



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3174/2021-22/1100

Karachi, dated the 25th April, 2022

To,

The Executive Engineer,
Provincial Highway Division,
Larkano.

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 R.M Associates v/s The Executive Engineer, Provincial Highway Division Larkano, held on 20.04.2022, for information & necessary action.

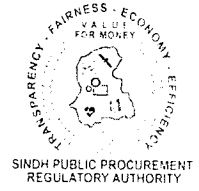

ASSISTANT DIRECTOR (Legal-II)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, (works & services) Department, Karachi.
2. The Superintending Engineer, Highway Circle Larkano.
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-317//2021-22

Karachi, dated, 22nd April, 2022

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

| | |
|--|---|
| Appellant | M/s R.M Associates |
| Decision of Review Committee Held on | 20.04.2022 |
| Procuring Agency | EN Provincial Highways Division Larkano (51- Works and Services Department) |
| PPMS ID # | T00786-21-0003 |
| Reference No. | TC/G/55/130/2022, Dated: 21-01-2022 |
| Appeal Received in Authority Dated | 6.4.2022 |
| Complaint of the Appellant Addressed to the Superintending Engineer, Provincial Highway Circle Larkano(CRC) Chairman | Dated:24.03.2022 |
| Dated of Posting Notice Inviting Tender | 25-01-2022 |
| Date of Opening of Bids Opening Technical | 10.02.2022,24.2.2022 |
| Date of Opening of Bids Financial | |
| Date of Posting Bid Evaluation Report | Various BER's have been posted on 28.03.2022 |
| Date of Posting Contract Documents | Not posted as yet |
| SPPRA Observations communicated on | 27.01.2022 |
| Estimated Cost of NIT Total | Around 550 Million |
| Total works in NIT | 16 Work |
| Appellant Related work | 1 and 2 |
| Issue involved | Non-acceptance of Bid |
| Complaint of the Appellant Addressed to the Superintending Engineer, Provincial Highway Circle Larkano(CRC) Chairman | Dated:24.03.2022 |
| CRC Decision | Not Yet Received |

Appellant's Version;-

1. The bidder has submitted that the procuring agency rejected his bid without assigning any cogent reasons and did not show his bid in BER nor showed name in attendance sheet.
2. The bidder submitted that his rates were the lowest and the procuring agency has recommended works on much higher rates. The Comparative statement of rates as claimed by the appellant is as under:

| Work No | Total Estimated cost | Rates submitted by the appellant | Rates accepted | Differential amount |
|---------|----------------------|----------------------------------|-----------------|---------------------|
| 1 | 115 Million | Rs.106,365,686/ | Rs.117,120,567/ | Rs.10754881/ |

[Handwritten signatures and marks]

| | | | | |
|---|----------------|---|---------------------------------------|------------------------|
| | | Less about 7.50 % of estimated cost | 1.84 above estimated cost | (around 11 Million) |
| 2 | 55.500 Million | Rs.48,794,885/ Less about 11.28 of the total NIT Cost | 56,333,213/ 2.42 above estimated cost | 7538328/ (7.5 Million) |

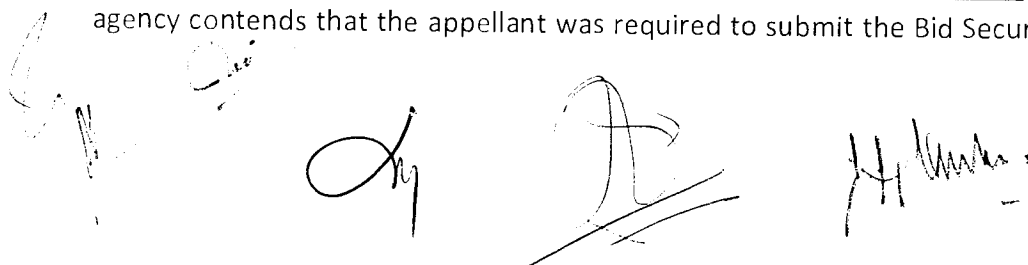
3. The appellant has claimed that the procuring agency has involved in corrupt practices.
4. The appellant admitted that he had paid the Bid Security amount and Tender Fees in the form of Pay order as one of the Scheduled bank where his account is running refused to prepare the amount in the form of Call Deposits rather prepared the same in the form of Pay order.
5. The appellant also complained that the procuring agency can not restrict the Bid Security form in the call deposits only as the Rules provide for other forms as well such the Pay Order, Bank Guarantee as well.
6. The appellant also contended that the procuring agency did not show his bid even as rejected which the appellant considered against the rules.

The procuring Agency's Version

1. The procuring agency submitted that the bid were opened before all and the appellant's bid was rejected at the time of opening because the appellant had not the Bid Security and Tender Fees in the form of Call Deposits as mandatorily required in NIT and bidding documents.
2. The procuring agency also submitted that the appellant was well informed about rejection of his bid as the bid of the appellant was rejected before the all bidders.
3. The procuring agency also pleaded that not only the appellant but also Four other bids were rejected because they had not submitted the Bid Security amount in the manner described and specified in the bidding documents.
4. The procuring agency also contended that the appellant was informed about the rejection of his by letter and the same was sent and received by the appellant accordingly.
5. The procuring agency resolved that the bidding process was completed in a transparent manner and the works were awarded to the successful bidder who was evaluated to be most advantageous in terms and conditions of NIT and bidding documents.

Findings of the Review Committee

1. Firstly, the Review Committee found that the major controversy revolves around the Submission of Bid Security and Tender Fees in the form of **Call Deposits**. The procuring agency contends that the appellant was required to submit the Bid Security and Tender



- Fees in the form of Call Deposits whereas the appellant contends that the procuring agency should have accepted Bid Security in Pay Order form.
2. Secondly, the appellant contends that the procuring agency rejected his bid but did not assign reasons which the appellant considered against the SPP Rules. On the other hand the procuring agency pleaded that the appellant was informed about his rejection accordingly.
 3. Thirdly, the appellant claims that his bid was not accepted even it was the lowest and complained that the procuring agency has caused serious loss to Public Exchequer by awarding the contract on higher rates to the favored contractors.

Observations of the Review Committee

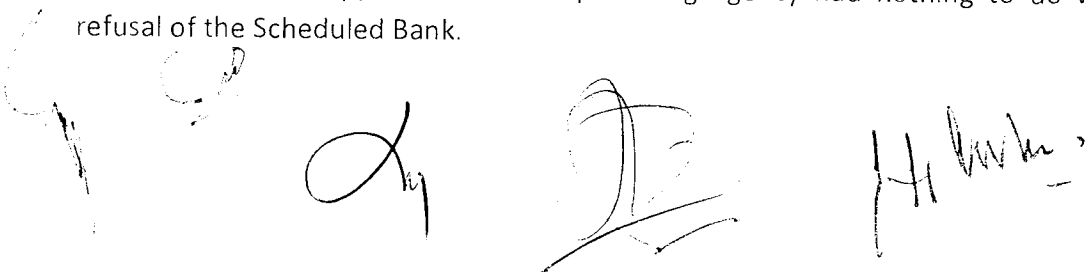
Issue of form of Submission of Bid Security and Tender Fees (Call Deposits Vs Pay Orders)

1. The Review Committee observed that the appellant's bid was rejected because the appellant did not submit required Bid Security and Tender fees in the form of Call Deposit rather paid in the form of Pay Orders in the favor of the Executive Engineer Highways Division Larkana. The procuring agency had clearly mentioned in NIT that Bid Security other than Call Deposit Form shall not be accepted. The Relevant Mandatory Conditions mentioned in Notice Inviting Tender is reproduced as under:

16. Contract documents and other terms and conditions can be seen or downloaded from the official website of SPPRA i.e "e.pprasindh.gov.pk". The tender amount to PK Rs.5,000/= and the bid security mentioned above in the shape of Call Deposit only from any scheduled bank of Pakistan in Executive Engineer Provincial Highways Division Larkana on account of (Name of Firm) should be attached with the bid/Tenders, otherwise such tenders will not be entertained.

17. Manner of Bid Security other than CD-R will not be accepted.

2. The Mandatory requirements mentioned in NIT as reproduced above made clear that the it was mandatory upon the bidders to comply with the tender conditions. In the instant matter, it is admitted position by the appellant himself that he had not submitted Bid Security and Tender Fees in the form of Call Deposit rather he had submitted the bid security and Tender fees in the form of Pay Order.
3. The appellant contended that one of the scheduled Banks, where his account is operational, did not allow for submitting Tender Fees and Bid Security amount in the form of Call Deposit. The Review Committee was of the view that the matter pertains to the bank and the appellant and the procuring agency had nothing to do with such refusal of the Scheduled Bank.

The block contains several handwritten signatures and initials in black ink. From left to right, there are: a large, stylized signature; a smaller signature; a signature that appears to be 'A'; a signature that appears to be 'D'; and a signature that appears to be 'H. Khan'.

rejected ab-initio without going forward to evaluation stage. The SPP Regulation of works also stipulates the same as described above. Regulation No.6.4 of the SPP Regulation of Works is reproduced as under:

6.4 Bid security: (Rule 37) Notice inviting tender may also specify that a bid security for a specified amount and in a specified format be enclosed with the tender. If there is no bid security, the bid is —non-compliant and therefore not —eligible to go forward to the evaluation stage.

Any bid/tender not accompanied by it to the extent and in appropriate form as notified while inviting tenders or stated in the bidding document shall be rejected and treated as non-responsive.

7. The Regulation underlined supra makes clear that the bid of the appellant was non-compliant and in-eligible for further evaluation hence was rightly rejected.

Non-Acceptance of Lowest submitted Bid

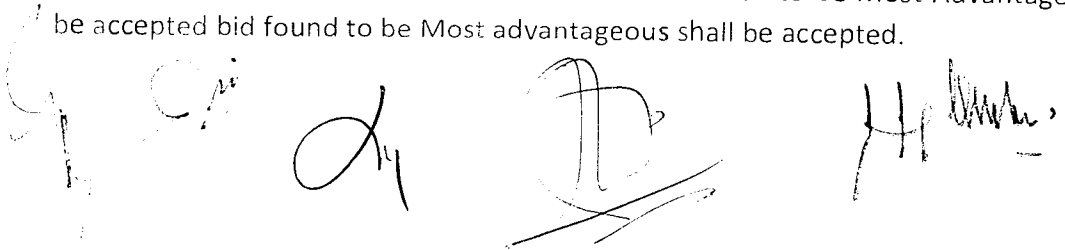
8. The appellant contended that the procuring agency should have accepted his as the bid was the lowest and was favorable. The Review Committee observed that the procuring agency had called the bids on Single Stage Two Envelope Bidding Procedure in which the procuring agency is required to evaluate the technical proposal in a manner prescribed in advance, without reference **to the price** and is required to reject any proposal which does not conform to the specified requirements. It is also clarified that as per SPP Rules the most advantageous bid is accepted rather the lowest submitted bid. The lowest submitted is a bid in which the price submitted is the lowest irrespective of meeting the required Eligibility and Qualification Criteria whereas the Most advantageous is bid or proposal for goods, works or services that after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding or request for proposals document. The SPP Rules defines the lowest submitted and most advantageous bid

"Lowest Submitted Price" means the lowest price quoted in a bid, which is otherwise not substantially responsive;

"Most advantageous" a bid or proposal for goods, works or services that after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding documents or request for proposals document and

ii evaluated is the highest ranked bid or proposal on the basis of cost and quality or qualification or any combination thereof, as specified in the bidding documents or Request for Proposal documents which shall be in conformity with the selection techniques to be issued by the Authority

9. The SPP Rule 46(2)(ii) describes that the bid evaluated to be Most Advantageous shall be accepted bid found to be Most advantageous shall be accepted.



4. The appellant contended that the SPP Rules allow the payment of Bid Security and Tender Fees in the form of Call Deposit, Pay Order, Demand Draft or a Bank Guarantee issued by a scheduled bank in Pakistan or from a foreign bank whereas the procuring agency restricted the Bid Security and Tender Fees submission in the form of Call Deposit only which the appellant considered against the SPP Rules. In this regard, the Review Committee observed that the SPP Rules empower, entrust and authorize the procuring agency to choose and call any of the forms and manners of Bid of Security and Tender Fees. The procuring agency has Authority to determine the form in which Bid Security or Tender Fees will be called. Rule 37 provides the amount and manner of asking for the Bid Security. For convenience and easiness, Rule 37 of the SPP Rules is reproduced:

37.[Bid Security:

- (1) The procuring agency shall require the bidders to furnish a bid security not below one percent and not exceeding five percent of the bid price.
- (2) The bid security shall be called in the form of Deposit at Call or Pay Order or Demand Draft or a Bank Guarantee issued by a scheduled bank in Pakistan or from a foreign bank duly counter guaranteed by a scheduled bank in Pakistan in favor of the procuring agency valid for a period of 28 days beyond the Bid Validity date.

5. The Rule mentioned above makes clear that the procuring agency may call the Bid Security in any form/manner. Similarly, Rule 17(3) provides the Basics for the preparation of NIT which also delineates that the procuring agency has to specify and describe amount and manner of payment of tender fee and bid security. Operative Para of Rule 17(3) is reproduced as under:

- (1) The notice inviting tender shall contain the following information:
- (a) name, postal address, telephone number(s), fax number, e-mail address (if available) of the procuring agency;
 - (b) purpose and scope of the project;
 - (c) schedule of availability of bidding documents, submission and opening of bids, mentioning place from where bidding documents would be issued, submitted and would be opened;
 - (d) amount and manner of payment of tender fee and bid security;

Rejection of Bid and Non-Inclusion of Bid in Bid Evaluation Report

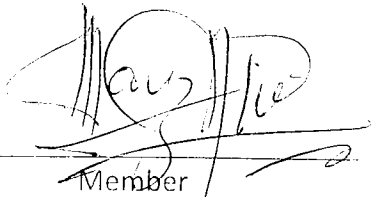
6. The appellant contended that the procuring agency did not show his bid in the Bid Evaluation Report. The Review Committee observed that the appellant had not submitted specified amount and in a specified format hence his bid was to be considered as non-compliant and therefore not —eligible. Hence the same was to be

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10. In the instant the bid submitted by the appellant was lowest submitted in terms of price but the same was not Most Advantageous as it did not meet the required mandatory qualification and was rejected accordingly.

Decision of the Review Committee:-

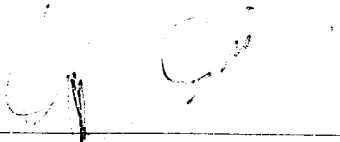
Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(a) of the SPP Rules, the Review Committee rejects the appeal of the appellant as the appellant's bid was rightly rejected in accordance with the terms and conditions set out in the NIT and bidding documents.



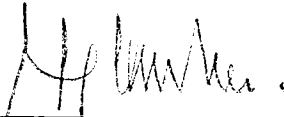
Member
(Manzoor Ahmed Memon)
Member SPPRA Board



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)