



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3288/2021-22/031

Karachi, dated 21st July, 2022

TO,

The Secretary,
Public Health Engineering & Rural Development Department,
Karachi.

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 namely **M/s Al-Fareed Bhutto v/s Executive Engineer, Public Health Engineering Division-1, Khairpurmir's** held on 29.06.2022, for information.

(ABDUL SATTAR SOOMRO)
ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for necessary action to:

1. The Chief Engineer, (Dev/OM) Public Health Engineering Department, Sukkur.
2. The Executive Engineer, Public Health Engineering Division-1, Khairpurmir's.
3. The PS to Chairman / Members of the Review Committee.
4. Assistant Director I.T. SPPRA (**with advice to post the decision on authority website in terms of Rule-32(11) of SPP Rules, 2010**).
5. The Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3288/2021-22

Karachi, dated, 06th July, 2022

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

Decision of the Review Committee held on 29.06.202

Name of Appellant	M/s Al-Fareed Bhutto
Procuring Agency	The Executive Engineer, Public Health Engineering Division-1, Khairpurmir's
PPMS ID # Reference No.	T00692-21-0006 TC/3007-2022 DATED: 21-04-2022
Appeal Received in Authority Dated	10.06.2022
Complaint addressed to the Chief Engineer (Dev/OM) Public Health Engineering Division-1, Khairpurmir's	31.05.2022
Dated of Posting Notice Inviting Tender	03-05-2022
Date of Opening of Bids	10.05.2022 First Attempt 25.05.2022 second Attempt
Date of Posting Bid Evaluation Report	Various BER's had been posted on Authority website 26 & 27.5.2022
Date of Posting Contract Documents	Not posted up-to 21.06.2022
SPPRA Observations communicated on	27-04-2022
Estimated Cost of NIT Total	Around 21 million
Total works in NIT	21 Works
Appellant Related work	Works at serial No. 02,03,04,05,06,08 & 09
Issue involved	Non-opening of bids or re-tender of NIT

The Appellant's Version

1. The appellant also claimed that the tenders are managed tenders and the procuring agency has failed to complete the procurement process in a transparent manner as described under rules. The appellant also conceived that the procuring agency was required to comply with the SPP Rules that make clear that "financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced

and communicated to the bidders in advance. or financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders." The bidder maintained that the Procuring Agency neither informed about financial bid opening nor informed about disqualification but proceeded to the procurement process in an illegal manner.

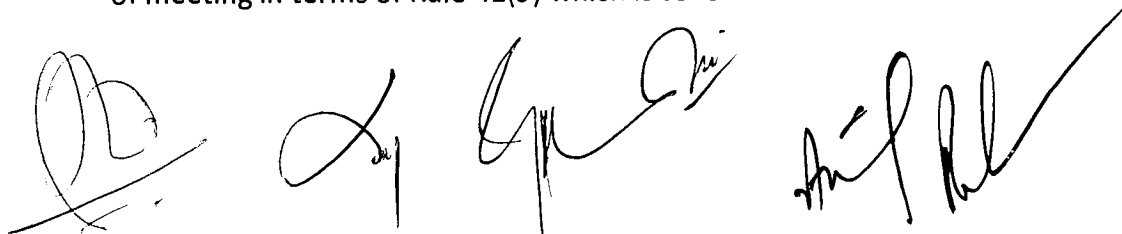
2. The appellant also claimed that the procuring agency did not hold the meeting of CRC and did not resolve the matter accordingly as required under rules. The complainant claimed that the complaint Redressal committee shall have announced its decision within seven days and intimate the same to the appellant and the Authority within three working days whereas, the Complaint Redressal committee failed to arrive at the decision within seven days.
3. The Appellant complained that there was no over writing in the bid submitted by the appellant.
4. The complaint also submitted that as the CRC did not decide the matter and it stood transferred to the Review Committee. Therefore, the bidder claimed to have approached the Review Committee.
5. The bidder also submits that the Procuring Agency shall have awarded the contract after the decision of the complaint redressal committee. However, the procuring agency awarded the contract without resolving the complaint and did not wait for the final adjudication by Review Committee but awarded contract which is against the rules.

The Procuring Agency's Version:-

1. The bids were opened within time. The procuring agency submitted that all bids were opened publicly in the presence of all the bidders, or their representatives at the time and place announced in the letters.
2. The procuring agency further submitted that the procurement committee read aloud the name of the bidder and total amount of each bid. All bidders signed an attendance sheet which may be perused by the record and the same is available at PPMS website. The official chairing of the procurement committee encircled the rates and all the members of procurement committee signed each and every page of financial proposal of bidders. The procuring agency submitted that the procurement committee issued the minutes of the opening of the tenders and the same are available at PPMS website.
3. The Procuring Agency also submitted that the appellant's bid was rejected being incomplete due to over writing, no further evaluation was carried out.
4. Responding to the question regarding the name of the Appellant in Technical Evaluation Report, The Executive Engineer submitted that the name of the appellant was recorded among the rejected bids. However, upon verification and scrutiny, it was observed that the Procuring Agency did not mention the name of the Appellant neither in minutes nor in technical evaluation report.
5. The procuring agency claimed to have carried out the entire procurement procedure in transparent manner.
6. The Procuring Agency further submitted that the appellant was verbally informed about his rejection of bids.

Observations of the Review Committee:-

1. The Review Committee observed that the Procuring Agency failed to record the minutes of meeting in terms of Rule 41(9) which is as follows:



Rule-41(9) The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

2. The Procuring Agency maintained that Appellant was disqualified due to over writing therefore his name was not shown in the bid evaluation report. The Committee observed that the results of bid evaluation in the form of a report are recorded which are aimed at giving reasons for acceptance or rejection of bids. All bidder whether qualified or disqualified are mentioned in the BER. But in the instant matter the Procuring Agency neither recorded minutes of over writing of the Appellant nor **mention over writing which proved that the Procuring Agency failed to complete the procurement process as per the SPP Rules.**
3. The Review Committee observed that the procuring agency failed to intimate the Bid Evaluation Report to all bidders as required under Rule 45 of the SPP Rules 2010 (amended up-to-date). The Rule states that the Bid Evaluation Report shall be intimated to the all bidders three days prior to the award of the contract. The Rule 45 is reproduced as under:
 45. **[Announcement of Evaluation Reports – Procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract.]**
4. In the instant matter, the procuring agency had not informed the bidder regarding the Bid Evaluation Report which is the violation of the Rule 45 of the SPP Rules 2010(amended up-to-date).
5. The Procuring Agency did not comply with the observations of the Authority which are posted on PPMS website.

Signing of Contract without Decision of CRC and during appeal period:-

6. The complainant also contended against the signing of contract and issuing of work orders by the procuring agency without decision of CRC and during appeal period. The committee of the view that the rule 31 describes the way of signing the contract if the complaint has been lodged.
 - (6) **The Procuring Agency shall award the contract after the decision of the complaint redressal committee;**
 - (7) **Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings; Provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract, [until the expiry of appeal period or the final adjudication by the Review Committee.]**
7. The sub rule 7 of 31 describes the **condition for the signing of contract in case of lodging of complaint. It is necessary that condition of CRC decision must be fulfilled before the signing of Contract.** It was mandatory upon the procuring agency to not sign





the contract until the final adjudication by SPPRA review committee. However, the procuring agency signed the contract which is clear violation of SPP rule 32(8).

8. Furthermore, the Review Committee observes that it is the duty of the procuring agency to ensure that the Sindh Public Procurement Regulatory Authority Act, 2009 read with Sindh Public Procurement Rules, 2010, are adhered to strictly to exhibit transparency. Hence, it was necessary upon the procuring agency to maintain the transparency in the complete process of bidding. However, the procuring agency failed to carry out the process in a transparent manner by not showing the received bid of the Appellant.
9. The committee also observed that the procuring agency did not follow the "Open Competitive Bidding" in the procurement of works. The SPP Rules 2010 defines the "Open Competitive Bidding"
10. Open Competitive Bidding" means a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Biddings;
11. The procuring neither followed transparency nor adopted proper procedure. The procuring agency neither informed to the bidder for financial opening nor before signing of contract waited till the final adjudication by the Review Committee. Therefore, it is evident from the discussion that the procuring agency violated the rules and failed to conduct an open competitive Bidding which is only possible in a transparent manner.

Review Committee Decision:-

After due deliberations, the Review Committee unanimously declares the instant tender as mis-procurement and refers the matter to the head of department for initiating disciplinary action against the officials responsible for the act mis-procurement as per SPP Rules 2010(Amended Up to date). Compliance of this decision shall be submitted before the Review Committee within 15 days of issuance of this decision.


Member
(Manzoor Ahmed Memon)
Member SPPRA Board


Member
(Munir Ahmed Shaikh)
Independent Professional


Chairman
(Atif Rehman)
Managing Director
(Sindh Public Procurement Regulatory Authority)