



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3300-3315-16-3329-30/2021-22/0859

Karachi, dated 11th October, 2022

TO,

- The Secretary,
Works & Services Department,
Karachi.
- The Executive Engineer,
Highway Division,
Shikarpur.

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 Syed Qurban Ali Shah, M/s Fida Hussain, M/s Ghulam Murtaza Bhutto, M/s Hotani & Brothers, M/s Raja Panhyar v/s Executive Engineer, Highway Division Shikarpur held on 27.07.2022, for information & necessary action.

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

A copy is forwarded for necessary action to:

1. The Chief Engineer, (Works & Services) Department Hyderabad.
2. The Superintending Engineer, (works & Services) concerned circle Larkano.
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-33 : 3300-3315-16-3329-30/2021-22

Karachi, dated, 15th August, 2022

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

Decision of the Review Committee held on 27 .07.2022

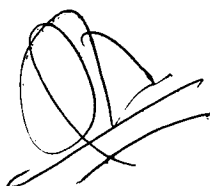
Name of Appellant	M/s Syed Qurban ali Shah , M/s Fida Hussain & Brothers M/s Ghulam Murtaza Bhutto,M/s Hotani & Brothers and M/s Raja Panhyar
Procuring Agency	The Executive Engineer Highways Division Shikarpur.
PPMS ID # Reference No.	T00697-21-0004 TC/G-55/48/2022 DATED: 21-03-2022
Appeal Received in Authority Dated	14.06.2022
Complaint addressed to the Superintendent Engineer Works and Services Department Shikarpur	2.6.2022 30.5.2022 31.5.2022
Dated of Posting Notice Inviting Tender	31-03-2022
Date of Opening of Bids	15.04.2022 First Attempt 02.05.2022 second Attempt
Date of Posting Bid Evaluation Report	Various BER's had been 29.5.2022 to 30.05.2022
Date of Posting Contract Documents	Not posted up-to 21.06.2022
SPPRA Observations communicated on	07-04-2022
Estimated Cost of NIT Total	Around 481 million
Total works in NIT	22 Works
Appellant Related work	Work No 14 , work no 5.6.21 & work no 7 & 22
Issue involved	Non-opening of bids and not showing in BER
CRC Decision	Not received

M/s Fida Hussain(Applied for Work No 5,6,21)

Sr.No	The Appellant's Version	The Procuring Agency's Version
1.	The Appellant submitted that he sent his bids by mail through leopard courier service and submitted the lowest bid but the procuring agency did not show his bid in the procurement process.	The procuring agency submitted that the appellant's bid was not received to the office. It was also informed that appellant also did not drop his bid at the time of bid opening.
2.	It was also submitted by the appellant that the procuring agency neither sent any disqualification letter nor showed his bid in the procurement process.	The Procuring agency reiterated that the bid was not received hence there was no question about sending the disqualification letter to the appellant.
3.	The Appellant also complained that the procuring agency awarded contracts on higher rates to the favored contractors. It was also complained that the procuring agency blatantly violated the rules in the procurement process.	The procuring agency denied such allegations and submitted that the procurement process was completed in fair manner.
4.	The Appellant contended that if the procuring agency claimed that he had not sent his bid, then procuring agency shall tell that where are the documents that were received by the procuring agency by mail through courier Service.	The procuring agency maintained that it has been norm of the habitual complainants that they send blank envelopes to blackmail the procuring agency.
5.	The Appellant also pleaded that he sent bid security to the procuring agency that is still in the possession of the procuring agency and the same could be verified from bank that he had not withdrawn the same till date.	The Procuring agency denied the receipt of any tender or bid security.

M/s Qurban Ali Shah (Work No 14)

Sr.	Appellant's Version	Procuring Agency's version
1.	The Appellants submitted that he participated in the procurement process and quoted lower rates but the procuring agency awarded works to other bidders on higher rates.	The Procuring agency submitted that the appellant's representative was present at the time of bid opening where he put fake signature but did not submit his bid.
2.	The appellant claimed that he had gone for the opening of bids and dropped the	The procuring agency informed that the bids were opened but the bidder did not




	tenders.	participate in the bidding.
3.	The appellant claimed that attendance sheet shows that the appellant had participated in the bidding process.	Regarding the signature of the bidders, the procuring agency submitted that representative put a fake signature but did not drop the tender.
5.	The Appellant submitted that the Procuring Agency was under obligation not to sign the contract during the pendency of the appeal before the Review Committee.	The Procuring Agency submitted that the appellant was neither a bidder nor his complaint was maintainable under the SPP Rules. Responding to a question regarding award of work, the procuring agency informed that the procurement contract had been signed with the successful bidder as per law.

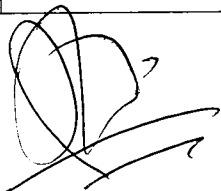
M/s Hotani Brothers (Applied for work No 04,05,20,21)

S. No.	Appellant's Version	Procuring Agency's version
1.	The Appellants submitted that he participated in the procurement process for works No. 4,5,20 & 21 but the procuring agency showed only work No. 4.	The Procuring agency submitted that the appellant had only participated for work No. 4. It was informed that for work No. 04 the appellant was disqualified as he had not attached any pay order for tender documents fees and call deposit furthermore he failed to submit fresh affidavit regarding blacklisting.
2.	The appellant claimed that he had attached pay orders for tender's fees in bid security. He said that his tender fees and bid security documents were checked at the time of bid opening.	The procuring agency informed that only name were called and later on during the evaluation of bids it was observed that the appellant did not submit required pay orders.
3.	The appellant submitted that the procuring agency awarded contract on higher rates.	The procuring agency submitted that the works were awarded to the contractors who fulfilled the requirements of the procuring agency and qualified the technical proposal.
4.	It was also submitted by the appellant that the procuring agency neither sent any disqualification letter nor showed his remaining bids in the procurement process.	The Executive Engineer informed that policy was devised by the procurement Committee that bidders will be informed about their disqualification by uploading BER on Authority website. Therefore no written communication was made with any disqualified bidder.

<p>5. The Appellant submitted that the Procuring Agency was under obligation not to sign the contract during the pendency of the appeal before the Review Committee.</p>	<p>The Procuring Agency submitted that the appellant was neither a bidder nor his complaint was maintainable under the SPP Rules.</p> <p>Responding to a question regarding award of work, the procuring agency informed that the procurement contract had been signed with the successful bidder as per law.</p>
--	---

M/s Raja Panhyar(Work No 7 & 14)

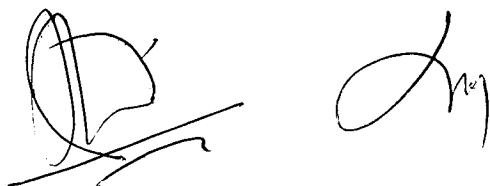
Sr.No.	The Appellant's Version	The Procuring Agency's Version
1.	The Appellants submitted that he participated in the procurement process and quoted lower rates but the procuring agency awarded works to other bidders on higher rates.	The Procuring Agency submitted that the appellant submitted his bid but when bids were evaluated it was found that the appellant had submitted duplicated bid security documents. Therefore, his bid was rejected and no further action was taken.
2.	The Appellant submitted that the procuring agency announced his name and checked bid security at the time of opening of bids. Later on, the procuring agency duplicated his bid security that was a forgery made by the procuring agency.	The Procuring Agency submitted that at the time of bid opening just name was called but during detailed scrutiny of bids, it was found that the appellant did not submit the original bid security call deposits.
3.	The Appellant also claimed that he had video evidence that his name was called and bid security was checked.	The Procuring Agency reiterated that just his name was called and apparently bid security was checked.
4.	The Appellant also complained that in the minutes of bid opening, the procuring agency mentioned that he had not submitted bid security but then maintained that bid security was duplicated which showed the mala fide intention of the procuring agency.	The Procuring Agency argued that duplicate was meant as there was no bid security therefore, it was mentioned that he had not submitted bid security.
5.	The Appellant submitted that even if the procuring agency had disqualified his firm, it was obligatory upon the procuring to send a letter stating the reasons for rejection/ disqualification.	The procuring agency submitted that policy was formed that bidders would be informed about disqualification via Bid Evaluation Report but letters




		would be written.
6.	The Appellant submitted that the procuring agency blatantly violated the rules and continued with the procurement process.	The procuring agency denied any violation of rules by the procurement committee.

M/s Ghulam Murtaza Bhutto (Works No. 7 & 22)

Sr.No	The Appellant's Version	The Procuring Agency's Version
1.	The Appellant submitted that procurement was not made according to the requirement/conditions as laid down in the advertisement published for procurement of works.	The procuring agency submitted that the procurement was made as per requirements and conditions in the advertisement.
2.	The Appellant submitted that the advertisement said the contractors having C-4 should apply but later on, the contractors who were cleared for award of contract did not meet the criteria.	The procuring agency submitted that rectification was made and C-6 and even c-7 were allowed to participate in order to encourage open competition in the bidding process.
3.	He said that the office administration opened bids on 15-5-2022 but neither any rejection / disqualification letter was received nor he was called for financial bid opening.	The procuring agency submitted that he had not dropped his bid just appeared and went out without submitting his bid. The procuring agency submitted that policy was formed that bidders would be informed about disqualification via Bid Evaluation Report but letters would not be written.
4.	The Appellant submitted that he signed attendance sheet which showed he was present at the time of bid opening.	The procuring agency submitted that on the day of opening there was rush due to the presence of many contractors, hence, the bidder got the chance and put signatures without dropping his tenders.
5.	At the time of bid' scrutiny, eligibility criteria were	The procuring agency




completely neglected and favorite contractors were awarded contract without detailed evaluation of bids.	submitted that the bids were evaluated as per the evaluation criteria mentioned in NIT and bidding documents.
--	---

Observations of the Review Committee:

1. The procuring agency failed to form the complaint Redressal Committee as per SPP Rules-7
2. The procuring agency failed to follow the procedure of bid opening as described under the SPP Regulations of Works.
3. The Procuring Agency failed to record the minutes of bid opening meeting.
4. The Review Committee observed that the procuring agency failed to evaluate the bids as per the evaluation criteria set forth in NIT and bidding documents.
5. The Review Committee observed that the procuring agency failed to communicate the rejection / disqualification of the bidders by following the procedure mentioned in the Rules.
6. The procuring agency awarded contract during the pendency of appeal.
7. The Procuring agency failed to show the bids of the bids whose bids were received by mail or who signed attendance sheet.
8. The Procuring Agency awarded works on higher rates which caused loss to the Public exchequer.
9. The Procuring Agency failed to complete the procurement process in a fair neat & clean and transparent manner.
10. Violation of Rule-50 and Rule-10.

The details of these observations are described below in detail,

1. The procuring agency failed to form the complaint Redressal Committee as per SPP Rules.
- I. The procuring agency was required to constitute the Complaint Redressal Committee comprising one independent member besides other member. However, the notification posted by the procuring agency clearly showed that the constituted committee was not as per the Rule 31 of the SPP Rules. The operative Para of notification of CRC hosted by the procuring agency on Authority's website is pasted as under:



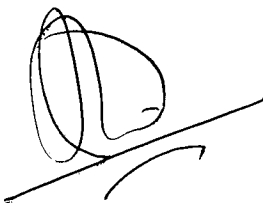
No. E&A(W&S) 3-9/91/2021
GOVERNMENT OF SINDH
WORKS & SERVICES DEPARTMENT
Karachi dated the 02nd September, 2021

NOTIFICATION

No. E&A (W&S) 3-9/91/2021: In partial modification of this Department's Notification of even number dated 18-05-2021, a Complaint Redressal Committee with the following composition, in terms of Rule-31 of Sindh Public Procurement Rules 2010 (Amended up-to-date) is hereby constituted in Works & Services Department, Shikarpur for the purpose of redressal of grievances and settlement of disputes, if any, arises between procuring agency and bidders:-

<u>DISTRICT SHIKARPUR</u>		
1.	Superintending Engineer, Works & Services Department Shikarpur	Chairman
2.	The District Accounts Officer, Shikarpur	Member
3.	The Executive Engineer, Education Works Division, Shikarpur	Member

- II. The Notification shows clearly that there was no any independent member in CRC. Furthermore, the procuring agency was intimated by the Authority about the error in the




notification. The Observation of the Authority communicated to the procuring agency and hosted on the website is as under:

"The CRC does not comprise independent Professional, as required under Rule-31. PA is required to re-notify the CRC comprising Independent Professional from relevant field, prior to opening of bids."

III. The procuring agency did not pay heed to the observation of the Authority and did not re-notify the CRC comprising Independent Professional from relevant field, prior to opening of bids. Therefore, this is violation of the SPP Rule 31.

2. The procuring agency failed to follow the procedure of bid opening as described under the SPP Regulations of Works.

IV. It is important to mention here that bidding is a **procurement procedure** under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract. The procedure is mandatory to be followed as described under the SPP Rules and Regulation. Any bidding process where procedure is not adopted accordingly, it shall be considered as unfair. The SPP Rules and Regulations provide the comprehensive and clear procedure for the opening of bids. At the time of opening, the procuring agency failed to follow the procedure. Besides other SPP Rules and Regulations, the Regulation 7.9(ii) provides for the requirements that are to be checked at the time of bid opening which is as follows:

ii) Bid opening check list.

Preliminary requirements:

Sr: No	ITEMS	Name of Bidders		
		Firm A	Firm B	Firm C
1.	Is envelope sealed?	Yes/No		
2.	Required Amount of Bid security			
3.	Required Bid validity period			
4.	Authority of signing			
5.	Alternate bid if any			
6.	Withdrawal.			
7.	Substitution or Modifications. if any			
8.	Any discounts (if any)			
9.	Price Read out			
10.	Form of tender signed or not			
11.	Other documents attached(PEC valid Registration in required discipline and category			
12.	Any other detail			

V. In this instant tender the Procuring Agency did not check the required documents at the time of bid opening. It was contended by the procuring agency that M/s Raja Panhyar's bid security was not checked at the time of bid opening but later on, the procuring agency came to know that the bid security pay order was duplicate. Such statement shows that the procuring agency failed to follow the proper procedure for the opening of bids as described under the SPP Rules and Regulation.

3. The procuring agency failed to record the minutes of bid opening meeting.

VI. The Rule 41 (9) of the SPP Rules states that the procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any. Furthermore, the procuring agency was required to record the proceedings of bid opening fairly in the minutes of meeting. In the instant matter, the procuring agency failed to record the minutes accordingly; the bidders signed attendance sheet but according to the procuring agency they just signed the attendance sheet but did not submit bids. Firstly, it was

not permissible for any person who was not submitting the bid to sign the attendance sheet. Secondly, even if they had signed the attendance sheet, the procuring agency was required to record the same in the meeting minutes that they just signed the attendance sheet but did not submit the bid. However, the same was not done which is tantamount to the violation of Rule 41(9).

4. The Review Committee observed that the procuring agency failed to evaluate the bids as per the evaluation criteria set forth in NIT and bidding documents.

VII. The Rule 42 of the SPP Rules states that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. However, in the instant matter, the procuring agency failed to comply with the Rule 42 of the SPP Rules. The eligibility criteria mentioned by the procuring agency is pasted as under:

01. ELIGIBILITY / MANDATORY

Page 10

- i) Valid Registration Certificates upto (June 2022) with Pakistan Engineering Council in relevant category and specialized codes as mentioned against each work.
- ii) Atleast 03 works having same specifications and nature having equal or more costs OR quantum (in terms of quantities) completed during past three years, duly supported with completion certificate, certified copies of Detailed Working Estimate and SPPRA ID's showing Bid evaluation report.
- iii) Bio-data of Engineers and Technical staff working with the firm as per PEC license.
- iv) Annual turnover atleast twice per annum, to the estimated cost of the work applied, in last three years (turnover will be evaluated from annual returns and Audit Reports).
- v) Annual audited reports of last three years from (ICAP) registered audit firm. Audit report issued other than (ICAP) registered audit firms will not be accepted.
- vi) List of machinery and equipments available with documentary evidence of its ownership / rented.
- vii) List of machinery and equipments available with documentary evidence of its ownership.
- viii) Certificate of Bank showing credit worthiness of at-least 15% (average balance per year for the last 3 years) of the estimated cost of work along with Bank Statement. Bank statement must be provided separately for each year starting from 1st July to 30th June for last three years and recent bank certificate must be attached showing available balance.
- ix) Registration with Income Tax Department (NTN Certificates) with activate status Federal Board of Revenue.
- x) Annual Income Tax Returns of Last Three Years.
- xi) Registration Certificates of Sindh Revenue Board Government of Sindh with activate status (SRB) certificate.(with active status)

VIII. On the contrary to the evaluation criteria, the procuring agency did not scrutinize the bids for required documents. The bidders' qualification Reports have been prepared on the below format:

a)	NTN	PEC	SRB Certificate	Relevant Experience	Turnover last 03 Years	Funds / Budget	05% Earnest Money	Tender Fee / Cost of bidding Documents
	Yes	Yes	Yes	Yes	Yes	Available	Submitted	Submitted

- IX. The remaining items of eligibility criteria have been neglected altogether by the procuring agency. The matter was also reported to the procuring agency by the Authority but the procuring agency proceeded with the procurement process and contract was signed without rectifying the errors in this regard.
5. The Review Committee observed that the procuring agency failed to communicate the rejection/disqualification of the bidders by following the procedure mentioned in the rules.
- X. The Rule 45 states that "the 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" Furthermore, the Regulation 7.9 of the SPPRA Regulation of Work states the Announcement of evaluation reports (Rule 45) which is as follows:

7.9 Announcement of evaluation reports (Rule 45). The Evaluation Report should include at least the following information:-

(i) results of the preliminary screening with the list of rejected bidders and a brief

statement of why the bid was rejected;

(ii) results of the detailed technical and commercial evaluation;

(iii) list of any tenders which were rejected as non-responsive and the reasons for the rejection;

(iv) details of any non-material deviations, errors or omissions accepted, clarified or corrected and, where relevant, the way in which deviations or omissions have been quantified and taken into account in the financial evaluation;

(v) price of each tender as read out at the bid opening;

(vi) evaluated price of each tender, following any correction or adjustments to the price and the conversion to a single currency (if required);

(vii) ranking of the tenders, according to their evaluated price;

(viii) stating the tender which has the lowest evaluated price and is therefore recommended for approval to competent authority; and

(ix) results of pre-qualification/technical assessment also be provided separately if any.

The Bid Evaluation Report in the standard form prepared and duly signed by all members of evaluation committee is to be hoisted on website of the authority and that of procuring agency if its website exists and intimated to all bidders at least three working days prior to the award of contract. (Annexure F).

- XI. The operative Para of Standard format of Bid Evaluation report is pasted below:



12. Bid Evaluation Report:

<i>S No</i>	<i>Name of Firm or Bidder</i>	<i>Cost offered by the Bidder</i>	<i>Ranking in terms of cost</i>	<i>Comparison with Estimated cost</i>	<i>Reasons for acceptance/rejection</i>	<i>Remarks</i>
0	1	2	3	4	5	6
1.	A					
2.	B					
3.	C					
4.	D					

Signatures of the Members of the Committee.

In the instant matter, the procuring agency did not mention the reasons for the rejection of bids nor intimated BER to the bidders and hoisted incomplete BER in violation of the SPP Rules and Regulations.

6. The procuring agency awarded contract during the pendency of appeal.

XII. The complainants 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.

- (1) **The Procuring Agency shall award the contract after the decision of the complaint redressal committee;**
- (2) **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.]

XIII. 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(7).

7. The procuring agency failed to show the bids of the bidders whose bids were received by mail or who signed Attendance sheet.

XIV. The Rule 41 states that the bids shall be opened within one hour of the deadline for submission of bids but in the instant matter the procuring agency failed to the open the bids received via courier service. The procuring agency maintained that envelope was received but that blank. The committee was of the view that if there was nothing in envelope, then the procuring agency was required to mention in the minutes but the same was not done.

8. The procuring agency awarded works on higher rates which caused loss to the exchequer.

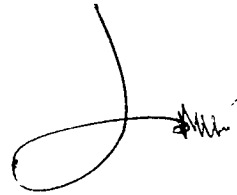


11. Decision of the Review Committee.

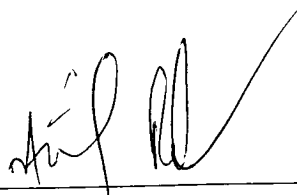
- XXI. Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(g) of the SPP Rules, the Review Committee declare the procurement of Eight works of NIT No.4,05,06,07,14,20, 21, & 22(for which the appellants had participated) as Mis-procurement, as it has been established that the Procuring Agency has violated the SPP Rules procedure during the procurement process.
- XXII. Decides to refer the matter to the Competent Authority i.e. Secretary Works & Services Department, Karachi for initiation of disciplinary action against the official(s)/ Officers of the procuring agency responsible for Mis-procurement.
- XXIII. Compliance of the decision shall be submitted within 15 days of the issuance of the decision.



Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



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