



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO. AD(L-II)/SPPRA/RC/2018-19/

Kavachi, dated Feb. 2019

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

(Appeal)

M/s Abdul Wajid Khan

Versus

Executive Engineer Public Health Engineering Division, Sujawal

Facts and background

M/s Abdul Wajid Khan, Thatta (hereinafter referred as the appellant) filed a complaint vide its letter dated 28th December 2018 to Sindh Public Procurement Regulatory Authority (hereinafter referred as the Authority) as well as copy endorsed to the Chief Engineer, Public Health Engineering Department/ Chairman Complaint Redressal Committee (CRC) of the procuring agency i.e. Public Health Engineer Division, Sujawal (hereinafter referred as the procuring agency) wherein the appellant stated that the procuring agency invited tenders for procurement of works vide notice inviting tenders No.TC/PHE/1156 dated 07th December 2018 and its opening was scheduled on 28th December 2018. The appellant highlighted that he participated in the bidding process through submission of bid documents to the procuring agency via mail and same were received by the procuring agency (Mr. Ghulam Shabir) on 28th December 2018 at 11.00 a.m. and his representative namely Mr. Aijaz Khan was present there during schedule for opening of bids but the procuring agency did not entertain/ consider his bid documents during bid submission and opening schedule on the premise that bids received through TCS (courier) cannot be accepted.

2. The Authority forwarded the above matter to the procuring agency on 02nd January 2019 with advice to redress the bidder's grievances (appellant) through CRC within stipulated time period as specified under Rule-31 of SPP Rules, 2010 (Amended Up to date). In response, the procuring agency furnished minutes of CRC meeting to the Authority on 18th January, 2019 with decision reproduced below:

"Members of CRC examined thoroughly the contents of complaint made by the contract Mr. Abdul Wajid Khan. It was observed that condition at Serial No. 10 of NIT No. TC/PHE/1156 Sujawal dated 07.12.2018 clearly indicates that no tender will be accepted if posted by courier. The applicant Mr. Abdul Wajid Khan admits in his complaint that his tender was submitted through TCS Service on dated 28.12.2018, thus making violation of SPPRA Rule 46(2)(e)."

3. On the above decision of the CRC, the appellant lodged his review appeal to this Authority on 22.01.2019 stating that the procuring agency has admitted that tender documents were received through mail but same were not accepted due to violation of SPPRA Rule-46(2)(e). The appellant further stated that there is not any condition under SPPRA Rule-46(2)(e) that restricts the acceptance of bid documents received through TCS/ courier.

4. On receipt of the above appeal, the Authority issued notices to the concerned parties for appearing before the Review Committee on 6th February, 2019. Mr. Abdul Wajid Khan (representative of appellant), and Mr. Abdul Haleem Memon, Superintendent Engineer (representative of the procuring agency) appeared before the Review Committee.

Appellant's Version

5. Mr. Abdul Wajid Khan (representative of the appellant) while arguing his appeal apprised the Committee that the procuring agency has acknowledged that our bid documents were received through mail within specified schedule and our representative was also present over there at the time of opening of bids; despite ~~of it~~ ^{of it}, our bid document was not entertained/ considered for opening by the procuring agency. We submitted our grievances to the procuring agency's CRC but the procuring agency rejected our plea to favor its own parties/ bidders. The appellant further highlighted that there is not any provision in SPPRA that allows the procuring agency to reject bids on the grounds of submission of bid documents through courier service.

Procuring Agency's Version

6. Mr. Abdul Haleem Memon, Superintendent Engineer while responding to queries raised by the Review Committee clarified that bid documents of the appellant were rejected as per terms and conditions (no tender will be accepted by courier) mentioned in NIT and this reason is also supported by the procuring agency's CRC. He stated that the Authority did not convey any observation over such condition to the procuring agency; therefore, we continued our bidding process and have also awarded contracts to the qualified firms.

Review Committee Observations

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

- It is the sole responsibility of the procuring agency to ensure compliance of SPP Rules during the procurement process/ cycle; The Authority does give its observations, advices, and infirmities from time to time whenever violation of rules is brought to its notice, but it does not absolve procuring agency of its primary responsibility of compliance of rules.
- The decision of the procuring agency's CRC to reject the bid submitted by M/s Abdul Wajid Khan through TCS in terms of Rule-46(2)(e) is baseless as it spells out that procuring agency shall evaluate the technical proposal in a manner prescribed in advance,

points out



without reference to the price and reject any proposal which does not conform to the specified requirement;

- It is explicitly highlighted under Rule-24(2) of SPP Rules, 2010 (Amended Up to date) that the bidder may submit bids on the bidding documents issued by the procuring agency or download from the Authority's website along with tender fee if any by mail or by hand.
- The procuring agency cannot impose any condition in bid documents that violates any of the SPP Rules.

Review Committee Decision

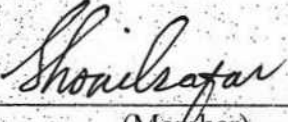
8. After due deliberations, the Review Committee unanimously declares the instant tender as mis-procurement and refers the matter to the head of department for initiating disciplinary action against the Executive Engineer, Public Health Engineering Division Sujawal in terms of Rule-32(A) of SPP Rules, 2010 (Amended Up to date). In addition, the Review Committee decides that the concerned Executive Engineer shall pay Rs.10,000/ from his Pocket to the appellant Mr. Abdul Wajid Khan as compensation for cost incurred by the bidder/ appellant on preparation of bid in terms of Rule-32(7)(e). Compliance of this decision shall be submitted before the Review Committee within 15 days of issuance of this decision.




(Member)
Saad Rashid
Private Member SPPRA Board
Representative Transpsarency International




(Member)
Asadullah Soomro
Private Member
SPPRA Board



(Member)
Shoaib Zafar
Nominee of Director General Audit Sindh



(Member)
Khalid Mehmood Soormo
Member Federal Ombudsman
Independent Professional



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