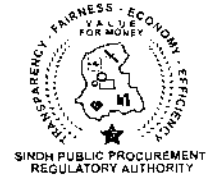




Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal)SPPRA/SMBBT/RC/2018-19

Karachi, dated 27 February, 2019

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

(Appeal)

M/s Shamsuddin Mandokhail

Versus

Project Director Shaheed Mohtarma Benazir Bhutto Town

Regarding NIT No. EE/SMBBT/37 dated 3<sup>rd</sup> September, 2018 SPPRA PPMS ID No. 00673-18-0001

**Facts and background**

1. M/s Shamsuddin Mandokhail, Government Contractor, hereinafter referred to as Appellant, filed an appeal on 14-01-2019 to the Review Committee (RC) of Sindh Public Procurement Regulatory Authority (SPPRA) stating therein that Appellant participated in the bidding process in response to Notice Inviting Tender (NIT) issued by Executive Engineer, Shaheed Mohtarma Benazir Bhutto Town hereinafter referred to as Procuring Agency (PA), for the procurement of the different packages (09 items) of civil works.

2. The Appellant had lodged a complaint to the Project Director, SMBBT/Chairman Complaint Redressal Committee (CRC), Manager Complaint, SPPRA, Chairman NAB & Director General NAB on 02-01-2019, for redressal of their grievance. In this regard, this Authority sent letter to Procuring Agency vide letter even no. dated 15<sup>th</sup> January, 2018 for redressal of their grievances under Rule-31 of SPP Rules but instead to furnish decision of CRC the PA has furnished clarification/justification vide letter No. EE/SMBBT/133 dated 18-01-2019 to this Authority that *“Chairman of the Redressal Committee was out of the country and due to this reason the decision of CRC was not communicated to SPPRA. However, the tender documents submitted by the complainant has been checked by officers of this department and it was observed that the complainant do not fulfill the required criteria and also not qualify in technical bid as well”*. Thereafter, Appellant preferred an appeal for redressal of his grievances before the Review Committee in term of Rule-32. The matter was taken up by Review Committee under Rule-31(5) read with Rule-32 of SPPRA Rule 2010.

3. Accordingly, notices were issued to the parties for appearing before the Review Committee and the matter was fixed for hearing on 24<sup>th</sup> January, 2019 at 12:00 noon and later on 29<sup>th</sup> January, 2019 at 02:00 pm. Mr. S. Ahsan Abidi (Consultant), Mr. Waheed Bashir (E.E), Mr. Fazal Rehman (A.E.E) from Procuring Agency and Mr. Shamsuddin Mandokhail from appellant appeared before the Review Committee.

**Appellant Version**

4. The appellant stated that their firm had participated in the bidding process for work No. 1 and 7 in which the procuring agency declared them qualified for work No. 01 and disqualified for work No. 7, despite that the eligibility criteria of both works are same. Furthermore, the appellant informed the committee that most of the successful bidders of the said NIT do not fulfill the Evaluation/Qualification criteria for two similar works/assignments as well as violation



Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal)SPPRA/SMBBT/RC/2018-19

Karachi, dated February, 2019

of SPPRA Rule 11.3.4 while allowing the bidder who have offered the cost 30.00001%. which is more than 30% below. The Appellant also alleged that tenders are being awarded on personal liking or disliking basis.

**Department/Procuring Agency Version:-**

5. Representatives of Procuring Agency while defending their action stated and admitted before the Review Committee that the appellant was erroneously declared qualified for work No.7 as their firm did not fulfill the Qualification criteria of having *at least two similar assignments having cost of each at least 55 million in the last five (05) years* and produced documents submitted by the appellant as evidence. Upon objection by the Appellant that the said work has been recommended for award to M/s Rajgan which also does not qualify on similar grounds, the Review Committee asked Procuring Agency to justify its action. The Procuring Agency provided a copy of the certificate of Joint Venture in between M/s Rajgan and M/s Askari Enterprises which jointly fulfilled the condition. Furthermore, the Procuring Agency clarified for the work/item no. 1, that the appellant was rightly declared as a rejected for not having *two similar assignments having cost of each at least 70 million in the last five (05) years* as mentioned in evaluation/qualification criteria.

6. The Procuring Agency provided all documents of the bidders who participated and declared 1<sup>st</sup> lowest for all 9 items/works of the NIT as called by the Review Committee and Procuring Agency also admitted/accepted the deficiencies during the Evaluation of bidding documents for item/work No. 5,6 & 8.

**Observations:**

7. i. As per statement of the Procuring Agency, as well as of the appellant, and also from the perusal of the bidding documents provided by Procuring Agency it is found that the Procuring Agency had wrongly evaluated the bidding documents of the bidders for items/works No. 5,6,7 and 8 which do not fulfill the evaluation criteria given in the bidding documents at the time of issuance of NIT at para (viii) Specific Construction Experience and Past Performance in bidding data Sheet which is not in consonance with SPP Rule-42(1).
- ii. From the perusal of agreement of Joint Venture provided by Procuring Agency for work/item No. 7 between two bidder i.e. M/s Rajgan and M/s Askari, it is observed that date of signing of agreement and date of opening of tender is the same i.e. 24<sup>th</sup> September, 2018, which raises question on the veracity and genuineness of the Joint Venture. Moreover, clause 6.4(a) of SPP Regulation on works stipulate that the bid security submitted by a Joint Venture should be in the name of Joint Venture, however, in the instant case the bid security submitted by Joint Venture is not in the name of Joint Venture.
- iii. It is observed that engineers estimated cost is on higher side resulting in higher number of bids more than 30% below quoted by the participating bidders.



Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal)SPPRA/SMBBT/RC/2018-19

Karachi, dated

February, 2019

- iv. It is also observed that the Procuring Agency had invoked clause 11.3.4 of Regulations for works/items No. 1,3 & 4 rejecting bids of other bidders as being more than 30% below but the successful bidders in above said works have also quoted rates more than 30% below. Hence, the clause 11.3.4 is also applicable in case of the 1<sup>st</sup> lowest bidders of said items/works as the application of this clause has to be across the board and not on pick-and-choose basis. The clause 11.3.4 stipulates as under:-

*"In case procuring agency receives a bid which is more than 30% below the Engineers Estimate or composite schedule rates (CSR), the procuring agency can reject that particular bid(s) or float tenders afresh, if deemed appropriate".*

- v. The Procuring Agency has also admitted several errors/mistakes found in the evaluation of qualification criteria.
- vi. It has been observed that Bid Evaluation Report for item No. 2 posted on Public Performance Management System (PPMS) by the Procuring Agency is inaccessible and therefore, cannot be examined.

**Decision:-**

8. i. In the light of above narration and observations, the Review Committee in exercise of power conferred vide Rule-32(7)(f) of SPP Rules, 2010, unanimously decided that Procuring Agency shall immediately terminate the instant procurement proceedings in respect of items/works No. 1,2,3,4,5,6,7&8 and also directed Procuring Agency to re-invite the tender afresh, following SPP Rules in letter and spirit.
- ii. The appellant has failed to prove that their firm is eligible for the item/work No. 1 & 7 as their firm does not fulfill requirement of Qualification Criteria of para (Viii) of Bid Data Sheet.

(Member)

Saad Rashid

Representative Transparency International  
Private Member Represented on SPPRA Board

(Member)

Asadullah Soomro

Private Member SPPRA Board

(Member)

Shoaib Zafar

Nominee of Director General  
Audit Sindh

(Member)

Khalid Mehmood Soomro

Member Federal Ombudsman  
Independent Professional

(Chairman)

Muhammad Aslam Ghauri

Managing Director

Sindh Public Procurement Regulatory Authority



Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal)SPPRA/SMBBT/RC/2018-19/2333 Karachi, dated 27 February, 2019

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

(Appeal)

M/s Shamsuddin Mandokhail

Versus

Project Director Shaheed Mohtarma Benazir Bhutto Town

Regarding NIT No. EE/SMBBT/37 dated 3<sup>rd</sup> September, 2018 SPPRA PPMS ID No. 00673-18-0001

**Facts and background**

1. M/s Shamsuddin Mandokhail, Government Contractor, hereinafter referred to as Appellant, filed an appeal on 14-01-2019 to the Review Committee (RC) of Sindh Public Procurement Regulatory Authority (SPPRA) stating therein that Appellant participated in the bidding process in response to Notice Inviting Tender (NIT) issued by Executive Engineer, Shaheed Mohtarma Benazir Bhutto Town hereinafter referred to as Procuring Agency (PA), for the procurement of the different packages (09 items) of civil works.

2. The Appellant had lodged a complaint to the Project Director, SMBBT/Chairman Complaint Redressal Committee (CRC), Manager Complaint, SPPRA, Chairman NAB & Director General NAB on 02-01-2019, for redressal of their grievance. In this regard, this Authority sent letter to Procuring Agency vide letter even no. dated 15<sup>th</sup> January, 2018 for redressal of their grievances under Rule-31 of SPP Rules but instead to furnish decision of CRC the PA has furnished clarification/justification vide letter No. EE/SMBBT/133 dated 18-01-2019 to this Authority that *“Chairman of the Redressal Committee was out of the country and due to this reason the decision of CRC was not communicated to SPPRA. However, the tender documents submitted by the complaintant has been checked by officers of this department and it was observed that the complaintant do not fulfill the required criteria and also not qualify in technical bid as well”*. Thereafter, Appellant preferred an appeal for redressal of his grievances before the Review Committee in term of Rule-32. The matter was taken up by Review Committee under Rule-31(5) read with Rule-32 of SPPRA Rule 2010.

3. Accordingly, notices were issued to the parties for appearing before the Review Committee and the matter was fixed for hearing on 24<sup>th</sup> January, 2019 at 12:00 noon and later on 29<sup>th</sup> January, 2019 at 02:00 pm. Mr. S. Ahsan Abidi (Consultant), Mr. Waheed Bashir (E.E), Mr. Fazal Rehman (A.E.E) from Procuring Agency and Mr. Shamsuddin Mandokhail from appellant appeared before the Review Committee.

**Appellant Version**

4. The appellant stated that their firm had participated in the bidding process for work No. 1 and 7 in which the procuring agency declared them qualified for work No. 01 and disqualified for work No. 7, despite that the eligibility criteria of both works are same. Furthermore, the appellant informed the committee that most of the successful bidders of the said NIT do not fulfill the Evaluation/Qualification criteria for two similar works/assignments as well as violation



Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal)SPPRA/SMBBT/RC/2018-19/2333

Karachi, dated 27 February, 2019

of SPPRA Rule 11.3.4 while allowing the bidder who have offered the cost 30.00001%. which is more than 30% below. The Appellant also alleged that tenders are being awarded on personal liking or disliking basis.

**Department/Procuring Agency Version:-**

5. Representatives of Procuring Agency while defending their action stated and admitted before the Review Committee that the appellant was erroneously declared qualified for work No.7 as their firm did not fulfill the Qualification criteria of having **at least two similar assignments having cost of each at least 55 million in the last five (05) years** and produced documents submitted by the appellant as evidence. Upon objection by the Appellant that the said work has been recommended for award to M/s Rajgan which also does not qualify on similar grounds, the Review Committee asked Procuring Agency to justify its action. The Procuring Agency provided a copy of the certificate of Joint Venture in between M/s Rajgan and M/s Askari Enterprises which jointly fulfilled the condition. Furthermore, the Procuring Agency clarified for the work/item no. 1, that the appellant was rightly declared as a rejected for not having **two similar assignments having cost of each at least 70 million in the last five (05) years** as mentioned in evaluation/qualification criteria.

6. The Procuring Agency provided all documents of the bidders who participated and declared 1<sup>st</sup> lowest for all 9 items/works of the NIT as called by the Review Committee and Procuring Agency also admitted/accepted the deficiencies during the Evaluation of bidding documents for item/work No. 5,6 & 8.

**Observations:**

7. i. As per statement of the Procuring Agency, as well as of the appellant, and also from the perusal of the bidding documents provided by Procuring Agency it is found that the Procuring Agency had wrongly evaluated the bidding documents of the bidders for items/works No. 5,6,7 and 8 which do not fulfill the evaluation criteria given in the bidding documents at the time of issuance of NIT at para (viii) Specific Construction Experience and Past Performance in bidding data Sheet which is not in consonance with SPP Rule-42(1).
- ii. From the perusal of agreement of Joint Venture provided by Procuring Agency for work/item No. 7 between two bidder i.e. M/s Rajgan and M/s Askari, it is observed that date of signing of agreement and date of opening of tender is the same i.e. 24<sup>th</sup> September, 2018, which raises question on the veracity and genuineness of the Joint Venture. Moreover, clause 6.4(a) of SPP Regulation on works stipulate that the bid security submitted by a Joint Venture should be in the name of Joint Venture, however, in the instant case the bid security submitted by Joint Venture is not in the name of Joint Venture.
- iii. It is observed that engineers estimated cost is on higher side resulting in higher number of bids more than 30% below quoted by the participating bidders.



Government of Sindh  
Sindh Public Procurement Regulatory Authority



No.AD(Legal)SPPRA/SMBBT/RC/2018-19/2333 Karachi, dated 27<sup>th</sup> February, 2019


- iv. It is also observed that the Procuring Agency had invoked clause 11.3.4 of Regulations for works/items No. 1,3 & 4 rejecting bids of other bidders as being more than 30% below but the successful bidders in above said works have also quoted rates more than 30% below. Hence, the clause 11.3.4 is also applicable in case of the 1<sup>st</sup> lowest bidders of said items/works as the application of this clause has to be across the board and not on pick-and-choose basis. The clause 11.3.4 stipulates as under:-

*"In case procuring agency receives a bid which is more than 30% below the Engineers Estimate or composite schedule rates (CSR), the procuring agency can reject that particular bid(s) or float tenders afresh, if deemed appropriate".*

- v. The Procuring Agency has also admitted several errors/mistakes found in the evaluation of qualification criteria.
- vi. It has been observed that Bid Evaluation Report for item No. 2 posted on Public Performance Management System (PPMS) by the Procuring Agency is inaccessible and therefore, cannot be examined.

**Decision:-**

8. i. In the light of above narration and observations, the Review Committee in exercise of power conferred vide Rule-32(7)(f) of SPP Rules, 2010,unanimously decided that Procuring Agency shall immediately terminate the instant procurement proceedings in respect of items/works No. 1,2,3,4,5,6,7&8 and also directed Procuring Agency to re-invite the tender afresh, following SPP Rules in letter and spirit.
- ii. The appellant has failed to prove that their firm is eligible for the item/work No. 1 & 7 as their firm does not fulfill requirement of Qualification Criteria of para (Viii) of Bid Data Sheet.

  
(Member)

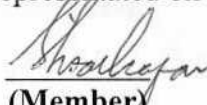
Saad Rashid

Representative Transparency International  
Private Member Represented on SPPRA Board

  
(Member)

Asadullah Soomro

Private Member SPPRA Board

  
(Member)

Shoaib Zafar

Nominee of Director General  
Audit Sindh

  
(Member)

Khalid Mehmood Soomro

Member Federal Ombudsman  
Independent Professional

  
(Chairman)

Muhammad Aslam Ghauri

Managing Director

Sindh Public Procurement Regulatory Authority