Government of Sindh
Sindh Public Procurement Regulatory Authority

No.AD(Legal)SPPRA/KW&SB/RC/2018-19/2334 Karachi, dated 27th February, 2019

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

(Appeal)

M/s Crescent Construction Company Engineers & Contractors

Versus

Karachi Water & Sewerage Board (KW&SB)

Regarding NIT No. 01/MCC/KW&SB/2017-18 dated 8th May, 2018 SPPRA ID No. 37668

Facts and background

1. M/s Crescent Construction Company Engineers & Contractors, hereinafter referred to as Appellant, filed an appeal on 09-01-2019 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 (MCC), Meter Workshop Division, KW&SB hereinafter referred to as Procuring Agency (PA), for the procurement of the "Installation of Full Bore Electromagnetic Water Flow Meters With Data Loggers on the Distribtion Pumping Station of Karachi".

2. The Appellant had lodged a complaint to the Head of the Department i.e. Managing Director KW&SB as well as to Chief Engineer (E&M)-Water/ Member/Secretary Complaint Redressal Committee, of the Procuring Agency on 05-10-2018, 08-10-2018, 16-10-2018 and 07-11-2018 for redressal of their grievance but Complaint Redressal Committee (CRC) failed to give its decision. Thereafter, Appellant preferred an appeal for redressal of his grievances before the Review Committee. The matter was taken up by Review Committee(RC) 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 29th January, 2019 at 2:00 pm. Mr. Muhammad Farooque Azam, Chief Executive Officer (CEO), Mr. S.M Tariq, Advisor & Mr. Muhammad Rafi Kamboh, Legal Advisor from appellant and Mr. Tariq Latif, Superintendent Engineer (MCC), Syed Manzoor Yameen, Superintendent Engineer & Mr. Azam Khan, from Procuring Agency appeared before the Review Committee.

Appellant Version

4. The appellant stated that their firm participated in the bidding process and was declared as 1st lowest in the competition and the bid evaluation report was also hoisted on SPPRA website vide SPPRA NIT serial No. 37668 on 20-06-2018. Thereafter, Managing Director (KW&SB) verbally asked their firm being the first lowest to start preparatory work.

No.AD(Legal)SPPRA/KW&SB/RC/2018-19/2334 Karachi, dated 27th February, 2019

In this regard, before starting the work at their end, they had to make foreign as well as local visit. However, all of a sudden, it came to their knowledge that the said NIT was cancelled by Procuring Agency and a letter of cancellation dated 19-09-2018 was received without assigning any reasons in term of SPP Rule-25(4). Thereafter, several letters were sent to the Procuring Agency and Complaint Redressal Committee (CRC) for redressal of the grievances in term of Rule-31, despite their repeated requests no response has so far been received from Procuring Agency. Finally, they decided to file an appeal before the Review Committee in term of SPP Rule-32. as the act of cancellation by Procuring Agency is construed by them a malafied act. Soon after cancellation, the Procuring Agency floated the same NIT on 02-10-2018 on SPPRA PPMS website vide NIT/ID number T01055-18-0001 and their appeal in this forum is to stop the procurement process, and let them know the grounds on which previous NIT was cancelled.

Department/Procuring Agency Version:-

5. Representatives of Procuring Agency while defending their action stated that the last NIT was cancelled by the Head of the Department in term of SPP Rule-25(1) due to un-healthy competition as only a single bidder was qualified. Therefore, the letter for cancellation was sent to the successful bidder as well as SPPRA for hoisting on website. Moreover, after cancellation of NIT the appellant had requested to withdraw their bid security and the same was returned on 25-10-2018. The representatives of Procuring Agency admitted before the Review Committee that they had not communicated the grounds for cancellation as required under Rule-25(4) despite the request of the appellant.

Observations:-

6.

i. SPP Rule-25(1) authorizes Proucring Agency to cancel the bidding process at any time prior to award of contract.

ii. SPP Rule 25(2) stipulates, " The Procuring Agency shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule(1)".

iii. The Procuring Agency has complied with the requirement of Rule-25(3) by promptly intimating the appellant about the cancellation.

iv. The Procuring Agency has failed to fulfill its obligation to communicate the grounds for the cancellation to the aggrieved bidder as required under SPP Rule-25(4).

v. SPP Rule-32(1) enables an aggrieved bidder to lodge appeal to the Review Committee provided that he has not withdrawn his bid security. In the instant case the appellant has withdrawn his bid security.

No.AD(Legal)SPPRA/KW&SB/RC/2018-19/2334 Karachi, dated 27th February, 2019

vi. Under SPP Rule-33(2), decision by Procuring Agency under SPP Rule-25 to cancel the bidding process is not subject to appeal or review.

Decision:-

7. In the light of above narration and observations the Review Committee unanimously decided that Procuring Agency shall immediately convey the grounds of cancellation to the appellant as requested by them as by not doing so the Procuring Agency has made the re-inviting of the same tender suspect and rendered it open to possible litigation. Furthermore, committee decided that the appeal is not maintainable on two grounds:-

i. Appellant has withdrawn his bid security SPP Rule-32(1) of SPP Rules 2010 (Amended upto date).

ii. Provision of SPP Rule-33(2). of SPP Rules 2010 (Amended upto date).

(Member)
Saad Rashid
Representative Transparency International
Private Member Represented on SPPRA Board

Not attended
(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