



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-243/2018-19

Karachi, dated the April, 2019

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

(Appeal)

M/s New Imran Umar

Versus

Provincial Highway Division Hyderabad

(NIT ID # T00606-18-0008 dated 06.01.2019)

Facts and background

M/s New Imran Umer, Hyderabad (hereinafter referred to as the appellant) lodged a complaint vide letter dated 12.02.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # TC/G-55/01/2019 dated 01.01.2019 floated for procurement of various works by the Executive Engineer, Provincial Highway Division, Hyderabad (hereinafter referred to as the procuring agency). The Authority vide letter dated 15.02.2019 forwarded the matter to the procuring agency with an advice to redress the appellant's grievances through its complaint redressal committee (CRC) within seven days and furnish the decision on complaint to the appellant as well as this Authority within three working days in accordance with Rule-31 of SPP Rules, 2010 (Amended Up to date)

2. The procuring agency failed to furnish any decision on aforementioned complaint within stipulated time period; accordingly, the matter was taken up by the Authority's Review Committee in terms of Rule-31(5) read in conjunction with Rule-32 of SPP Rules, 2010 (Amended Up to date) and notices were issued to the concerned parties vide this Authority's letters dated 08.03.2019 for appearing before the Review Committee on 13.03.2019 at 01.00 p.m. In compliance, Mr. Tufail Ahmed Palejo, Chief Engineer (Highways), Provincial Highway Division, Hyderabad (representative of the procuring agency) and Mr. Imran Ahmed (representative of the appellant) appeared before the Review Committee.

Review Committee Proceedings

3. The Chairperson of the Review Committee welcomed all the participants of the meeting and introduced the members of the Review Committee. Then, the chair asked the appellant to present his case/ version on the instant procurement before the committee.

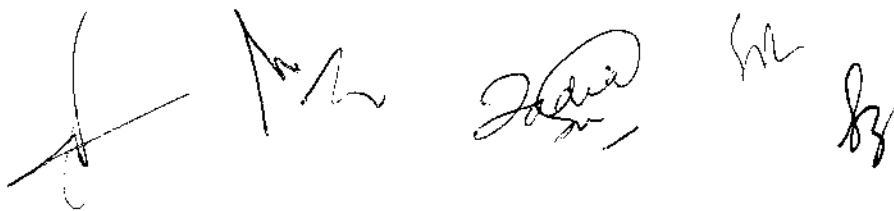
Appellant's Version

4. Mr. Imran (representative of the appellant) while arguing his appeal apprised the Committee that they submitted their bids – under the instant procurement – to the procuring agency on 23.01.2019 but the procuring agency did not publicly open the bids. Mr. Ameer Bux Rahpoto, Executive Engineer Provincial Highway Division Hyderabad, intended to accommodate his blue eyed contractors by using those tactics. In this regard, they approached the procuring agency's CRC on 16.02.2019 but CRC did not furnish any response or decision against their grievances as required under Rule-31 of SPP Rules, 2010 (Amended Up to date).

Procuring Agency's Version

5. Mr. Tufail Ahmed Palejo, Chief Engineer Highways (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that the procuring agency solicited bids under instant procurement on Single Stage Two Envelope procedure and their procurement committee scrutinized the technical proposals in the first instance; once that process of technical proposals' evaluation would be finalized then the results would be communicated to all the bidders including the appellant;

- The chair asked the procuring agency about the schedule when the bids were opened by the procurement committee
 - The procuring agency clarified that bid were opened on 23.01.2019;
- The committee noticed that 50 days had passed – from the date of opening of bids – but the procuring agency had not finalized the evaluation of technical proposals till date; the committee further noticed that the technical evaluation of bidders was based on only 10 criteria (knock-out) as mentioned in the instant NIT then why the evaluation process had been taking so much time;
 - The procuring agency clarified that more than 200 bidders participated in the instant procurement process. Evaluation of each bid – verification of bid securities as well as documents submitted along with the bid – required time to finalize the technical evaluation process; notwithstanding that the procuring agency would complete the instant procurement process within the bid validity period of 90 days as per Rule-37(1) of SPP Rules, 2010 (Amended Up to date);
- The committee directed the procuring agency to ensure seeking feedback from the concerned bidder(s) in case any document is to be found as fake or doctored while scrutiny process and then to take appropriate action as per SPP Rules.
 - The procuring agency clarified that they used to seek clarification from bidders whenever required; moreover, they would follow the above directions of the committee in letter and spirit. The procuring agency further added that the appellant or any other complainant should have approached to procuring agency's CRC in the first instance whenever any grievance arose. In case, bidders' grievances were not redressed properly then they might have approached to the next forum.



- The committee highlighted that the appellant already approached to the procuring agency's CRC on 30.01.2019 and subsequently approached this Authority on 12.02.2019. In turn, the Authority vide letter dated 15.02.2019 forwarded the matter to the procuring agency's CRC with an advice to furnish its decision, if any, but the procuring agency did not furnish any response against it and that was the reason of taking up the matter on that forum.
 - The procuring agency clarified that they received above letter from the Authority on 22.02.2019 and subsequently furnished their response against the complaint on 28.02.2019 by stating the procurement position as '*scrutiny of the technical proposals – verification of work orders and call deposits – was in process and as soon as the technical evaluation process would be finalized then the bidders would be communicated technical evaluation results and the schedule for opening of financial bids – to the successful bidders.*'
- While checking the procurement record, it was revealed that no such letter as referred to by the procuring agency was received before scheduling the instant meeting and the procuring agency might have submitted their response after scheduling this meeting.

Review Committee Observations

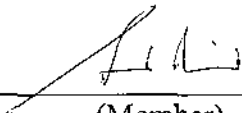
6. After hearing the parties at length and perusal of record, Review Committee observed that:-
- The condition # vii under eligibility criteria – *affidavit that the firm had not been involved in any litigation/ arbitration cases versus any executing agency in any court of law* – was inappropriate and such condition should have never been used while evaluating bidders' qualification. Any aggrieved bidder/ firm had constitutional right to approach appropriate legal forums for redressal of grievances and that right could not deprive the bidder from participating in bidding process;
 - The condition # viii under eligibility criteria – *affidavit that the firm had never been blacklisted from any executing agency* – was also inappropriate as blacklisting of bidders in most of the cases was made for temporary period; therefore, such condition be rephrased as to ascertain that the bidder was not blacklisted – at the time of submission of bid – by any procuring agency;
 - Appellant's grievance under instant procurement pertained to the publicly opening of bids, which could not be verified by this forum without substantial evidence. It was the prime responsibility of the procuring agency to ensure that procurements were to be conducted in a fair and transparent manner, the object of the procurement brought value for the money to the agency and the procurement process was efficient and economical as per Rule-4 of SPP Rules, 2010 (Amended Up to date).

The bottom of the page contains several handwritten signatures and initials. From left to right, there is a long horizontal signature, a signature that appears to be 'Mr.', a signature that appears to be 'Jadid', a signature that appears to be 'SM', and a signature that appears to be 'BY'.

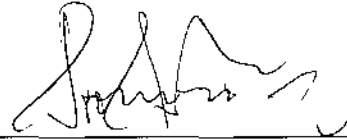
Review Committee Decision

7. After due deliberation, the Review Committee has observed that the instant procurement is still in process and the complainant's grievance can be redressed by the procuring agency's CRC; therefore, the committee unanimously decided to refer back the appellant's matter to the procuring agency's CRC with directions to proceed and resolve the matter within stipulated time period as per Rule-31 of SPP Rules, 2010 (Amended Up to date).

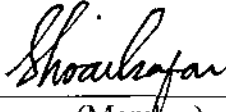
8. The committee further directs the procuring agency to ensure compliance with SSP Rules, Regulations, Orders, Instructions while conducting public procurement otherwise the matter will be declared as "mis-procurement" under Rule-32(7)(g) of SPP Rules, 2010 (Amended Up to date) read in conjunction with Section-2(i) of SPP Act, 2009 (Amended 2017).



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



(Member)
Asadullah Soomro
Private Member
SPPRA Board



(Member)
Shoaib Zafar
Nominee of Director General Audit Sindh



(Member)
Engineer Sadia Jabeen Asim
Senior Civil Engineer,
H.E.J. Institute, University of Karachi
Independent Professional



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