



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-144/2018-19

Karachi, dated the March, 2019

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

(Appeal)

M/s Khalid Corporation

Versus

Culture, Tourism & Antiquities Department
(Planning, Development, Monitoring & Implementation Cell, Karachi)

(NIT ID # T01060-18-0002 dated 11.12.2018)

Facts and background

M/s Khalid Corporation, Karachi (hereinafter referred to as the appellant) lodged a complaint vide letter dated 30.01.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # AD/PDM&I/CT&AD/REV/2018-19/83 dated 04.12.2018 – for procurement of physical assets (hardware & software) – floated by the Culture Tourism & Antiquities Department, Planning Development Monitoring & Implementation Cell, Karachi (hereinafter referred to as the procuring agency).

2. The Authority vide letter dated 31.01.2019 forwarded the matter to the procuring agency with advice to redress the appellant's grievances through its Complaints Redressal Committee (CRC) within seven days and furnish its decision to the appellant as well as to this Authority within three working days in accordance with Rule-31 of SPP Rules, 2010 (Amended Up to date). In response, the procuring agency furnished minutes of the CRC meeting to this Authority on 06.02.2019 with decision on the complaint as reproduced below:

"In the light of documents/ information given by the Director PDM&I Cell, Culture Tourism & Antiquities Department/ Head of Procuring Agency, the CRC unanimously decided that the bidding process may be proceeded further as per Sindh Public Procurement Rules in letter & spirit. Further, the said decision may be communicated to the complainant as well as SPPRA."

3. Being not satisfied with the decision of CRC, the appellant lodged an appeal vide letter dated 26.02.2019 to the Review Committee of this Authority stating that the procuring agency did not call them to present their objections/ concerns – as raised in their complaint – before the CRC; moreover, the CRC did not redress their grievances within stipulated time period as

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specified under SPP Rules, therefore, matter may be placed in the Authority's Review Committee.

4. Subsequently, the Authority vide its letter dated 06.03.2019 advised the procuring agency to confirm that the appellant has not withdrawn its bid security as required under Rule-32(1) of SPP Rules, 2010 (Amended Up to date). However, the procuring agency did not furnish any response against the letter within given timeframe. Resultantly, the Authority vide letters dated 19.03.2019 issued notices to the concerned parties for appearing before the Review Committee on 21.03.2019 at 12.30 p.m. Mr. Santosh Kumar, Deputy Director - PDMI&E Cell, Culture Tourism & Antiquities Department (representative of the procuring agency) and Mr. Khalid, Proprietor (representative of the appellant) appeared before the Review Committee.

Review Committee Proceedings

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

Appellant's Version

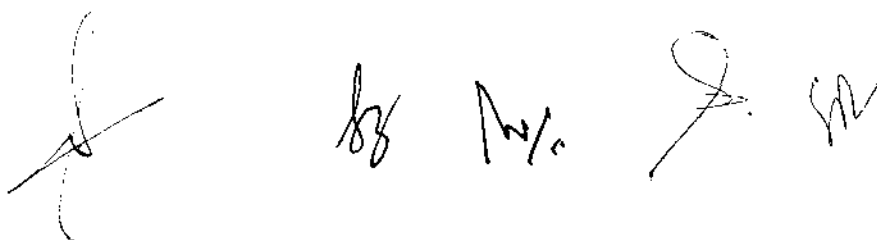
6. Mr. Khalid (representative of the appellant) while arguing his appeal apprised the Committee that:

- They downloaded the bid documents from the Authority's PPMS website and approached the procuring agency to submit their bids – along with requisite documents and bid security – on the scheduled date for submission and opening of bids wherein ten (10) firms – including them – participated in the bidding process; they participated under only one category i.e. Hardware & Software; whereas, they did not participate in rest of the categories of NIT;
- The procuring agency incorporated a condition in the NIT as well as bid documents, according to which representative of the bidder must have authority letter on stamp paper from his firm/ company's owner including details of owners along with copy of CNIC;
- The procuring agency did not accept their bid despite the submission of copies of their CNIC and authority letter on company letterhead; according to the procuring agency, authority letter should have been produced on stamp paper rather than company's letterhead; moreover, the procuring agency did not call them during the CRC meeting to avail them opportunity for presenting their grievances.

Procuring Agency's Version

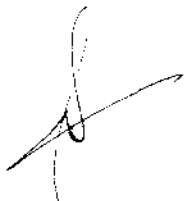
7. Mr. Santosh Kumar, Deputy Director (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- Dummy firms download bid documents from the Authority's PPMS website and submit their bids to the procuring agency without having particular company's background and



relevant experience of the procurement; therefore, they incorporated the condition – authority letter on stamp paper – to avoid participation of such firms;

- The chair queried how it is possible for those firms to invest their precious time and investment/ bid cost that occur while preparation and submission of bids along with bid security – pay orders/ demand drafts issued by commercial banks;
 - In response, the representative of the procuring agency stated that they are not aware whether these firms (dummy) do take care about their investment or not but such firms do not possess particular background, experience, and genuineness;
- Mr. Saad Rashid (member of the committee) advised that it is the primary responsibility of procuring agency to check and verify the documents as submitted by the bidders while undertaking evaluation of bids; in case, a forged document as submitted with bid documents is found/ verified by the procuring agency that then the procuring agency may take appropriate action as spelled out under the rules;
- The representative of the procuring agency acknowledged that the appellant submitted bid at the time of bid submission but due to the procuring agency's lack of knowledge, the bid was not accepted and opened by the procurement committee;
 - The chair queried why did not the procurement committee – responsible for receiving, opening and evaluation of bids – accept bid submitted by the appellant;
 - The representative of the procuring agency stated that they incorporated the condition - for bidders to submit authority letter on stamp paper – in the bidding documents and SPPRA did not convey any observation over such condition; hence, the procurement committee carried on with this condition while receiving bids;
 - Mr. Saad Rashid asked the representative of the procuring agency to clarify whether it was mentioned in the NIT that bid cannot be submitted without having Authority letter on stamp paper;
 - The representative of the procuring agency stated that word 'bid' was not mentioned in the NIT but the participation was subject to the authority letter on stamp paper;
 - The chair and Mr. Saad Rashid added that bid submitted by any firm or individual even through mail cannot be refused to accept due to any reason whatsoever; the procuring agency can disqualify the bid after opening and evaluation of bids as per evaluation criteria and terms and conditions set forth in the bid documents as per Rule-42(1) read in conjunction with Rules-24(2) & 45 of SPP Rules, 2010 (Amended Up to date);



- The representative of the procuring agency admitted mistake on their part and highlighted that they had awarded the contract to the lowest evaluated bidder but have verbally asked the bidder not to execute the contract and supply the goods and services; moreover, they had mentioned a condition for closure of contract with mutual agreement at any time in the contract from;
- The chair asked why the procuring agency awarded the contract before redressing aggrieved bidder's grievances as per Rule-31(6) and proviso of Rule-31(7) of SPP Rules, 2010 (Amended Up to date), which stipulates that *'the procuring agency shall award the contract after the decision of the complaint redressal committee; 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;*
 - The representative of the procuring agency clarified that they awarded the contract after deciding the appellant/ complainant matter as per rules as provided above; the procuring agency also showcased copies of the CRC decision and letter of award to the Committee;
- Mr. Ali Imam Qadri, Procurement Specialist SPPRA highlighted that the procuring agency cannot restrain anybody – whether authority letter is available or not – to sit and observe bid opening procedure, which needs to be made publicly as per Rule-46(2)(g) of SPP Rules, 2010 (Amended Up to date);
 - The representative of the procuring agency stated that they did not receive any observation from SPPRA after posting instant procurement's NIT on the Authority's PPMS website but they believe that the mistake occurred is on their own part and they are willing to cancel or close the contract with mutual consent of the bidder, who already agreed to do so.

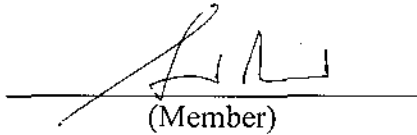
Review Committee Decision

8. After due deliberations, the Review Committee observed that the procuring agency violated SPP Rules under the instant procurement case and the procuring agency admitted mistakes on their part; resultantly, the procuring agency is now willing to cancel the awarded contract or close the contract - signed with M/s Continental Enterprises for supply of hardware and software – on the basis of mutually agreed terms and conditions set forth in the contract. If such provisions exist in the contract and the procuring agency cancels or closes the contract then it should proceed the matter accordingly otherwise the matter will be decided as "mis-procurement" on the grounds of violation of SPP Rules. Intimation of decision to cancel the contract must be furnished to this Authority for finalizing the committee decision.

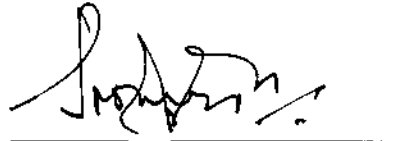
9. Pursuant to the committee's decision, the procuring agency vide its letter dated 21.03.2019 submitted a copy to this Authority for termination of contract signed with M/s

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Continental Enterprises under Clause-27 of General Conditions of Contract Award. Accordingly, the Review Committee directed the procuring agency to retender the cancelled items, observing SPP Rules, 2010 (Amended Up to date) in letter & spirit.



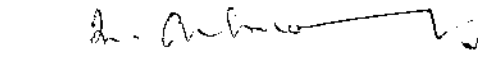
(Member)
Saad Rashid
Private Member SPPRA Board
Representative Transparency International




(Member)
Asadullah Soomro
Private Member
SPPRA Board



(Member)
Shoaib Zafar
Nominee of Director General Audit Sindh



(Member)
Dr. Khalid Mehmood Soomro
Member Federal Ombudsman
Independent Professional



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