



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-244/2018-19

Karachi, dated the April, 2019

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

(Appeal)

M/s Ghulam Murtaza Enterprises

Versus

Highway Division, Works & Services Department, Matiari

(NIT ID # T00615-18-0001 dated 19.01.2019)

Facts and background

M/s Ghulam Murtaza Enterprises, Hyderabad (hereinafter referred to as the appellant) lodged a complaint vide letter dated 26.01.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # XEN(H)/TC/G-55/24/2019 dated 08.01.2019 floated for procurement of works by the Executive Engineer, Highway Division, Works & Services Department, Matiari (hereinafter referred to as the procuring agency). The Authority vide letter dated 04.02.2019 forwarded the matter to the procuring agency with an advice to take appropriate action as per SPP Rules, 2010 (Amended Up to date).

2. Subsequently, the appellant vide letter dated 28.02.2019 lodged an appeal to the Review Committee of this Authority on the grounds that the CRC had failed to arrive at the decision within stipulated time period of seven days, therefore, the complaint stood transferred to the Review Committee in terms of Rule-31(5) read in conjunction with Rule-32 of SPP Rules, 2010 (Amended Up to date).

3. On receipt of the above appeal, 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 01.00 p.m. In compliance, Mr. Arshad Bhutto, Superintending Engineer, Works & Services Matiari (representative of the procuring agency) and Mr. Ghulam Murtaza, Proprietor, M/s Ghulam Murtaza Enterprises (representative of the appellant) appeared before the Review Committee.

Review Committee Proceedings

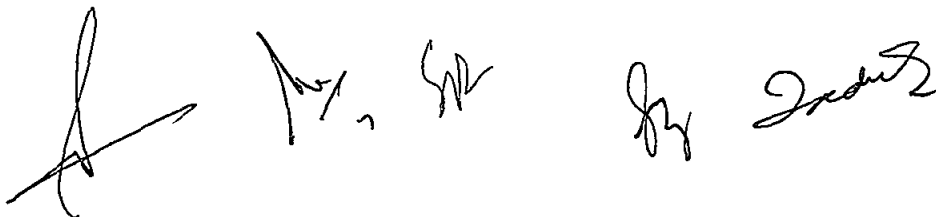
4. The Chairperson of the Review Committee welcomed all the participants of the meeting and introduced the members of the Review Committee. Then, the chair asked the appellant to present his case/ version on the instant procurement before the committee.

[Handwritten signatures]

Appellant's Version

5. Mr. Ghulam Murtaza (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 i.e. 25.01.2019;
- The Tender Clerk of the procuring agency informed that the bid documents downloaded from the Authority's website were unacceptable and they should purchase blank bid documents from the procuring agency's office through submitting an application along with the documents fees; resultantly, they submitted an application along with requisite documents for issuance of bid documents but the Tender Clerk of the procuring agency did not issue them bid documents; the behavior of the Tender Clerk and officials of the procuring agency was depicting that the procurement process was to be carried out in a secret manner to favor a particular firm, which was against the spirit of SPP Rules, that was why the procuring agency did not inform them for submission and opening of bids in second attempt. Moreover, the members of the procurement committee were also absent;
- Subsequently, they lodged a complaint to the procuring agency's complaint redressal committee (CRC) on 26.01.2019 with regard to redressal of their aforementioned grievances; simultaneously, the Authority also forwarded their complaint to the procuring agency with an advice to take appropriate action as per SPP Rules but the procuring agency did not pay any heed to resolve their matter and posted the bid evaluation report on the Authority's website.
- The attendance sheet posted on the Authority's website shows participation of 7 bidders; whereas the bid evaluation report highlights participation of only 2 bidders that was a clear evidence of procuring agency's manipulation in award of contract.
 - The chair asked the appellant why did they not submit their bid through mail – reliable courier service – as allowed under Rule-24(2) of SPP Rules, 2010 (Amended Up to date), which stipulates that *'the bidders 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 appellant clarified that the procuring agency did not mention such condition in the NIT and/ or bidding documents; therefore, they did not opt such opportunity.
 - The committee informed the appellant that when an opportunity for the bidders to submit their bid(s) through mail was available under SPP Rules then there was no need for the procuring agency to mention such condition in the NIT and/ or bidding documents. Even if the procuring agency did not accept the bid received via mail then it was a clear proof of violation of rules, provided that the bidder

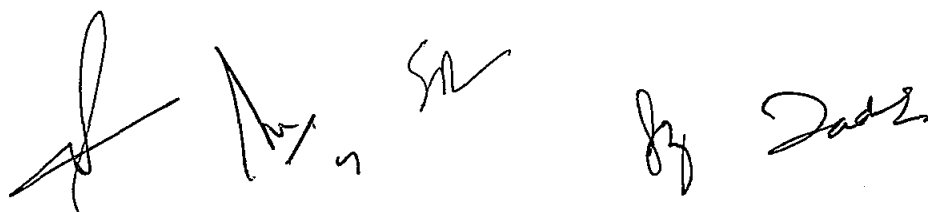


had proof/ courier receipt available with him in case of rejection of his bid on the sole grounds of bid submission through mail.

Procuring Agency's Version

6. Mr. Arshad Bhutto, Superintending Engineer, and Muhammad Ismail Umrani, Executive Engineer (representatives of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency did not receive any bid in the first attempt for submission and opening of bids; therefore, bids were received and opened as per schedule of second attempt, which was mentioned in the NIT; the bids were opened publicly wherein 15-20 contractors were present there; only 2 contractors had approached to the Honorable Court which indicated that other contractors – who participated and witnessed the opening of bids – were satisfied from this procurement process;
 - The chair highlighted that it was not mandatory for all aggrieved bidders to approach the Honorable Court; it was the complainant's own will and constitutional right to approach the legal forums by looking into availability of his resources but it did not prove here that a complainant – as the case of appellant – who approached the Honorable Court would be definitely incorrect;
- The Executive Engineer stated that the appellant did not submit his bid on 08.02.2019. Bidders who submitted their bids on the scheduled date and time were allowed to participate and submit their bids without any hindrance. The claim of appellant that M/s Ramzan was not allowed to participate in the bid was totally baseless as the procuring agency not only allowed M/s Ramzan but also other 5-7 contractors - accompanied with M/s Ramzan – were allowed to participate and submit their bids.
 - The chair noticed that a bidder namely Zulfiqar Ali Sahito signed attendance sheet twice and his signature was absolutely different during both times;
 - The procuring agency clarified that it was done by mistake that the bidder signed attendance sheet twice.
 - Mr. Saad Rashid (member of the Review Committee) also noticed that another bidder – whose name was not mentioned in the attendance sheet – signed the attendance sheet twice;
 - The chair asked the procuring agency that the bid evaluation report posted on the Authority's website highlighted bids received from only 2 bidders; whereas the attendance sheet was signed by 8 bidders;
 - The procuring agency clarified that they sought signatures on attendance sheet from all bidders who were present in the meeting but allowed participation to only those bidders whose documents were complete with respect to all the conditions.



- Mr. Saad Rashid pointed out that the attendance sheet highlighted names of firms and it was signed by 8 firms;
- The chair asked the procuring agency to share the actions taken in light of complaint filed by the appellant vide his letter bearing No.100 dated 26.01.2019 submitted to the CRC and also forwarded vide this Authority's letter dated 04.02.2019;
 - The procuring agency stated that the aforementioned complaint was not placed before the CRC;
- The committee pointed out that how the procuring agency awarded the contract without redressing the complainant's grievances through CRC as required under Rule-31(6) and Proviso of Rule-31(7) of SPP Rules, 2010 (Amended Up to date); The chair noted that the Authority vide its policy letter dated 19.02.2019 issued instructions among all departments under provincial government of Sindh to focus on mitigation of key issues – as discussed in this meeting – pertaining to the frequent complainants.

Review Committee Observations

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

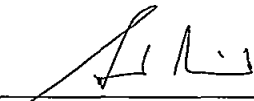
- The procuring agency failed to rectify following observation/ infirmity – before opening of bids - as communicated by the Authority through PPMS website on 24.01.2019 against the NIT ID # T00615-18-0001 dated 19.01.2019:
 - Data sheet containing information about the assignment is missing in the bid documents as required under Rule-21(1)(b) of SPP Rules, 2010 (Amended Up to date);
- The procuring agency had failed to finalize and announce its CRC decision within seven days and intimate the same to the appellant and the Authority within three working days in terms of Rule-31(5) of SPP Rules; moreover, the procuring agency was required to decide the complainant's matter through its CRC prior to awarding contract in terms of Rule-31(6) and Proviso of Rule-31(7) of SPP Rules;
- The procuring agency was required to accept bids from all bidders without taking into consideration the availability of requisite documents in it – in sealed envelope; reasons for acceptance and rejection of bids thereof required to be mentioned in the bid evaluation report as required under Rule-45 of SPP Rules, 2010 (Amended Up to date), which stipulates that *'procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website*

exists and intimated to all the bidders at least three (03) working days prior to the award of contract.”

- The procuring agency was required to post contract documents – evaluation report; form of contract and letter of award; and bill of quantities – on the Authority’s website within seven days of the award of contract in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010 (Amended Up to date); however, in the instant case, the procuring agency awarded the contract on 05.03.2019 and posted the contract documents on 14.03.2019 i.e. after nine days of award of contract. Moreover, the contract agreement – mutually signed between the procuring agency and the contractor – affixed with stamp duty was not posted as yet on the Authority’s website.

Review Committee Decision

8. In light of the above observations and violation of Rules as mentioned under para-7, and after due deliberation, the Review Committee unanimously declares the said procurement as **Mis-Procurement** in the light of SPP Rule-32(7)(g) and has decided to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010 (Amended Up to date).

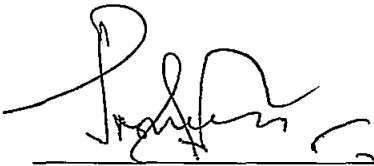


(Member)

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