



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-17/2018-19

Karachi, dated the April, 2019

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

**(Appeal)**

Advocate Shahabuddin A. Shaikh on behalf of  
M/s Relaint Trade Link; M/s Abdul Khaliq Dayo; and M/s Bahadur Ali Shaikh

Versus

Highway Division, Jamshoro

**(NIT ID # T00543-18-0002 dated 03.01.2019)**

**Facts and background**

Mr. Shahabuddin A. Shaikh, Advocate High Court Sindh, lodged a complaint on behalf of M/s Relaint Trade Link; M/s Abdul Khaliq Dayo; and M/s Bahadur Ali Shaikh (hereinafter referred to as the appellant) vide letter dated 06.02.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # EEHD/TC/G-55/101/2018 dated 28.12.2019 floated for procurement of work by the Executive Engineer, Highway Division, Jamshoro (hereinafter referred to as the procuring agency).

2. The Authority vide letter dated 18.02.2019 forwarded the aforementioned matter to the procuring agency with an 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 this Authority within three working days in accordance with Rule-31 of SPP Rules, 2010 (Amended Up to date); however, the procuring agency did not furnish any response.

3. Subsequently, the appellant vide letters dated 03.03.2019 & 11.03.2019 informed the Authority that the procuring agency's CRC did not call any meeting to resolve their grievances despite lapse of stipulated time period; therefore, the complaint stood transferred to the Review Committee in accordance with Rule-31(5) of SPP Rules, 2010 (Amended Up to date). In turn, the Authority vide letter dated 12.03.2019 advised the procuring agency to confirm the status of bid security, submitted by the appellant, within three days of receipt of instant letter so that the Authority could proceed further the appellant's matter in accordance with Rule-32(1) of SPP Rules, 2010 (Amended Up to date); however, the procuring agency again did not furnish any response/ confirmation regarding the appellant's bid security status.

4. Thereafter, the Authority vide letters dated 25.03.2019 issued notices to the concerned parties for appearing before the Review Committee on 09.04.2019 at 12.00 p.m. In compliance, Mr. Ali Bahadur Memon, Superintending Engineer, Works & Services, Jamshoro (representative of the procuring agency) and Mr. Muhammad Ali Shaikh and Bahadur Ali Shaikh (representatives of the appellant) appeared before the Review Committee.

*(Handwritten signatures)*


## Review Committee Proceedings

5. The Chairperson of the Review Committee welcomed all participants of the meeting and introduced the members of the Review Committee. The chair enlightened that this forum was an appellate forum where bidders/ complaints could lodge their appeals – before approaching to other legal forums – and the decision of this forum should be final and binding upon the procuring agency in terms of Rule-32(11) of SPP Rules, 2010 (Amended Up to date). Then, the chair asked the appellant to present his case/ version on the instant procurement before the committee.

### Appellant's Version

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

- The bids were scheduled to be received and opened – first attempt/ schedule of NIT – on 22.01.2019 but the procuring agency extended the schedule for submission and opening of bids – second attempt/ schedule of NIT – on 06.02.2019;
- They visited the procuring agency office on 22.01.2019 for issuance of bid documents but the procuring agency did not issue them bid documents by stating that the procuring agency was about to extend schedule for submission and opening of bids as per second attempt/ schedule of NIT and they were advised to visit the procuring agency's office later on for obtaining blank bid documents. When they approached the procuring agency on next schedule, the procuring agency again did not issue bid documents despite of their repetitive requests, and the concerned officers of the procuring agency left the office pretending to offer prayer and advised them to wait there;
- They as well as other contractors were waiting there but the concerned officers of the procuring agency did not come back to office – after offering prayer. Upon approaching the higher-ups, the procuring agency denied their (appellant) appearance during submission and opening of bid documents when they were not issued bid documents. The Review Committee could verify their claim from the pictures – captured on the schedule date and time for submission and opening of bids – which showed that concerned officers of the procuring agency were absent there;
  - The chair noted that these pictures alone did not serve substantial evidence to prove absence of procuring agency's concerned staff on the scheduled date and time for submission and opening of bids. These pictures could had been taken on different dates and time when the procuring agency's concerned staff had left their room or office for a while and so;
- The appellant shared additional pictures and a video showcasing them as well as other contractors demonstrating protest in the procuring agency's office over the instant procurement process. The appellant further highlighted that the procuring agency initiated the similar procurement couple of months ago but later on cancelled due to higher-ups influence to re-tender the NIT to favor a particular contractor.
  - 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



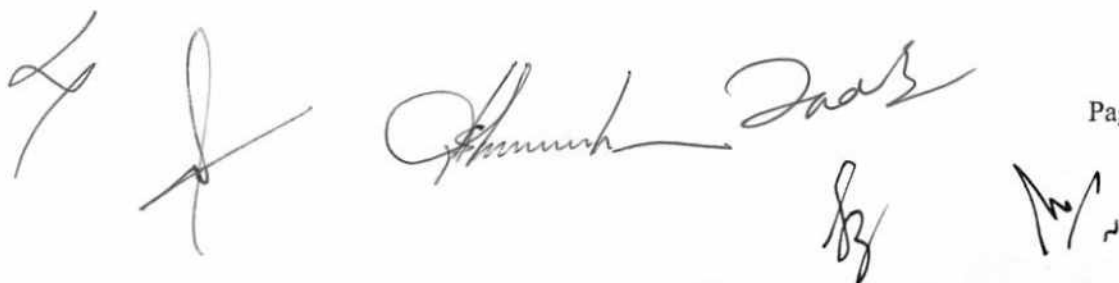
(Amended Up to date), which stipulates that *'the bidders may submit bids on the bidding documents issued by the procuring agency or download from the Authority's website along with tender fee if any by mail or by hand.'* The visibility and traceability of bids submitted through mail could be conveniently tracked and verified as compared to the bids submitted to the procuring agency by hand.

- The appellant stated that the procuring agency did not mention such condition in the NIT and/ or bidding documents; therefore, they did not opt such opportunity.
  - The procuring agency stated that they would have accepted any bid submitted through mail in terms of SPP Rules.
- 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. Ali Bahadur Memon, Superintending Engineer, and Mr. Faizan Abbasi, Tender Clerk (representatives of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- They were completely aware about instant procurement process, which had been undertaken in compliance of SPP Rules and Regulations; complete procurement record including: notice inviting tenders; bid documents; bid evaluation report; bidders' qualification report; minutes of the meeting; and attendance sheet were made available/ posted on the Authority's PPMS website in timely manner in accordance with SPP Rules;
- The appellant visited the procuring agency office on 06.02.2019 at 02.00 p.m. and met with them – Mr. Faizan Abbasi – and they informed the appellant to wait there as Executive Engineer – Highway Division Jamshoro – went to offer prayer at that time. Subsequently, the appellant started capturing video at 2 p.m. when their concerned staff was on prayer break.
  - The chair asked the procuring agency about the schedule when the bids were received and opened;
    - The procuring agency clarified that the schedule for issuance, submission, and opening of bids were mentioned up to 06.02.2019 at 01 p.m., 2 p.m., and 3 p.m., respectively, as per NIT; the appellant had appropriate time to obtain bid documents from their office before or after first attempt/ schedule of NIT then why appellant approached for issuance of bid documents beyond given schedule.



Four handwritten signatures are visible at the bottom of the page, corresponding to the representatives mentioned in the text above.

- Mr. Asadullah Soomro (Member of Review Committee) asked the procuring agency as to why bids were not received and opened in the first attempt/ schedule of NIT;
  - The procuring agency clarified that bids were not received and opened in the first attempt/ schedule of NIT due to the absence of procurement committee members.
- Mr. Asadullah Soomro then asked the procuring agency whether the corrigendum for submission and opening of bids in second attempt/ schedule was published in newspapers and posted on the Authority's website;
  - The procuring agency clarified that both schedules – first and second attempts – for submission and opening of bids were mentioned in the NIT.
- Syed Adil Gilani and Mr. Asadullah Soomro (Members of Review Committee) noticed that the procuring agency did not use standard bidding documents – civil works/ large works costing more than Rs. 50 Million – as required under Rule-21(3) of SPP Rules, 2010 (Amended Up to date), which stipulates that *'procuring agencies shall use standard bidding documents as and when notified by the Authority.'* The Committee asked the procuring agency whether the procuring agency had know-how about the use of specific standard bid document - as available for works (small, medium, and large) on the Authority's website – based on the estimated cost of the work;
  - The representatives of the procuring agency were unaware about any standard bid documents for procurement of works as notified by SPPRA. They claimed that the procurement documents are solely prepared by the Executive Engineer, Highway Division Jamshoro and he might have awareness about standard bid documents and its mandatory usage in procurement of works as per Rules; however, they usually used these documents for all procurement of works having any estimated cost.
- Syed Adil Gilani noted that the Superintending Engineer, being the head of the procuring agency, should have ensured compliance of SPP Rules and Regulations at all levels in letter and spirit.
- Engineer Sadia Jabeen Asim (Independent Professional) observed that the procuring agency used bid documents for procurement of works for contracts costing up to PKR 2.5 Million; whereas the estimated cost of the instant procurement was PKR 209 Million.
- Syed Adil Gilani further observed that the clause # 16 of bid documents, which stipulates that *'all disputes arising in connection with the present contract, and which cannot be amicably settled between the parties, , the decision of the Superintending Executive Engineer of the circle/officer/one grade higher to awarding authority shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs drawings, and instructions, hereinbefore mentioned and as to the quality of workmanship, or materials used on the work or as to any other questions, claim, right, matter, or thing whatsoever in any way arising out of, or relating to the*



*contract design, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the execution, of failure to execute the same, whether arising, during the progress of the work, or after the completion or abandonment thereof.* This clause was another blatant violation of Rule-34 of SPP Rules, 2010 (Amended Up to date), which stipulates that *'after coming into force of the procurement contracts, disputes between the parties to the contract shall be settled by arbitration. The procuring agencies shall provide for a method of arbitration in the procurement contract, not inconsistent with the laws for the time being in force in Pakistan.'*

- The chair asked the procuring agency to share decision taken in light of complaint lodged by the appellant vide letter dated 06.02.2019 and subsequently forwarded vide this Authority's letter dated 18.02.2019 to the procuring agency's CRC;
  - The procuring agency stated that they did not receive any complaint directly from the appellant or forwarded by the Authority;
- The chair asked when the procuring agency did not receive Authority's earlier referred letter then how did they submit para-wise comments vide letter dated 05.04.2019 to this Authority against the referred letter, whereby the Authority clearly advised the procuring agency to redress the complainant's grievances through its CRC within stipulated time period in terms of Rule-31(5) read in conjunction with Rule-31(6) and Proviso of Rule-31(7) of SPP Rules, 2010 (Amended Up to date);
  - The procuring agency clarified that the instant procurement was still in process and contract had not been awarded.
- The chair added that it was the primary responsibility of the procuring agency to ensure compliance of the SPP Rules.

### Review Committee Observations

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

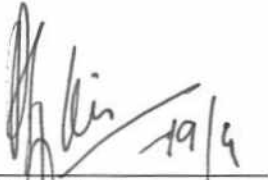
- ~~The appellant's claim could not be verified as the Review Committee cannot accept photograph or video clips as conclusive evidence of non-issuance of tender forms/ bidding documents, especially when alternative channels were available with the appellant;~~
- The procuring agency failed to use standard form of bidding documents – civil/ large works costing more than PKR 50 million – in terms of Rule-21(3) of SPP Rules, 2010 (Amended Up to date);
- The procuring agency failed to finalize and announce its CRC decision within seven days and intimated the same to the appellant and the Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended Up to date);



- The clause-16 under bid documents for disputes arising between the parties was in contradiction/ violation of Rule-34 of SPP Rules, 2010 (Amended Up to date);
- The integrity pact was not incorporated in the bid documents as required under Rule-89 read in conjunction with Rule-21(1)(n) of SPP Rules, 2010 (Amended Up to date);

### **Review Committee Decision**

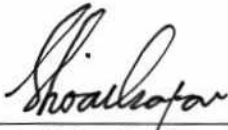
8. In light of the above observations and violation of Rules as mentioned under para-7, and after due deliberation, Review Committee unanimously decides that since the procuring agency has not awarded or signed procurement contract as yet; hence, the instant procurement's proceedings may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010 (Amended Up to date), and fresh tenders may be floated on correct standard bidding documents.



(Member)  
Syed Adil Gilani  
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