GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-196/2018-19 Karachi, dated the May, 2019

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

(Appeal)

M/s Muhammad Iqbal Shaikh & Co.
Versus
Public Health Engineering Division, Shaheed Benazirabad

(NIT ID # T00569-18-0001 dated 31.01.2019)

Facts and background

M/s Muhammad Iqbal Shaikh & Co., Hyderabad (hereinafter referred to as the appellant) lodged a complaint vide letter dated 28.03.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # AB/T.C/NIT/164/2019 dated 28.01.2019 floated by the Executive Engineer Public Health Engineering Division, Shaheed Benazirabad (hereinafter referred to as the procuring agency) wherein the appellant raised concerns over non-disclosure of clear reasons for their disqualification under technical evaluation report as required under Rule-45 of SPP Rules, 2010 (Amended 2019) by the procuring agency.

2. The Authority vide letter dated 01.04.2019 forwarded the appellant's aforementioned matter to the procuring agency with an advice to furnish views/ comments. In response, the procuring agency vide letter dated 05.04.2019 stated that the appellant was technically disqualified due to non-submission of bid security in shape of call deposit as required/ mentioned under NIT; such response of the procuring agency was forwarded to the appellant vide this Authority's letter dated 18.04.2019.

3. Subsequently, the appellant vide letter dated 18.04.2019 stated that they had lodged a complaint to the procuring agency's complaints redressal committee (CRC) on 21.03.2019 in terms of Rule-31 of SPP Rules, 2010 (Amended 2019) but they had not received any response against it as yet; hence requested the Authority to take appropriate action to redress their matter in accordance with SPP Rules.

4. Accordingly, the aforementioned matter was taken up by the Authority's Review Committee for hearing and deciding the same in its meeting scheduled on 02.05.2019 at 01.30 p.m. In this connection, notices were issued to the concerned parties vide this Authority's letter dated 29.04.2019 for appearing before the committee on scheduled date, time and venue. In compliance, Mr. Mushtaque Hussain Memon, Executive Engineer, Public Health Engineering Division, Shaheed Benazirabad (representative of the procuring agency) and Muhammad Iqbal Shaikh, Proprietor M/s Muhammad Iqbal Shaikh & Co. (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 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

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

- They participated under two works of the instant procurement, as mentioned below along with serial number of the works given in NIT, and submitted the requisite documents along with bid securities in shape of bank guarantees as per requirement of the bid documents:

Sr.#	Description	Estimated Cost
5.	Providing, laying, jointing & testing P.E pipe trunk main 12" & 16" dia for providing water supply lines in PS-24 Nawabshah	PKR 18,400,000.00
6.	Providing, laying, jointing & testing P.E pipe trunk main 10" & 8" dia for providing water supply lines in PS-24 Nawabshah	PKR 17,300,000.00

- The procuring agency disqualified them during technical evaluation on the pretext that bid securities submitted along with the proposals were in the form of bank guarantees instead of call deposit, although the procuring agency explicitly mentioned under Instructions to Bidders (ITB) Clause # 13.1 that *'each bidder shall furnish, as part of his bid, at the option of the bidder, a bid security as percentage of bid price/ estimated cost or in the amount stipulated in bidding data in Pak Rupees* ***in the form of Deposit at Call/ Payee's Order or a Bank Guarantee*** *issued by a scheduled bank of Pakistan in favor of the procuring agency valid for a period up to twenty eight (28) days beyond the bid validity date.'*

Procuring Agency's Version

7. Mr. Mushtaque Hussain Memon (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency mentioned in the NIT that prospective bidders had to submit bid security in the form of call deposit. The appellant submitted bid security in the form of bank guarantee; hence, disqualified under technical evaluation.
    - Syed Adil Gilani asked the procuring agency when they allowed the prospective bidders to submit their bid security in the form of bank guarantee as per ITB 13.1 read in conjunction with Rule-37(2) of SPP Rules, 2010 (Amended 2019), then why they disqualified the appellant.
        - The procuring agency stated that the bank guarantee was probably required for advance payment. At the time of evaluation process, they [Procurement Committee members] were of view that the bid security submitted by the appellant in the form of bank guarantee be accepted; however, Mr. Abdul Wahab Sahito, Chairman Procurement Committee, did not accord to their opinion and disqualified the appellant. Moreover, the procuring agency highlighted that they had not awarded the contract for works, where appellant participated, as yet.

Review Committee Observations

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

- The procuring agency allowed the bidders to submit bid security in the form of call deposit/ pay order or bank guarantee under ITB Clause # 13.1 of bid documents read in conjunction with Rule-37(2) of SPP Rules, 2010 (Amended 2019) then disqualification of the appellant contrary to

the said condition is violation of Rule-42(1) of SPP Rules, 2010 (Amended 2019), which provides *'all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents';*

- The procuring agency had failed to finalize and announce its CRC decision, against the complaint lodged by the appellant, 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, 2010 (Amended 2019);
- The procuring agency should have adopted *single stage one envelope bidding procedure* rather than *single stage two envelope bidding procedure* for procurement of works of simple and routine nature, where no technical complexity or innovation is involved in terms of Rule-47(1) of SPP Rules, 2010 (Amended 2019).

Review Committee Decision

9. In light of the above observation and violation of Rules as mentioned under para-8, and after due deliberation, Review Committee unanimously decides that since the procuring agency has not awarded or signed procurement contract against the works listed at Sr. # 5 & 6 of NIT; hence, the procurement's proceedings for these two works may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010 (Amended 2019), and fresh tenders be floated in terms of Rule-23(2) of SPP Rules, 2010 (Amended 2019). Moreover, the Review Committee decides that the Head of Procurement Committee shall pay PKR 10,000/ from his Pocket to the appellant Muhammad Iqbal Shaikh as compensation for cost incurred by the bidder/ appellant on preparation of bid in terms of Rule-32(7)(e) of SPP Rules, 2010 (Amended 2019). **Compliance of this decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.**

(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International

(Member)
Asadullah Soomro
Private Member
SPPRA Board

- Not Present -

(Member)
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