GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-273/2018-19 Karachi, dated the May, 2019

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

(Appeal)

M/s Kashif Constructors
Versus
Jinnah Sindh Medical University

(NIT ID # T00533-18-0020 dated 23.02.2019)

Facts and background

M/s Kashif Constructors, Karachi (hereinafter referred to as the appellant) lodged a complaint vide letter dated 02.04.2019 against the NIT # JSMU/PROC/NIT/6808 dated 20.02.2019 floated by the Procurement Officer, Procurement Department, Jinnah Sindh Medical University (hereinafter referred to as the procuring agency) for procurement of work *'Construction of Dental OPD Annexe Building'* wherein the appellant raised concerns over their disqualification under technical evaluation. In turn, the procuring agency convened a meeting of complaints redressal committee (CRC) in terms of Rule-31 of SPP Rules, 2010 (Amended 2019) to redress the appellant's grievances and decided that [reproduced herewith] *'all the members after reviewing the arguments, forwarded by M/s Kashif Constructors, concluded that the complainant M/s Kashif Constructors does not possess relevant work experience of similar nature as per eligibility criteria of bidding documents; hence, the complaint is invalid.'*

2. Subsequently, the appellant lodged an appeal vide letter dated 23.04.2019 to the Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) showing concerns over the aforementioned decision of procuring agency's CRC in terms of Rule-32(1) of SPP Rule, 2010 (Amended 2019). On receipt of the appeal, the Authority vide letter dated 29.04.2019 issued notices to the concerned parties for appearing before the Authority's Review Committee on 02.05.2019 at 02.30 p.m. In compliance, Mr. Naveed Ali, Incharge Procurement, and Mr. Muhammad Salman, Incharge, Works & Services, Jinnah Sindh Medical University (representatives of the procuring agency) and Mr. Anwar Bhutto, Chief Executive Officer, M/s Kashif Constructor (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. Anwar Bhutto (representative of the appellant) while arguing his appeal apprised the Committee that they possessed vast experience under buildings, highways and other construction projects, due to which they had been shortlisted by various public as well as private sector organizations. The procuring agency disqualified them under technical evaluation [preliminary evaluation] on the reasons that they did not submit certificate of similar works, costing at least PKR 150 million, completed in last three years [mentioned as five years in CRC decision]; whereas, they submitted a completion certificate

for construction of Imperial Restaurant G+3, Imperial Banquet along with court yard wall in Khairpur at the cost of PKR 165 million. Earlier, the procuring agency invited tenders against similar procurement under single stage one envelope where they were found as second lowest bidder with 9.5% below the estimated cost but later on the procuring agency cancelled that procurement process and re-invited the bids through afresh NIT.

- Syed Adil Gilani (Member of Review Committee) asked the appellant to share the construction projects details they have undertaken other than the above;
    - The appellant stated that they are currently working on various projects over PKR100 million in Islamia University, Karachi, Sindh Madressatul Islam University, Karachi, and Shah Abdul Latif University, Khairpur. Their firm was incorporated in 2010 and currently registered with PEC under category C-II and would soon obtain category C-I.

Procuring Agency's Version

5. Mr. Naveed Ali and Mr. Muhammad Salman (representatives of the procuring agency) while responding to queries raised by the Review Committee clarified that they sold eighteen bid documents to prospective bidders; out of which seven bidders participated and three bidders were found as technically qualified under the instant procurement. The appellant did not fulfill the mandatory requirement 'proof of completion certificate of similar works costing at least PKR 150 million completed in last three years', as mentioned under NIT and bidding documents [eligibility criteria] of instant procurement. The appellant submitted a copy of completion certificate of a banquet hall, which did not have any resemblance with the procurement at issue. The procuring agency further highlighted that the appellant did not undertake construction work, at its own level, on the banquet hall project rather it was owned by them otherwise they could have provided evidence, if constructed.

- Syed Adil Gilani asked the procuring agency about the current status of instant procurement;
    - The procuring agency stated that they completed the evaluation of bids and posted bid evaluation report on the Authority's website on 02.04.2019; however, they had not awarded the contract as yet.
- The chair and Syed Adil Gilani asked the procuring agency for the rationale to re-invite the bids;
    - The procuring agency stated that they cancelled previous NIT due to the scope creep emerged during the procurement process. The estimated cost of earlier cancelled procurement was PKR 195 million, which got increased to PKR 250 million due to the change in scope including renovation of floors and interior walls. In this regard, they obtained mandatory approval of the Competent Authorities and updated the procurement plan, which was posted on the Authority's website before floating the NIT.
- The chair asked the procuring agency to share any particular uniqueness of work under the instant procurement that differs from the general construction works;
    - The procuring agency stated that the instant procurement work is related to the construction of medical dental building, where dental surgeries and operations and outdoor patients would be provided healthcare services. The scope of the work under this procurement includes but not limited to civil works, installation of dental equipment, vacuum, built-in oxygen line, dental chairs, and other electrical work etc.

Review Committee Observations

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

- The procuring agency explicitly asked the bidders to submit completion certificate of similar works, costing PKR 150 million, in last three years and the appellant submitted completion

certificate of only one work relating to the construction of Imperial Restaurant and Banquet. The word similar under the ordinary usage of language, in terms of Rule-2(2) of SPP Rules 2010 (Amended 2019), mean having a *resemblance in appearance, character, or quantity, without being identical.*[i] As such a medical and dental OPD should not be regarded as similar to a banquet hall;

- The appellant failed to provide any documentary record or financial transaction [payment made to them] to cross check and verify that they constructed the banquet hall project;
- The procuring agency has provided documents that the contract of PKR 165.03 million banquet hall, between contractor and client is the same proprietor, Mr. Kashif Bhutto, and there is no record of payment of taxes paid to FBR & SRB, on the contract.

Review Committee Decision

7. In light of the above observation, as under para-7, and after due deliberation, the Review Committee unanimously decides to reject the reference/ appeal lodged by the appellant in the light of SPP Rule-32(7)(a) of SPP Rules, 2010 (Amended 2019) and uphold the decision of CRC.

(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

[i] https://en.oxforddictionaries.com/