



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-258/2018-19 2971

Karachi, dated the 22 May, 2019

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

(Appeal)

*M/s Dilawar Khan & Brothers
Versus
Education Works Division, Thatta*

(NIT ID # T00652-18-0008 dated 06.01.2019)

Facts and background

M/s Dilawar Khan & Brothers, Thatta (hereinafter referred to as the appellant) lodged an appeal vide letter dated 20.03.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # TC/G-55/EWDT/NIT/4287/2018 dated 31.12.2018 floated by the Executive Engineer, Education Works Division, Thatta (hereinafter referred to as the procuring agency) wherein the appellant stated that the procuring agency's complaints redressal committee (CRC) had failed to resolve their grievances despite lapse of stipulated time period; therefore, the matter may be placed in the Authority's Review Committee meeting in terms of Rule-31(5) of SPP Rules, 2010 (Amended Up to date).

2. Accordingly, the aforementioned matter was taken up by the Authority's Review Committee for hearing and deciding in its meeting scheduled on 23.04.2019 at 12.30 p.m. However, due to certain engagements of Review Committee members, the meeting was later on rescheduled on 02.05.2019 at 12.30 p.m. In this connection, notices were issued to the concerned parties (procuring agency and appellant) vide this Authority's letter dated 16.04.2019 & 19.04.2019, respectively. Besides, following complainants, who lodged their grievances under the instant procurement, were also issued meeting notices to appear and present their grievances, if any or unresolved as yet, before the Review Committee:

Sr. #	Name of Complainant	Sr. #	Name of Complainant
I.	M/s Aamir Aftab Construction Company	V.	M/s GMS Builders & Developers
II.	M/s Abdul Malik Khan	VI.	M/s Juman Kahyo
III.	M/s Abdul Wajid Khan	VII.	M/s Kashif Rafique
IV.	M/s Al-Farooque & Brothers	VIII.	M/s Abdul Majeed Sabugar

3. In compliance, Syed Muhammad Shees, Executive Engineer, Education Works Division, Thatta (representative of the procuring agency) and Mr. Dilawar Khan, Proprietor, M/s Dilawar Khan & Brothers (representative of the appellant) as well as representatives of complainants as listed at Sr. # I, II & III above 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 as well as complainants to present their case/ version, one by one, before the committee.

Appellant's Version

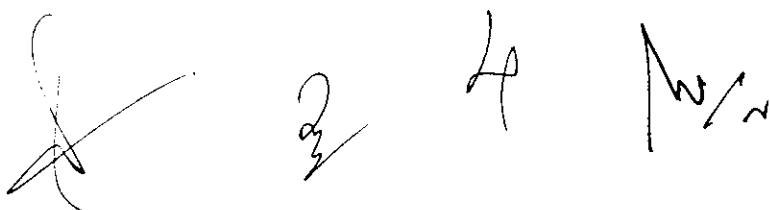
5. Mr. Dilawar Khan (representative of the appellant) while arguing his appeal apprised the Committee that:

- The procuring agency issued them bid documents only after lodging complaint to the Authority as well procuring agency's CRC. When they approached the procuring agency to submit their bids, which were scheduled on 01.02.2019 under second attempt of NIT, the procurement committee members were not present there;
- The concerned Executive Engineer asked them to submit blank tender documents, without quoting the bid on it, like other contractors had done so that the procuring agency could quote the bid on premium rates and distribute the works evenly among the contractors; the concerned Executive Engineer also demanded to pay commission in order to avail the opportunity for getting work order otherwise the procuring agency would technically disqualify them without disclosing their financial bid;
- The procuring agency did not follow open competitive bidding procedure as given under the rules and they resisted to be a part of such procedure adopted by the procuring agency, which falls under violation of the rules and tantamount to mis-procurement;
- The procuring agency got their signatures on the bidders' attendance sheet that was posted along with the bid evaluation report on the Authority's website, which could prove they were present in procuring agency's office but their bid was not incorporated/ accepted.

Complainant's Version

6. Representatives of following complainants apprised the committee as under:

- **M/s Abdul Malik Khan and M/s Abdul Wajid Khan:** They participated under various works as listed at Sr. # 08, 12, 13, 14, 15, and 17 of NIT through submitting bids via mail on 31.01.2019 [TCS receipts along with tracking IDs were attached with their complaints lodged to the Authority] but the procuring agency did not place/ accept their tenders nevertheless they were present there in the procuring agency office at the time of opening of bids. *When they lodged their complaint to the Authority, the procuring agency admitted their mistake and requested them to submit written statement for withdrawal of complaint, which they denied. The complainant [M/s Abdul Malik Khan] revealed that the procuring agency had awarded them work order for single work on premium/ higher rates; though, they had offered a competitive bid that was far below the amount mentioned in their work order.*
 - The committee observed that the procuring agency did not open the complainant's [M/s Abdul Malik Khan] bid and awarded them work order, which proved the procuring agency's melafide intentions. The committee asked the complainants why did they withdraw their complaints, as communicated vide procuring agency's letters dated 06.03.2019 to this Authority;
 - The complainants totally denied over withdrawal of their complaints and stated that if they had withdrawn their complaints then why they had attended this meeting to express their grievances.
- **M/s Aamir Aftab Construction Company:** They submitted bids along with requisite documents through mail but the procuring agency did not accept their tenders despite they were present there in the procuring agency office at the time of opening of bids and signed bidders' attendance sheet [the complainant also presented copy of call deposit before the Review Committee]. The procuring agency demanded them to submit blank tender documents so that bids can be quoted on premium/ higher rates, which they totally refused. The procuring agency did not issue



corrigendum for receiving and opening of bids under second attempt of NIT. The procuring agency even did not call any CRC meeting to redress their grievances and awarded contracts.

Procuring Agency's Version

7. Syed Muhammad Shees (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

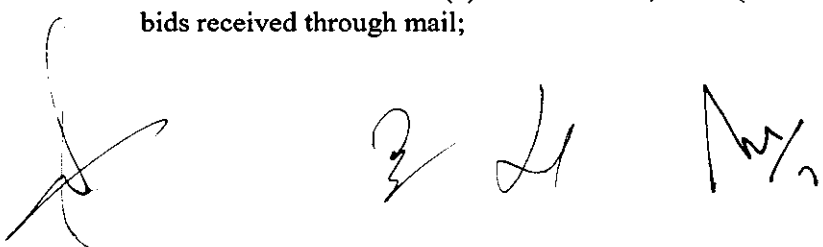
- Due to absence of procurement committee member [external/ outside the procuring agency] during first attempt/ schedule for submission and opening of bids, they received and opened the bids under second attempt of NIT that was scheduled on 01.02.2019;
- The procuring agency admitted that they received complainants' bids (M/s Abdul Malik Khan, and M/s Abdul Wajid Khan) through mail but same were not accepted/ opened by the procurement committee due to a mistake. Moreover, the procuring agency admitted that they received and opened the bid of the complainant [M/s Aamir Aftab Construction Company] but same was not incorporated in the bid evaluation report due to non-submission of call deposit.
 - The chair asked the procuring agency why frequent number of complaints lodged against them and why they did not address these complaints in a timely manner;
 - The procuring agency stated that they initiated the tendering process first time; therefore, some mistakes took place during the tendering.
 - The chair asked the procuring agency about the status/ compliance of observations, under instant procurement, as conveyed by the Authority through PPMS website; and existing status of instant procurement process;
 - The procuring agency was unaware about any observations conveyed by the Authority and highlighted that they awarded contracts for following two works, as mentioned below along with serial numbers of the work given in NIT:

Sr.#	Name of Work	Estimated Cost
	Up-gradation of Primary to Middle School 2016-17 District Thatta	
14.	GBPS Wali Muhammad Shoro	PKR 8.70 Million
16.	GGPS Pir Patho	PKR 8.70 Million

Review Committee Observations

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

- The procuring agency was required to allocate minimum response time of fifteen (15) days for issuance of bid documents under second attempt of NIT in terms of Rule-18 read in conjunction with Rule-2(1)(eee) of SPP Rules, 2010 (Amended Up to date) and SPPRA Policy Letter No.Dir(Enf-I)/SPPRA/1-3(GEN)/12-13/206 dated 12.07.2013 but they allowed only 04 days response time for second attempt;
- The procuring agency was required to use standard bidding documents for works in terms of Rule-21(3) read in conjunction with Rule-21(1) of SPP Rules, 2010 (Amended Up to date);
 - *Observations to rectify infirmities related to the response time and use of complete/ standard bid documents were conveyed online to the procuring agency through Authority's PPMS website on 15.01.2019; despite the procuring agency failed to rectify.*
- The procuring agency was required to open the bids received from bidders/ complainants through mail in terms of Rule-24(2) of SPP Rules, 2010 (Amended Up to date) but they did not accept bids received through mail;




- The procuring agency was required to finalize and announce its CRC decisions within seven days and intimate the same to the appellant/ complainants and the Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended Up to date) but they failed to redress the grievances of the complaints through CRC;
- The procuring agency was required to award the contract after the decision of the CRC in terms of Rule-31(6) of SPP Rules, 2010 (Amended Up to date) but they awarded the contract in violation of Rule-31(6) and proviso of Rule-31(7) of SPP Rules, 2010 (Amended Up to date);
- The procuring agency was required to accept and open bids received from all the bidders, without taking into consideration any other factor or requirement. The reasons for acceptance or rejection of bids should have been recorded in the bid evaluation report in terms of Rule-45 of SPP Rules, 2010 (Amended Up to date);

Review Committee Decision

9. In light of the above observation and violation of Rules as mentioned under para-9 and after due deliberation, Review Committee unanimously decides that:

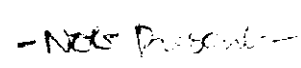
- 9.1. Since the procuring agency has not awarded or signed procurement contract against NIT's fifteen (15) works [except works listed at Sr. # 14 & 16 of NIT] hence, the procurement's proceedings for these fifteen (15) works may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010 (Amended Up to date), and fresh tenders be floated in terms of Rule-23(2) of SPP Rules, 2010 (Amended Up to date); and
- 9.2. Declares the said procurement as **Mis-Procurement** in light of SPP Rule-32(7)(g) and decides to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement and also decides to refer the matter to the Sindh Enquiries & Anti-Corruption Establishment for investigation against officers responsible/ involved in the instant procurement process, in terms of Rule-32(A)(2) of SPP Rules, 2010 (Amended Up to date).



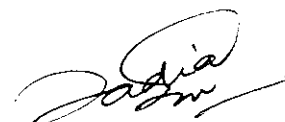
 (Member)
 Syed Adil Gilani
 Private Member SPPRA Board
 Representative Transparency International



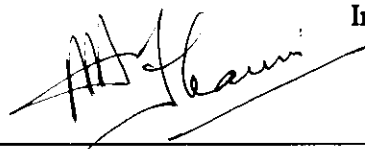
 (Member)
 Asadullah Soomro
 Private Member
 SPPRA Board



 (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