



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-141/2018-19

Karachi, dated the May, 2019

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

(Appeal)

M/s Bhatti Enterprises

Versus

Education Works Division, District West Karachi

(NIT ID # T00865-18-0002 dated 07.02.2019)

Facts and background

M/s Bhatti Enterprises, Karachi (hereinafter referred to as the appellant) lodged a complaint vide letter dated 01.03.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # EE/EWDW/NIT/2018-19/1932 dated 04.02.2019 floated by the Executive Engineer, Education Works Division, District West Karachi (hereinafter referred to as the procuring agency) for construction work 'Centre for Attention Deficit Hyper/ Active Disorder (ADHD) and Dyslexia Children, Korangi'. The appellant addressed their complaint to the procuring agency and copy endorsed to complaints redressal committee (CRC) as well as this Authority. In turn, the Authority vide letter dated 20.03.2019 also forwarded the appellant's complaint to the procuring agency's CRC with an advice to furnish its decision, if any, as required under Rule-31(5) of SPP Rules, 2010 (Amended 2019); however, the procuring agency did not furnish any response.

2. Subsequently, the appellant lodged an appeal vide letter dated 04.04.2019 to the Authority's Review Committee on the grounds that they had submitted two complaints to the procuring agency's CRC on 01.03.2019 and 14.03.2019 but their grievances could not be redressed despite lapse of stipulated time; hence, they requested to place the matter before the Authority's Review Committee.

3. Accordingly, the aforementioned matter was taken up by the Authority's Review Committee for hearing and for deciding the same in its meeting scheduled on 23.04.2019 at 01.00 p.m. However, due to certain engagements of Review Committee members, the meeting was later on rescheduled on 02.05.2019 at 12.00 p.m. In this connection, notices were issued to the concerned parties vide this Authority's letter dated 18.04.2019 & 29.04.2019 for appearing before the committee on scheduled date, time and venue. In compliance, Engineer Syed Ali Asghar Shah, Superintending Engineer, Education Works Circle, Karachi, and Syed Rizwan Haider, Executive Engineer, Education Works Division, District West, Karachi (representative of the procuring agency) and Sahibzada Kamran Khan, M/s Bhatti 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.

Appellant's Version

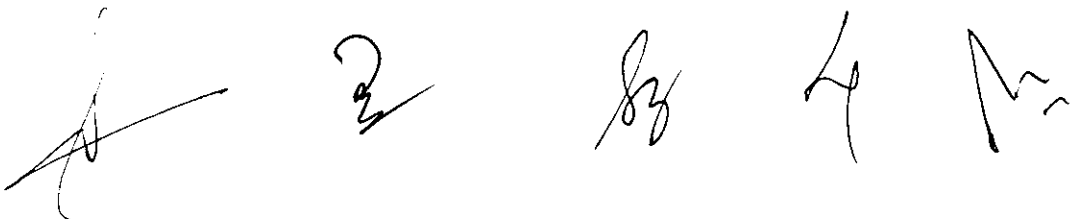
5. Mr. Sahibzada Kamran Khan (representative of the appellant) while arguing his appeal apprised the Committee that:

- They had waited in the procuring agency office on 26.02.2019 from 12.00 p.m. to 01.00 p.m. to obtain bid documents but they could not obtain the documents. Subsequently, they downloaded the bid documents from the Authority's website and approached the procuring agency office on 27.02.2019 to submit their bids where they came to know that entrance doors of the procuring agency's office were closed to restrict the contractors from participating in the bidding process;
- They as well as other contractors waited outside the procuring agency's office and had repeatedly requested and shouted there to allow them to participate in the bidding process but no one paid heed towards their requests and were informed by the procuring agency's Naib Qasid that the concerned Executive Engineer [Syed Rizwan Haider] was busy and could not meet them. They had recorded this whole event in their mobile phone;
- The procuring agency, like previous tendering processes, allowed only few favorite contractors to participate in the bidding process with the intention to award contract on rates suitable to procuring agency;
 - The chair and Syed Adil Gilani (Member of Review Committee) remarked that the appellant could submit their bids through mail – reliable courier service – preferably two days earlier to the deadline for submission of bids 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 bids submitted through reliable courier service would be authentic proof even if any received or accepted by the procuring agency.*

Procuring Agency's Version

6. Syed Rizwan Haider, Executive Engineer (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency issued bid documents to all bidders and they had compiled list of bidders those were issued bid documents. The procuring agency allowed all bidders to participate and submit bids till scheduled date for submission and opening that was 26.02.2019 as per NIT; whereas, the appellant approached the procuring agency to submit their bid on 27.02.2019;
 - Syed Adil Gilani asked the procuring agency to share list of bidders that were issued bid documents;
 - The procuring agency shared photocopy of deposit receipt book [excerpt], which showed the procuring agency had issued bid documents under instant procurement to twelve (12) firms on 22.02.2019 & 25.02.2019 only.
 - The committee noted that the procuring agency issued bid documents on two particular days and how it could be possible that bidders had not approached the procuring agency for issuance of bid documents beyond these two dates. Syed Adil Gilani asked the procuring agency about the first attempt/ schedule for submission and opening of bids.



- The procuring agency stated that they cancelled their earlier NIT and re-invited bids for instant procurement works that were opened on 26.02.2019 but the procuring agency had not awarded the contract as yet.
- The chair asked the procuring agency regarding the number of bidders who submitted their bids on the bid documents downloaded from the Authority's website. The chair further asked the procuring agency whether they accept the bids quoted on the bid documents downloaded from the Authority's website;
 - The procuring agency stated that they accept the bids submitted on the bid documents downloaded from the Authority's website and further highlighted that they did not receive bid, from any bidder under instant procurement, on the bid documents downloaded from the Authority's website.

7. Engineer Syed Ali Asghar Shah, Superintending Engineer (representative of the procuring agency), being the head of the procuring agency, highlighted that his office vide letter dated 15.03.2019 had also communicated various concerns/ objections, as reproduced below, over instant procurement to the Executive Engineer, Education Works, District West Karachi; therefore, CRC meeting was not called:

- Prior permission for the tender of work in question was not granted [Superintending Engineer];
- Bid evaluation report of SPPRA was not enclosed along with tender documents of works in question;
- A number of complaints were received in the office of undersigned against the transparency and fairness of tendering process of work in question. In light of these complaints, the undersigned asked the factual position from your office vide letter No.SE/EWCK/ESST/201-19/1399 Karachi, dated 27.02.2019 and letter No.SE/EWCK/ESTT/2018-19/1455 Karachi dated 11.03.2019, the reply of allegations was submitted in this office vide your office letter No.EE/EWDW/Works/2018-19/2097 Karachi dated 13.03.2019 which is found *unsatisfactory*.

Review Committee Observations

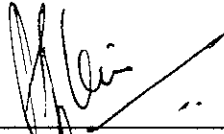
8. After hearing parties at length and perusal of the available record, the Review Committee observed that:-

- The procuring agency should have sought approval of Competent Authority before floating the NIT;
- The procuring agency was required to incorporate the instant procurement scheme in the annual procurement plan and same was required to be posted in advance on the Authority's website in terms of Rule-11 of SPP Rules, 2010 (Amended 2019);
- The procuring agency was also required to publish advertisement in one Urdu language newspaper in terms of Rule-17(2) of SPP Rules, 2010 (Amended 2019);
- The procuring agency has 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).

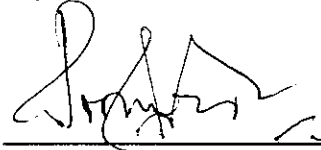
Review Committee Decision

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 NIT work; hence, the procurement's proceedings for the work 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).



(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