



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-355/2018-19

Karachi, dated the May, 2019

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

(Appeal)

M/s Khokhar Brothers Construction
Versus
Mirpur Division (Irrigation) at Mirpur Mathelo
(NIT ID # T01417-18-0001 dated 02.05.2019)

Facts and background

M/s Khokhar Brothers Construction, Hyderabad (hereinafter referred to as the appellant) lodged a complaint vide letter dated 09.05.2019 to the Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) as well as Mirpur Division Irrigation at Mirpur Mathelo (hereinafter referred to as the procuring agency) and others against the NIT # TC/G-55(b)/501 dated 29.04.2019 floated for procurement of work 'Providing stone apron from mile 0/5 to 1/2+200 and dumping of stone boulders to eroded portions from mile 1/2+200 to 1/3+285 along Qadirpur shank bund [Non-ADP/ Emergent work]'. In turn, the Authority vide letter dated 16.05.2019 also forwarded the appellant's matter to the procuring agency's complaints redressal committee (CRC) with an advice to redress the appellant's grievances in accordance with Rule-31 of SPP Rules, 2010 (Amended 2019).

2. Subsequently, the appellant vide letter dated 19.05.2019 lodged an appeal to the Authority's Review Committee stating that the procuring agency's CRC had failed to decide their complaint, received by the CRC through mail [TCS] on 10.05.2019, within the stipulated time period of seven days; hence, their case be placed before the Authority's Review Committee in terms of Rule-31(5) read in conjunction with Rule-32 of SPP Rules, 2010 (Amended 2019).

3. Accordingly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 22.05.2019 at 11.30 a.m. and notices, in this connection, were issued to the concerned parties vide this Authority's letter dated 20.05.2019 for appearing before the committee on scheduled date, time and venue. In compliance, Mr. Jai Ram Motwani, General Manager (Operation), Sindh Irrigation & Drainage Authority, Hyderabad [Chairman CRC]; Mr. Bahar Ali Jumani, Executive Engineer, Mirpur Division Irrigation at Mirpur Mathelo (representatives of the procuring agency) and Muhammad Shabir Khokhar, Proprietor, M/s Khokhar Brothers Construction (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. Muhammad Shabir Khokhar (representative of the appellant) while arguing his appeal apprised the Committee that:

- They participated in the instant procurement process through submitting bid along with bid security and other requisite documents sent via mail [TCS receipt along with tracking ID # 2065821618 dated 06.05.2019 was attached with the complaint lodged to the Authority] that were received by the procuring agency on 08.05.2019 at 10.20 a.m. – before the deadline for

submission of bids. They quoted bid against the instant procurement work as PKR 520,254,476 that was 4.56% below the rate offered by the M/s Abdul Hakeem Chachar & Sons, Government Contractor, Hyderabad [the lowest evaluated bidder as mentioned under the bid evaluation report];

- The procuring agency opened their bid and then retained the same without dropping it into the tender box on the directions of Engineer Yasin Qureshi, Director Ghotki Feeder Canal Area Water Board, Ghotki, who insisted them to sign a fresh and blank tender document in order to award the contract on the basis favoritism by violating the procurement principles and rules. The procuring agency allowed rest of the bidders/ contractors [20 firms] to participate in the instant bidding process but did not include appellant's bid, submitted through mail, which could be verified from the bid evaluation report posted on the Authority's website;
- Being aggrieved with the aforementioned discrimination, they lodged a complaint vide letter dated 09.05.2019 to the procuring agency's CRC, which fixed their case for hearing on 15.05.2019. However, when they went to attend the meeting they found the committee as absent despite the fact that the CRC had to decide their matter within seven days as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019).
 - ◆ Syed Adil Gilani (Member of Review Committee) asked the appellant whether they were present there in the procuring agency office at the time of opening of bids;
 - The appellant affirmed that they were present there in the procuring agency office at the time of opening of bids where they also witnessed occurrence of stampede due to improper seating for bidders' representatives; however, they did not observe any bidder, including them, had withdrawn or received back their bid from the procuring agency;
 - On another a query raised by the Committee, the appellant stated that their original call deposit [bid security] was lying with their proposal submitted to the procuring agency. The appellant also presented a photocopy of call deposit and same was verified and found genuine by the issuing bank [Dubai Islamic Bank] that also confirmed the call deposit had not been withdrawn as yet.

Procuring Agency's Version

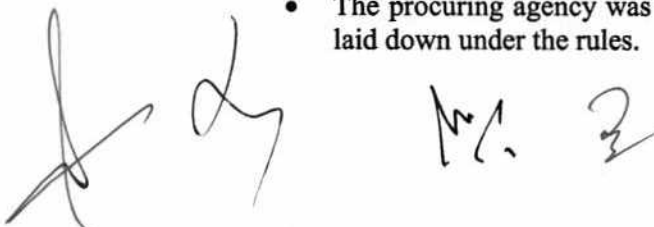
6. Mr. Jai Ram Motwani [Chairman CRC] and Mr. Bahar Ali Jumani (representatives of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency initiated the instant procurement on emergent basis (non-ADP) by reducing the response time as specified under Rule-18 in pursuance of the approval with reasons accorded by the Managing Director, Sindh Irrigation & Drainage Authority, vide letter NO.MD/SIDA/DB-Permission-2018-19/GFC/1868 dated 12.04.2019 in terms of Rule-19(1) of SPP Rules, 2010 (Amended 2019). They could have executed the instant work on emergency basis through opting single sourcing [direct contracting] in terms of Rule-16(1)(b)(viii) of SPP Rules, 2010 (Amended 2019), as allowed by the Head of the Department, but they avoided to do so due to the reason that funds were not released to them as yet and direct contracting might have impeded their work once executed;
- The procuring agency acknowledged that they received appellant's bid through mail and same was dropped into the tender box. After opening of tender box, some contractors including the appellant forcibly took away their sealed bids and left the office. The appellant did not address any complaint directly to them rather the appellant approached to the Chief Secretary Sindh, Secretary Irrigation Department, and Managing Director SPPRA; whereas other two contractors M/s F.B. Enterprises and M/s Iftikhar Enterprises approached the CRC, for which they convened a meeting on 15.05.2019 in the procuring agency's office to examine procurement proceedings [relevant record] and decide the complainants, including the appellant, grievances. *So far, they*



had neither decided the complainants' matter nor awarded the contract, due to the matter already transferred to the Authority's Review Committee;

- ◆ The chair raised an observation over the procuring agency's CRC, which was not constituted in consonance with Rule-31(2) of SPP Rules, 2010 (Amended 2019);
 - The procuring agency admitted that the chairman of the procurement committee could not become a member of their CRC; indeed they should have incorporated an independent expert in place of that member. The fact is that their CRC was constituted and notified in June, 2018, earlier than initiating the instant procurement; hence, they could not pay any heed towards that;
- ◆ Syed Adil Gilani queried as to why the procuring agency returned the bids to the bidders after passing the deadline when it is explicitly mentioned under Clause # 7.1(C)(e) & 7.2(c) of SPPRA Procurement Regulation (Works) that *'bids shall be dropped in the locked tender box or cabinets may be used or when the tenders are in large volumes or in envelopes that are large or thick, they may be directly received by an assigned officer/official of the procuring agency. The key of the box should remain in possession of the officer who opens the tenders; neither modification nor withdrawal is allowed after the deadline for submission of bids'*;
 - The procuring agency stated that some bidders including the appellant forcibly took back their submitted bids from the tender box that was also witnessed by other contractors, which participated in the bidding process and were also present there in the procuring agency office during opening of the bids. Spontaneously, the procuring agency vide letter dated 08.05.2019 reported the incident to the Senior Superintendent of Police, Ghotki at Mirpur Mathelo with request to issue orders to the concerned Station House Officer for lodging F.I.R.;
- ◆ Syed Adil Gilani pointed out that it was the sole responsibility of the procuring agency, being the custodian, to ensure opening of all received bids. In case, a bid submitted by any bidder was found as misplaced or theft, due to any reason whatsoever, after submission of bids to the procuring agency then it was suffice that the integrity and sanctity of procurement process was not managed effectively in the instant procurement process. It also implies that there might be a pool of bidders, with or without the knowledge of the procuring agency, to establish prices at artificial, noncompetitive levels for any wrongful gains, which fall under corrupt and fraudulent practices in terms of Rule-2(1)(q) of SPP Rules, 2010 (Amended 2019);
- The procuring agency further highlighted that the appellant had not undertaken any work related to the instant procurement and awarding the contract for such work to an inexperienced contractor was riskier for the procuring agency, which had to ensure smooth execution of the work. Moreover, the work under the instant procurement was of an important and sensitive nature due to the presence of oil and gas fields; cantonment area; and newly constructed motorway etc. within the suburb areas of the bund and same could get effected in case of any untoward situation takes place there in the upcoming monsoon season;
 - ◆ While examining procurement record [report prepared/ shared by the procuring agency containing an allegation leveled by the procuring agency that the appellant demanded 1.5% as bribe/ commission from the lowest evaluated bidder otherwise threatened to face serious consequences], the Review Committee opined that the procuring agency could have blacklisted such bidder subject to the condition the procuring agency had cogent reasons and proof to blacklist bidder(s) as provided under Rule-35 read in conjunction with Rule-2(1)(q) of SPP Rules, 2010 (Amended 2019). *These rules also protect the procuring agency to face such situations as mentioned under procuring agency's report;*
 - The procuring agency was unaware about the bidders' blacklisting procedure as laid down under the rules.



Review Committee Observations

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

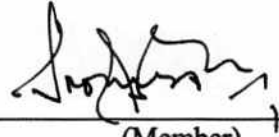
- The committee could not verify whether the procurement process was conducted in a fair and transparent or not as they were not physically present over there in the procuring agency office during the opening of bids; moreover, the role of the Authority is up to the monitoring for execution of the rules. However, it is proven from the procurement record and the procuring agency's statement that the appellant had submitted their bid by mail that was also received by the procuring agency before deadline for submission of bids;
- It was sole responsibility of the procuring agency, being the custodian, to ensure safe and secure opening of all received bids without allowing any bidder to withdraw their bid after the deadline for submission of bids in terms of Clause # 7.2(c) of SPPRA Procurement Regulation (Works);
- The procuring agency was required to constitute its CRC in consonance with Rules-31(1) & (2) of SPP Rules, 2010 (Amended 2019) to address the complaints of bidders during the procurement proceedings;
- The procuring agency was required to decide the complainants' grievances within seven days and intimate the same to the appellant and Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended 2019).

Review Committee Decision

8. In light of the observation and violation of rules and regulations as mentioned under para-7, and after due deliberation, Review Committee unanimously decides that the instant 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 on emergency basis in terms of Rules-19(1) or direct contracting be undertaken in terms of Rule-16(1)(b)(viii) read in conjunction with Rules-2(1)(r) & 23(2) of SPP Rules, 2010 (Amended 2019), as per approval already accorded by their Head of the Department.



(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