GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-238/2018-19 Karachi, dated the June, 2019

To,

- The Chief Engineer Highways,
  Works & Services Department,
  Sukkur.
- M/s Ghulam Murtaza Enterprises,
  Bungalow No. C-377/3, Phase-I, Qasimabad,
  Hyderabad.
- M/s F.B. Enterprises,
  A-26, Faraz Villas Phase-III, Qasimabad,
  Hyderabad.

Subject: **DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEALS LODGED BY M/S WSKB & COMPANY; M/S GHULAM MURTAZA ENTERPRISES; M/S F.B. ENTERPRISES VERSUS MACHINERY MAINTENANCE DIVISION, KHAIRPUR AT SHIKARPUR).**

The undersigned is directed to refer to the subject cited above and to enclose a copy of the Authority's Review Committee's decision taken in its meeting on 29th May, 2019 for your information and further necessary action under intimation to this Authority, at the earliest.

13/06/2019

ASSISTANT DIRECTOR (LEGAL-II)

***A copy along with enclosures** is forwarded for information to:*

1. The Secretary to Government of Sindh, Works & Services Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Superintending Engineer, Provincial Highway Circle, Larkana.
4. The Executive Engineer, Machinery Maintenance Division, Khairpur at Shikarpur.
5. The P.S. to the Chairman Review Committee/ Managing Director SPPRA/ Review Committee Members (all).

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-238/2018-19/3069 Karachi, dated the 13th June, 2019

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

(Appeals)

M/s WSKB & Company; M/s Ghulam Murtaza Enterprises; and M/s F.B. Enterprises
Versus
Machinery Maintenance Division, Khairpur at Shikarpur

(NIT ID # T00138-18-0004 Dated 28.03.2019)

Facts and background

M/s WSKB & Company, Karachi; M/s Ghulam Murtaza Enterprises, Hyderabad; and M/s F.B. Enterprises, Hyderabad (hereinafter referred to as the appellant # I, II & III, respectively) lodged separate complaints vide their letters dated 15.04.2019 & 22.04.2019, respectively, addressed to the Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) as well as to Machinery Maintenance Division, Khairpur at Shikarpur (hereinafter referred to as the procuring agency) and others against the NIT # TC/G-55/346/of 2019 dated 18.03.2019 floated for procurement of fourteen (14) works related to reconditioning/ rehabilitation/ maintenance & repair of roads. In turn, the Authority vide letters dated 26.04.2019 and 10.05.2019, followed by reminders dated 08 & 16.05.2019, also forwarded the appellants' matters to the procuring agency's complaints redressal committee (CRC) with an advice to furnish its decisions as well as confirm the appellants' bid security status to the Authority in terms of Rules-31(5) & 32(1) of SPP Rules, 2010 (Amended 2019); however, they did not furnish any response.

2. Subsequently, the appellants [I, II & III] vide their letters dated 16.05.2019 & 15.05.2019, respectively, lodged individual appeals to the Authority's Review Committee stating that the procuring agency's CRC had failed to decide their complaint 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).

2. Accordingly, the aforementioned matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 29.05.2019 at 11.00 a.m. and notices, in this connection, were issued to the concerned parties [procuring agency and appellants] vide this Authority's letter dated 27.05.2019. Besides, the complainants, who lodged their grievances under the instant procurement case, were also issued meeting notices to appear and present their grievances unresolved as yet, before the Review Committee. In compliance, the meeting was attended by the following [representatives]:

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Mr. Shafique Rehman, Superintending Engineer	Provincial Highway Circle, Larkana
II.	Mr. Riaz Ahmed Chandio, Tender Clerk	Machinery & Maintenance Div., Khairpur at Shikarpur
Appellants		
I.	Mr. Ghulam Murtaza, Proprietor [Appellant # 2]	M/s Ghulam Murtaza Enterprises
II.	Mr. Farooque Ali, Proprietor [Appellant # 3]	M/s F.B. Enterprises
Complainants		
I.	Mr. Taj Muhammad Soomro, Proprietor	M/s Nawab & Sons Construction Services, Jacobabad
II.	Mr. Abdul Khalique Dayo, Proprietor	M/s Abdul Khalique Dayo, Jacobabad
III.	Mr. Sunny Memon, Manager	M/s Khokhar Brothers & Construction Company, Hyd.
IV.	Mr. Akhter Ali Qureshi, Chairman	M/s Sindhu Paras Construction Company, Jacobabad
V.	Mr. Raja Panhyar, Proprietor	M/s Raja Panhyar, Jacobabad
VI.	Mr. Abdul Sattar Brohi, Proprietor	M/s Brohi Construction Company, Jacobabad

VII.	Mr. Sherbaz Benglani, Proprietor	M/s Sherbaz Benglani, Shikarpur
VIII.	Mr. Javed Ahmed Lashari, Proprietor	M/s New Javed Ahmed, Jacobabad

Review Committee Proceedings

3. At the outset of the meeting, the Chairperson of Review Committee welcomed all the participants 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.

Appellants Version[1]

4. Mr. Farooque Ahmed (representative of the appellant # 3) while arguing his appeal apprised the Committee that they approached the procuring agency to obtain blank tender documents but the same were not issued to them despite having prepared/ submitted an application along with tender documents fees in favor of the procuring agency. Alternatively, they downloaded the bid documents, as available, from the Authority's website and filled their rates/ bid. When they approached the procuring agency to submit their bids on the scheduled date for submission and opening of bids, they found all office rooms of the procuring agency closed/ locked and procurement committee members as absent. The procuring agency did not issue any corrigendum for receiving and opening of bids under second attempt of NIT. Resultantly, they filed their complaint to procuring agency's CRC that did not redress their grievances.

Complainants Version

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

M/s Nawab & Sons Construction Company: They approached the procuring agency to participate in the bidding process on the first attempt/ schedule [12.04.2019] for submission and opening of bids as per NIT where they witnessed participation of other contractors ranging 200 to 250, albeit, they found all office rooms of the procuring agency as locked, not only on the scheduled date for submission and opening of bids but also during the scheduled period for obtaining/ issuance of bid documents. Spontaneously, they along with other contractors recorded protest over such irregularities before the media as well as lodged complaints before the appropriate forums, including the procuring agency's CRC and the Authority etc. *The Review Committee could verify that the Authority had never received as many complaints in other cases as in the instant procurement, which was ample evidence that procuring agency had absolutely failed to ensure compliance of the rules and procurement principles while undertaking the instant procurement.* The procuring agency did not post bid documents for four works of NIT on the Authority's website; whereas, rest of the bid documents [for remaining works] as posted on the website were also incomplete. In this connection, the Authority vide letter dated 26.04.2019 also advised the procuring agency to proceed under Rules-25 & 26 read in conjunction with Rule-23(2) of SPP Rules, 2010 (Amended 2019) – in case bids already received/ opened – otherwise rectify the violations/ infirmities through extending response time in terms of Rules-18 & 21(2) read in conjunction with Rule-2(1)(eee) of SPP Rules, 2010 (Amended 2019). Regardless of these explicit directions, the procuring agency continued the bid process without rectifying the violations/ infirmities. Moreover, *the bid evaluation reports posted on the Authority's website on 14 & 16.05.2019 were also signed by two members of the procurement committee who [both members] belong to the procuring agency [internal members]; whereas, the third member [Divisional Accounts Officer, Education Works Division, Shikarpur – outside the procuring agency] of the procurement committee vide his letter dated 29.03.2019 already informed the procuring agency about his engagements in other assignments delegated by the Accountant General Sindh and therefore, he withdrew his role as member of procurement committee under instant procurement.* The procuring agency had not followed the Authority's instructions recently

[1] M/s WSKB & Company [Appellant # I] did not attend the meeting proceedings despite filing more than twenty complaints, related to the instant procurement case, to this Authority. The meeting notice were received and acknowledged by the appellant on 27.05.2019. Raja Jawad Ali Sahaar & Co., Advocate Supreme Court of Pakistan, vide letter dated 28.05.2019 intimated the Authority, on behalf of appellant # I, that their client [appellant # I] could not attend the meeting; however, their grievances were same.

circulated vide policy letter dated 19.02.2019 whereby all the procuring agencies were reminded to ensure compliance of rules by issuing bid documents to all the bidders; accepting sealed bid from the bidders; and opening of bids in presence of bidders on scheduled venue, date & time etc.

- The Review Committee asked rest of the complainants to present their version if other than stated above by the appellant/ complainant;
  - All the complainants duly supported the version presented by M/s Nawab & Sons.

Procuring Agency's Version

6. Mr. Shafique Rehman (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency did not receive and open the bids on first attempt/ schedule of NIT due to ill-health of a member of the procurement committee; therefore, they received and opened the bids under second attempt/ schedule of NIT. The procuring agency also called pre-bid meeting, attended by 70-75 contractors; whereas the appellants and contractors did neither attend pre-bid meeting nor submitted their bids on the scheduled date. Moreover, the appellants and complainants had not available original bid security with the procuring agency.

  "M/s F.B. Enterprises [appellant # III] presented bid security [original pay dated 11.04.2019] before the Committee that was not withdrawn as yet. The complainants were of view that their bid securities were still placed with them that had not been withdrawn."

  - Syed Adil Gilani (Member of Review Committee) asked the procuring agency to provide rationale for calling pre-bid meeting and also describe source through which firms, that participated meeting, came to know about the schedule and venue of pre-bid meeting[2];
    - The procuring agency could not furnish any response against above query.
  - The Review Committee asked the procuring agency to clarify/ justify as to why the bid documents against all works of NIT were not posted on the Authority's website;
    - The procuring agency stated that they posted duplicate bid documents against four works of NIT on Authority's website that were later on rectified/ updated;
  - The Review Committee highlighted that the Authority conveyed observations to the procuring agency through PPMS website on 12.04.2019 as well as Authority's letters dated 15, 17, 18 & 26.04.2019 with an advice to rectify these observations. Subsequently, the Authority vide letter dated 26.04.2019 explicitly advised the procuring agency to rectify the infirmities/ observations through extending response time, in case bids were not opened, otherwise cancel and re-invite the bids in terms of Rules-25 & 26 read in conjunction with Rule-23(2) of SPP Rules, 2010 (Amended 2019); nevertheless, the procuring agency neither took any action nor bothered to respond to the Authority;
    - The procuring agency stated that they received the Authority's observations on 29.04.2019 [scheduled date for submission and opening of bids].
  - The Review Committee noted that the procuring agency was required to open the bids within an hour of the deadline for submission of bids and all the bidders in attendance were required to sign an attendance sheet while **opening of bids** in terms of Rules-41(3) & (6) of SPP Rules, 2010 (Amended 2019). However, in the instant case, bids were opened on 29.04.2019 and the bidders signed attendance sheet on 26.04.2019 [prior to opening of bids]. Moreover, the bid evaluation report was signed by three members of procurement committee and two members of the procurement committee were the same person[3]. Even in such case where one member of the procurement committee had dual

[2] Pre-bid meeting reference [schedule and venue] were not mentioned in the bid documents as well as NIT.

[3] Mr. Iqbal Ahmed Pathan signed bid evaluation reports being Assistant Engineer, Provincial Highway Sub-Division Jacobabad as well as Executive Engineer, Building Division, Jacobabad. The procurement committee was notified/ constituted upon three members of Executive Engineer, Machinery Maintenance Division [Chairman]; Assistant Engineer, Provincial Highway Sub-Division, Shikarpur [Member]; and Divisional Accounts Officer, Education Works Division, Shikarpur [Member].

charges then the procuring agency must have reconstituted the procurement committee in order to comply with Rules-7(2) & (4) of SPP Rules, 2010 (Amended 2019), which spells out that *'the procurement committee comprising three members: all members shall form quorum and the decision of the procurement committee shall be taken on the basis of majority of votes of the total strength of the committee.'*

- The procuring agency admitted that they got attendance sheet signed by the bidders on closing date [26.04.2019] for submission of bids.

- Syed Adil Gilani asked procuring agency to submit written statement about current status of the instant procurement case, enabling the Review Committee to decide the matter;

  - The procuring agency [Mr. Shafique Rehman, Superintending Engineer] stated that they had not issued even a single work order as yet and also submitted written statement to the Committee as verbatim reproduced herewith *["it is to certify that no any rate has been approved by this office or any approval has been forwarded to XEN office for issuing work order regarding NIT No. TC/G-55/346/2019 dated 18.03.2019 issued by the Executive Engineer Machinery Maintenance Division, Khairpur at Shikarpur.* ***I am conveying to office of Chief Engineer also to stop the process until the decision of Review Committee."]***

Review Committee Observations

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

- The procuring agency did not use standard bidding documents for procurement of works as required under Rule-21(3) read with Rule-21(1) of SPP Rules, 2010 (Amended 2019);
- The procuring agency did not post on the PPMS website bid documents for procurement of works listed at NIT Sr. # 5, 6, 7 & 12; whereas, bid documents for procurement of works listed at NIT # 2, 4, 9 & 13 were posted twice to match the number of bid documents with NIT works;
- The procuring agency was required to post complete set of bid documents against all works on or before the first date of issuance of such documents on the Authority's website in terms of Rule-21(4) read in conjunction with Rule-24(2) of SPP Rules, 2010 (Amended 2019), while some of the bidding documents were found incomplete;
- The procuring agency failed to clearly mention the bidders' eligibility criteria in the NIT as well as bidding documents as required under Rule-46(1)(a) read in conjunction with Rules-21(A) & 42(1) of SPP Rules, 2010 (Amended 2019);
  - *Observations to rectify the above infirmities were conveyed to the procuring agency through Authority's PPMS website on 12.04.2019 and subsequent reminders dated 15, 17, 18 & 16.04.2019; despite that the procuring agency failed to rectify the violations/ infirmities.*
- The procuring agency was required to post bid evaluation reports, on the Authority's website, duly signed by all the members of the procurement committee as constituted/ notified by the Head of the Department in terms of Rule-7 of SPP Rules, 2010 (Amended 2019), read in conjunction with the Authority's instructions circulated vide policy letters dated 03.04.2013 & 15.07.2014; in case of any change under procurement committee's constitution then the same were required to be approved/ notified by the Head of the Department[4];
- The procuring agency was required to issue corrigendum for extension in deadline/ time period for submission of bids in terms of Rule-22 of SPP Rules, 2010 (Amended 2019) read in conjunction with Clause # 4.10 of the Authority's Procurement Regulation (Works);

[4] http://www.pprasindh.gov.pk/policies/Policy03Apr2013.pdf
http://www.pprasindh.gov.pk/policies/Policy15July14.pdf

- The procuring agency was required to finalize and announce its CRC decisions within seven days and intimate the same to the appellants/ complainants and the Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended 2019) but they failed to redress the grievances of the appellants/ complaints through CRC;
- The procuring agency was required to open bids within one hour of the deadline for submission of bids and got attendance sheet signed by all bidders in attendance in terms of Rules-41(3) & (6) of SP Rules, 2010 (Amended 2019) but in the instant case, bids were opened after three days of submission deadline.

Review Committee Decision

8. In light of the above observation and glaring violation of Rules as mentioned under para-7 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 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 Rules-25 & 26 read in conjunction with Rule-23(2) of SPP Rules, 2010 (Amended 2019), as earlier advised vide this Authority's letter dated 26.04.2019.

(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