



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-335/2018-19

Karachi, dated the June, 2019

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

(Appeal)

*M/s Global Engineering Links; and M/s Aas Construction Company
Versus*

Jacobabad Institute of Medical Sciences

(NIT ID # T00047-18-0001 dated 11.04.2019)

Facts and background

M/s Global Engineering Links, Karachi, and M/s Aas Construction Company, Jacobabad (hereinafter referred to as the appellants) lodged complaints vide letters dated 03.05.2019 and 02.05.2019, respectively, to the Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) as well as Director, Jacobabad Institute of Medical Sciences, Jacobabad (hereinafter referred to as the procuring agency) and others against the NIT # INF-KRY NO.1801/19 dated 11.04.2019 floated for procurement of *i. outsourcing of skilled/ maintenance staff; ii. outsourcing of janitorial/ housekeeping staff; iii. supply & installation of furniture/ fixture, CCTV cameras, electrical items, air conditioners, kitchen items/ utensils; and iv. Supply & installation of reverse osmosis plant (10,000 GPD) & drinking points from water filtration plant* for the year 2018-19. In turn, the Authority vide letter dated 16.05.2019 forwarded the appellants' matter to the procuring agency with an advice to furnish its complaints redressal committee (CRC) decision, as stipulated time period of seven days had already elapsed since lodging of the complaints, and also confirm the Authority whether the appellants had withdrawn their bid securities or not as required under Rules-31(5) & 32(1) of SPP Rules, 2010 (Amended 2019).

2. Subsequently, the appellants vide letters dated 22.05.2019 lodged appeals to the Authority's Review Committee stating that the procuring agency's CRC had failed to decide their complaints within stipulated time period of seven days; hence, their cases 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 appellants' matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 29.05.2019 at 12.00 p.m. and notices, in this connection, were issued to the concerned parties vide this Authority's letter dated 27.05.2019 for appearing before the committee on scheduled date, time and venue. In compliance, Dr. Abdul Wahid Tagar, Director, Jacobabad Institute of Medical Sciences, Jacobabad (representative of the procuring agency) and Engr. Khadim Hussain, Proprietor, M/s Global Engineering Links; Mr. Altaf Ahmed, Proprietor, M/s Aas Construction Company (representatives of the appellants) 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 appellants to present their case/ version, one by one, on the instant procurement before the committee.

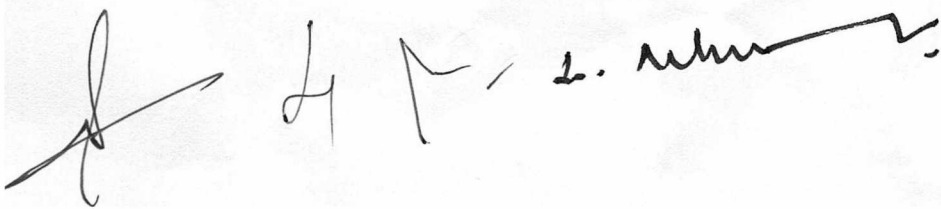
Appellants' Version

5. Engr. Khadim Hussain (representative of M/s Global Engineering Links) while arguing his appeal apprised the Committee that:

- They reached in the procuring agency's office on the scheduled date for submission and opening of bids, which was fixed as on 26.04.2019 at 10.30 a.m., to submit their bid, on the bid documents issued by the procuring agency, under all works of NIT. Some bidders reached in the procuring agency office [at 11.30 a.m.] after the deadline for submission of bids; however, the procuring agency allowed them to participate in the bidding process. They raised concerns, before the procurement committee, over acceptance of late bids in violation of rules; however, the procurement committee did not pay any heed towards that and opened the sealed bids [technical proposals] received from all bidders, including latecomers, and thereafter informed that the technical evaluation results would be communicated to all bidders once scrutiny of the documents received with technical proposals gets done by the committee.
- Subsequently, the procuring agency vide its letter dated 29.04.2019 informed that the procurement committee had disqualified them [appellant] under technical evaluation of all works on the grounds of *non-submission of original bid documents, and registration with EOBI & SESSI*; whereas, they submitted original bid document and original pay order [bid security] along with their financial proposal, which was lying with the procuring agency;
- The procuring agency, under the technical evaluation criteria of instant bid documents, instructed the bidders to submit their original bid receipt along with technical proposal, which they submitted along with products' brochures. However, their registration with SESSI was in process but it was not the mandatory requirement for bidders' eligibility and the procuring agency just assigned only 10 marks for having registration with SESSI that could be deducted from their scoring under technical evaluation as per criteria of bid documents. Based on their valid grievances, they approached the procuring agency to re-examine their case; however, they did not receive any response. Moreover, they [appellant] alleged that bidder recommended by procurement committee did not meet eligibility criteria that needed to be examined by Authority.
 - ◆ The chair and Mr. Khalid Mehmood Soomro [Member of Review Committee] asked the appellant why had they not mentioned quoted products' specification, rather than submitting brochures containing similar product with alternative specifications, in their technical proposal;
 - The appellant stated that they had submitted products' brochures to enable the procuring agency to select any model of their [procuring agency] own choice.
 - ◆ The chair pointed out that the appellant could have either highlighted clear specification of quoted item or marked the model within the brochure(s) submitted with their bid.

6. Mr. Altaf Ahmed (representative of M/s Aas Construction Company) while arguing his appeal apprised the Committee that:

- They have been offering janitorial services to the procuring agency and also participated under the instant procurement process wherein the procuring agency neither used standard bid documents for procurement of works [item # 4 of NIT] nor specified scheduled & non-scheduled items [pipe size and type etc.] in the bid documents. When they raised the query, the procuring agency asked them to quote bid as per running foot. Nevertheless, they participated in the bid and were disqualified on the grounds of non-payment of SRB taxes and poor performance with



the procuring agency during running contract; whereas, they had already cleared the dues against SRB taxes before opening of the bids and also submitted a letter issued by the SRB, which clearly highlighted there were no any liabilities pending against M/s Aas Construction.

- ◆ The chair highlighted that the procuring agency had already issued various letters, including warnings, to them [appellant] against poor performance of work;
 - The appellant admitted that they had received warning and poor performance letters after the posting of Dr. Abdul Wahid Tagar [Director]; prior to that, there was not even a single complaint against their work.
- The procuring agency qualified M/s Qurban & Company, which did not clear the dues against the SRB taxes and also submitted forged PEC certificate; however, the procuring agency qualified them.
 - ◆ The chair asked the appellant how they would prove the PEC certificate submitted by M/s Qurban & Company to the procuring agency under instant bidding process was fake;
 - The appellant stated that M/s Qurban submitted PEC certificate, under category C-6 having license No.59262, which was registered with the name of M/s New Aijaz Brothers & Co [de-registered firm] as verified from PEC website [constructor/ operator firm verification].

Procuring Agency's Version

7. Dr. Abdul Wahid Tagar (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency received/ accepted late bids, as received beyond 5 minutes of deadline for submission of bids, due to the security arrangements available at the hospital's main entrance gate that require each visitor's checking before entering into the hospital, after seeking consent of all stakeholders;
 - ◆ Syed Adil Gilani (Member of Review Committee) pointed out that the procuring agency cannot accept/ receive late submitted bid in terms of Rules-24(1) & 41(7) of SPP Rules, 2010 (Amended 2019), which spells out that '*bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee*' and '*all bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered and shall be returned without being opened*';
- The procuring agency highlighted that the appellant [M/s Global Engineering Links] did not submit *original bid document* along with their technical proposal and the appellant [M/s Aas Construction Company] had given poor performance to the procuring agency as well as had not cleared the dues against the SRB taxes, for which the SRB sent various letters directly to the appellant as well as procuring agency to clear the dues. The procurement committee qualified M/s Qurban & Company after seeking status about pending due, if any, from the SRB, which confirmed that there were not any dues pending in respect of M/s Qurban & Company against the services rendered by the procuring agency. Moreover, the PEC certificate was not required against NIT item # I where M/s Qurban & Company participated.
 - ◆ The Review Committee asked the procuring agency what did it mean [original bid document] and what about the bid documents if downloaded from Authority's website;



- The procuring agency stated that the original bid document means the document duly stamped and issued by the procuring agency and bidders were supposed to submit their bids on these documents only;
- ◆ The Committee pointed out that the bidder(s) could submit the bids on the bid documents as download from the Authority's website in terms of Rule-24(2) of SPP Rules, 2010 (Amended 2019), which spells out that *'the bidders may submit bids on the documents issued by the procuring agency or download from the Authority's website along with tender fee if any by mail or by hand.'* In this regard, the Authority vide policy letter dated 19.02.2019 had also circulated instructions among procuring agencies to accept the bids submitted by bidders on the bid documents downloaded from the Authority's website;
 - The procuring agency clarified that they solicited bids for instant procurements under Single Stage Two Envelop procedure where the procurement committee initially opened the technical proposal and evaluated the same in a manner prescribed in advance, without reference to the price in terms of Rule-46(2) of SPP Rules, 2010 (Amended 2019). The appellant [M/s Global Engineering Link] had not submitted their bid document [products' specification and other details] along with the technical proposal. Resultantly, the procurement committee could not evaluate and ascertain products' specifications and disqualified the appellant. The procuring agency further referred condition # 1 of pre-requisite/ eligibility criteria [bidders' qualification checklist] of bid documents, which provided the bidders to submit *'original terms and conditions duly signed and stamped; each page should be signed by the authorized person/ competent authority.'*
- ◆ Syed Adil Gilani asked the procuring agency how did they evaluate the bidders against condition # 11 & 12 [list of litigations/ client list/ relevant experience/ previous year performance] of eligibility criteria that seems ambiguous in terms of Rule-21(A) of SPP Rules, 2010 (Amended 2019), which spells out that *'the procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide a clear and unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.'* Moreover, the committee pointed out that the procuring agency assigned marks against requisite criteria [eligibility criteria] like: NTN certificate etc. thus enabling these requirements as optional for the bidder. Subsequently, *Mr. Asadullah Soomro (Member of Review Committee) asked the procuring agency about the current status of the instant procurement;*
 - The procuring agency stated that they have not awarded the contracts as yet due to the grievances raised by the appellants.

Review Committee Observations

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

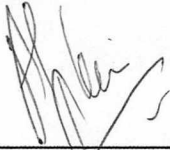
- The procuring agency was required to formulate an appropriate evaluation criterion, listing all the relevant information against which a bid was to be evaluated in terms of Rules-21(1)(h) & 21(A) read in conjunction with Rule-42(1) of SPP Rules, 2010 (Amended 2019); but they have failed to comply with these requirements;

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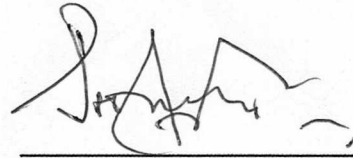
- The procuring agency was required to return the late submitted bids, without being opened, to the bidders in terms of Rules-24(1) & 41(7) of SPP Rules, 2010 (Amended 2019); but they have admittedly accepted bids submitted after the deadline in contravention of the rules;
- The procuring agency was required to decide the complainants' grievances within seven days and intimate the same to the appellants as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended 2019); but they have failed to do so.

Review Committee Decision

9. In light of the observation and violation of rules as mentioned under para-8, and after due deliberation, Review Committee unanimously decides that the instant procurement's proceedings 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). Moreover, the procuring agency shall also ensure compliance with Sindh Terms of Employment (Standing Orders) Act, 2015 (Amended 2016).



 (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)
 Khalid Mehmood Soormo
 Former Managing Director
 Sindh Public Procurement Regulatory Authority



 (Chairman)
 Muhammad Aslam Ghauri
 Managing Director
 Sindh Public Procurement Regulatory Authority