



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-402/2019-20/725

Karachi, dated the

07th October, 2019

To,

The Secretary to Government of Sindh,
Public Health Engineering & Rural Development Department,
Karachi.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S AGHA SHOAIB & BROTHERS CONSTRUCTION COMPANY, HYDERABAD VERSUS PUBLIC HEALTH ENGINEERING DIVISION, JAMSHORO).

The undersigned is directed to refer to the subject cited above and to enclose a copy of the Authority's Review Committee decision taken in its meeting on 25th September, 2019 for your information and further necessary action under intimation to this Authority, at the earliest.

[Handwritten signature and date: 07/10/2019]

ASSISTANT DIRECTOR (LEGAL-II)

A copy along with enclosures/ decision is forwarded for information to:

1. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
2. The Chief Engineer, Public Health Engineering Department, Hyderabad.
3. The Superintending Engineer, Public Health Engineering Circle, Hyderabad.
4. Executive Engineer, Public Health Engineering Division, Tando Allahyar.
5. ✓ The Assistant Director (I.T), SPPRA [with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010.]
6. The Staff Officer to the Chairman Review Committee/ Managing Director SPPRA/ Review Committee Members (all).
7. M/s Agha Shoaib & Brothers Construction Company, H. No. 47, Star Bungalows, Naseem Nagar, Qasimabad, Hyderabad.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-402/2019-20

Karachi, dated the October, 2019

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

(Appeal)

M/s Agha Shoaib & Brothers Construction Company, Hyderabad
Versus
Public Health Engineering Division, Jamshoro
(NIT ID # T00820-18-0004 dated 04.03.2019)

Facts and background

The appellant, M/s Agha Shoaib & Brothers Construction Company, Government Contractor Hyderabad, lodged a complaint vide letter dated 25.05.2019 addressed to the Sindh Public Procurement Regulatory Authority and copy endorsed to the Chief Engineer, Public Health Engineering Department, Hyderabad/ Chairman Complaint Redressal Committee (CRC) and others – for taking necessary action – against the NIT # TC/390/2019 dated 25.02.2019¹ floated by the Executive Engineer, Public Health Engineering Division, Jamshoro, for procurement of eight (8) works. In turn, the Authority vide letter dated 14.06.2019, followed by reminder dated 24.06.2019, forwarded the appellant's matter to the procuring agency's CRC with an advice to furnish its decision, if any, as well as to update the status of the bid security, submitted by the appellant, to this Authority in terms of Rule-31(5) read with Rule-32(1) of SPP Rules, 2010. *It was also advised to the procuring agency to award the contract after the decision of the CRC and in case of failure of the CRC to decide the complaint, the procuring agency shall not award the contract until the expiry of appeal period or the final adjudication by the Review Committee in terms of Rule-31(6) and Proviso of Rule-31(7) of SPP Rules, 2010.*

2. Subsequently, the appellant (vide letter dated 12.06.2019, followed by reminder dated 16.07.2019) lodged an appeal to this Authority stating that the procuring agency's CRC had failed to decide their complaint despite lapse of sixteen (16) days; hence, the appellant requested the Authority to take necessary action. Resultantly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 11.09.2019, which was rescheduled on 18.09.2019 and then on 25.09.2019 at 12 p.m. Notices, in this regard, were issued to the parties concerned vide this Authority's letters dated 23.08.2019, 05.09.2019, and 17.09.2019, respectively, for appearing before the Committee on scheduled date, time, and venue². In compliance to the meeting notice, Mr. Sohail Ahmed Memon, Executive Engineer, Public Health Engineering Division, Jamshoro (representative of the procuring agency) and Mr. Agha Shoaib, Proprietor, M/s Agha Shoaib Brothers Construction Company (appellant) appeared before the Committee.

Review Committee Proceedings

3. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting and introduced the members of the Review Committee. Then, the chair requested the appellant to present their case/ version on the instant procurement before the committee.

¹ The NIT floated on 25.02.2019; hence, SPP Rules as amended vide SGA&CD's notification dated 15th March, 2019 were not applicable under the instant procurement.

² Meeting was rescheduled due to the certain engagements of the Authority's Review Committee members.

Appellant's Version

4. Mr. Agha Shaoib [the appellant] apprised the Committee that they had participated for the instant procurement, which was carried out by the procuring agency under Single Stage Two Envelope bidding procedure. The procuring agency technically qualified them under NIT's work listed at Sr. # 4 [supply and installation of pumping machinery at site of work for Zone-A, B, C, D, E & F for drainage scheme Sehwan under the scheme elimination of sewerage discharging in irrigation canals and lakes in Sindh]; however, when the procuring agency posted bid evaluation reports³ on the Authority's PPMS website, their bid was rejected on the grounds of submission of blank tender. The appellant stated that no bidder could submit blank tender especially when he knew about their technical eligibility as submission of bid required expenses, to be borne by the bidder, in the form of purchase and preparation of tender document and an additional investment in the form of bid security up to a period of more than three months [bid validity period]. If they had submitted the blank tender then the procuring agency should prove it or showcase their blank tender duly signed by them [appellant].

5. The appellant alleged that the procuring agency demanded them to pay commission up to a certain percentage of cost of work in order to avail the opportunity for work order, which they rejected. It was evident that the procuring agency called meeting for opening of their financial bids but their bids were not opened publicly and the procurement committee's chairman [Superintending Engineer, Public Health Engineering Circle, Hyderabad] was also absent on that scheduled date.

- Syed Adil Gilani (Member of Review Committee) asked the appellant to present copy of their bid submitted to the procuring agency. The appellant replied that they had submitted their original bid, duly signed by them on each page of document, to the procuring agency but they did not retain its photocopy but ensured that they would definitely retain its photocopy in future.

Procuring Agency's Version

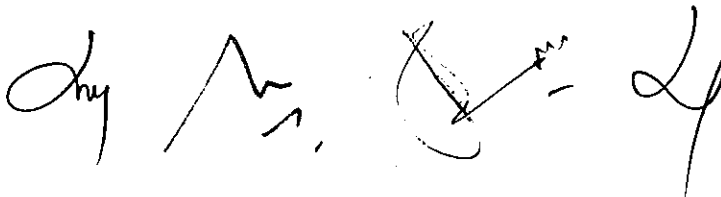
6. Mr. Sohail Ahmed Memon (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that they qualified the appellant under technical evaluation but rejected their bid due to submission of blank tender document [financial bid]⁴.

- The Review Committee, while examining the financial bid submitted by the appellant, observed that the financial proposal of the appellant was signed by only one member of the procurement committee⁵; whereas Rule-41(8) of SPP Rules, 2010 spells-out that *'the official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal'*;
 - ◆ The procuring agency stated that all the members of procurement committee signed bid evaluation reports, including technical evaluation report, comparative statement, and minutes of the meeting. The appellant submitted blank tender documents; therefore, it was signed by only one member;
- Syed Adil Gilani objected against adoption of Single Stage Two Envelope Bidding procedure, under instant procurement, which is applicable for procurement of goods, works and services where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation in terms of Rule-47(2) of SPP Rules, 2010. *Since the*

³ The procuring agency posted nine (9) bid evaluation reports, against eight (8) works of the NIT, on the PPMS website at ID # BE00820-18-0004-1 to 10 dated 23.05.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>].

⁴ The procuring agency presented copy of financial bid, submitted by the appellant; and the bidders' attendance sheet duly signed by the bidder. However, the appellant repudiated the same by claiming their signature as fake. The procuring agency did not post copy of the bidders' attendance sheet for opening of financial bids on the PPMS website.

⁵ The financial bid of the appellant was signed by only member of the procurement committee that created a question over transparency under instant procurement. This also leads to the blatant violation of Rule-41(8) of SPP Rules, 2010.

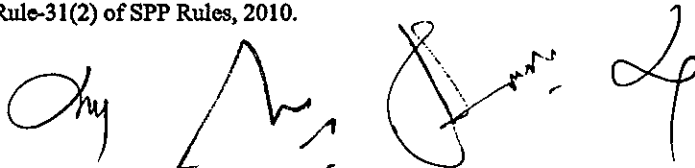


procurement of works under instant procurement were of simple and routine nature, where no technical complexity or innovation was required; hence, the procuring agency was required to adopt Single Stage One Envelope bidding procedure in terms of Rule-47(1) of SPP Rules, 2010;

- ◆ The procuring agency admitted that the works under instant procurement were of simple nature but they have been routinely following Single Stage Two Envelope bidding procedure for the last couple of years.
- The Chair of the Committee asked the procuring agency to update the forum regarding current status of the instant procurement;
 - ◆ The procuring agency stated that they had awarded contracts under instant procurement.
- Syed Adil Gilani pointed out as to how the procuring agency could award the contract when a complaint was in process⁷;
 - ◆ The procuring agency stated that they convened CRC meeting on 10.06.2019 & 16.07.2019 whereby it was decided [excerpt of the decision]⁸ that *'the aggrieved bidder did not attend the CRC meeting to explain his grievances even two notices were issued....CRC therefore disposed of matter as further proceedings will be wastage of time.'*
- Mr. Asadullah Soomro (Member of Review Committee) also pointed out the annual procurement plan posted on the Authority's website had not contained NIT works as required under Rule-11 of SPP Rules, 2010;
 - ◆ The procuring agency stated that the NIT and bid documents were prepared by their Consultant Mr. Lakho Sahib. They [representative of the procuring agency] only sign these documents and would check why the updated procurement plan with procurement's NIT works was not incorporated.
- Syed Adil Gilani noted that the procuring agency shall furnish the report as to how the Consultant Mr. Lakho was appointed and paid by the procuring agency. Subsequently, Mr. Asadullah Soomro advised the representative of the procuring agency to submit written status showing current status of the instant procurement;
 - ◆ The representative of the procuring agency submitted written statement as reproduced [excerpt] herewith *'the procuring agency received and opened bids [technical and financial] under instant procurement on 19.03.2019 and 24.04.2019, respectively, wherein these contractors/ firms: i. M/s Muhammad Iqbal Shaikh; ii. M/s Yar Muhammad Mahar; iii. M/s Fazal & Brothers; iv. M/s Riya Enterprises; and v. M/s Agha Shoaib & Brothers; participated and M/s Muhammad Iqbal Shaikh submitted as lowest bid to whom the procuring agency awarded contract and uploaded the documents on the Authority's website on 23.05.2019. Work Order was issued to M/s Muhammad Iqbal Shaikh on 12.06.2019. The procuring agency's CRC convened two meetings on 10.06.2019 & 16.07.2019 wherein the complainant was found absent. Resultantly, the*

⁷ This Authority vide letter of even number dated 14.06.2019 advised the procuring agency to award the contract after decision of the CRC and in case of failure of the CRC to decide the complaint, the procuring agency shall not award the contract until the expiry of appeal period or the final adjudication by the Review Committee in terms of Rule-31(6) and Proviso of Rule-31(7) of SPP Rules, 2010.

⁸ The procuring agency presented copy of the CRC decision on 25.09.2019 [during Review Committee meeting]. The procuring agency was required to announce its decision within seven days and intimate to the bidder and the Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010. However, the procuring agency's CRC failed to communicate its decision to the Authority as well as the appellant. Moreover, the composition of the procuring agency's CRC was not in consonance with Rule-31(2) of SPP Rules, 2010.

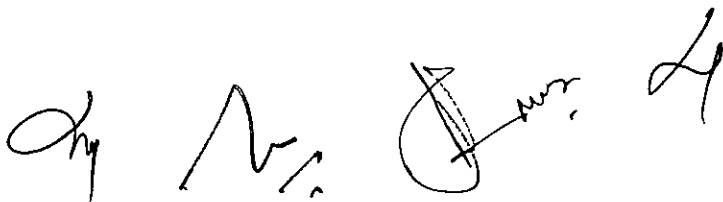


Chairman CRC decided that since it would be wastage of time to hear or wait for hearing the complainant, the complaint was disposed of.'

Review Committee Observations

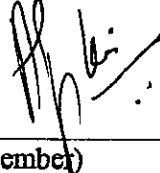
7. After hearing parties at length and perusal of the available record, the Review Committee observed that:-

- It was responsibility of the procuring agency to adhere to the procurement rules, regulations, and instructions and to ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and procurement process is efficient and economical in terms of Rule-4 of SPP Rules, 2010;
- The procuring agency constituted the CRC comprising Executive Engineer, Public Health Engineering Division, Jamshoro as Member. The procuring agency was required to include an independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency, as required under Rule-31(2)(b) of SPP Rules, 2010. Since the composition of the procuring agency's CRC was not in accordance with Rule-31(2) of SPP Rules, 2010; hence, the procuring agency failed to comply with the said rule;
- The procuring agency's CRC 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. Moreover, the procuring agency was required to award the contract after the decision of the complaint redressal committee in terms of Rule-31(6) of SPP Rules, 2010, but they failed to expedite it;
- The procuring agency was required to open the bids publicly in the presence of all the bidders, or their authorized representatives, at the time and place announced in the invitation to bid in terms of Rule-41(4) of SPP Rules, 2010 (Amended 2010), but they failed to do so;
- The procuring agency's official chairing the procurement committee was required to encircle the rates and all the members of the procurement committee were required to sign each and every page of the financial proposal in terms of Rule-41(8) of SPP Rules, 2010 (Amended), but the committee failed to do so;
- The procuring agency was required to mention minimum amount of turnover of last three years under bidder's technical evaluation criteria in terms of Rule-46(2) of SPP Rules, 2010, read with Clause # 7.9.2 of the Authority's Procurement Regulation (Works), but they failed to comply with these requirement;
- The procuring agency was required to adopt Single Stage One Envelope bidding procedure for instant procurement as these works were falling under simple and routine nature that did not require technical complexity or innovation in terms of Rule-47(1) of SPP Rules, 2010; hence, said rule was violated;
- The procuring agency was required to post contract documents – evaluation report; form of contract and letter of award; and bill of quantities or schedule of requirement – on the Authority's website within seven (07) days of the award of contract in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010; however, the procuring agency has failed to post these documents on the Authority's website [as yet], violating the aforementioned rules;
- The procuring agency posted bid evaluation reports on the Authority's PPMS website against nine (09) works; whereas, the NIT contained only eight (08) works. The procuring agency is required to furnish clarification/ justification against posting of an additional bid evaluation report. Moreover, the procuring agency is required to clarify as to how the consultant Mr. Lakho has been appointed by the procuring agency and what financial resources are being used by the procuring agency to pay the consultant for such assignments;

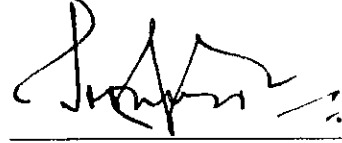


Review Committee Decision

8. In the light of the above observations and violations of Rules as mentioned under para-7, and after due deliberation, the Review Committee unanimously declares the said procurement as **Mis-Procurement** in light of SPP Rule-32(7)(g) of SPP Rules, 2010, read with Section-2(i) of SPP Act, 2009 and decides to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010 (Amended 2019).



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



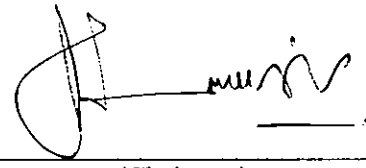
(Member)
Asadullah Soomro
Private Member
SPPRA Board

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(Member)
Nominee of Director General Audit Sindh



(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
Retd. Executive Engineer
Public Health Engineering Department
Government of Sindh



(Chairman)
Abdul Rahim Sheikh
Managing Director
Sindh Public Procurement Regulatory Authority