



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-522/2019-20

10861

Karachi, dated the 25th October, 2019

To,

The Chairman,
Town Committee,
Diplo.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEALS LODGED BY M/S GHULAM MURTAZA ENTERPRISES AND M/S ABDUL RASHEED BHUTTO VERSUS TOWN COMMITTEE DIPLO.)

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 16th October, 2019 for your information and further necessary action under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Govt. of Sindh, Local Government Department, Karachi.
2. The Deputy Commissioner Tharparkar.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Town Officer, Town Committee Diplo.
5. The Assistant Director (I.T), SPPRA [with an advice to post the Review Committee's 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 Ghulam Murtaza Enterprises, Government Contractor, Bungalow No. C-377/3, Phase-I, Qasimabad, Hyderabad.
8. M/s Abdul Rasheed Bhutto, Government Contractor, Water Park, New Bypass Sindh Wah Canal Sukkur Road, Shikarpur.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-522/2019-20

Karachi, dated the October, 2019

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

(Appeal)

M/s Ghulam Murtaza Enterprises; and M/s Abdul Rasheed Bhutto

Versus

Town Committee Diplo

(NIT IDs # T01346-18-0001 & 2 DATED 29 & 30.06.2019)

Facts and background

The appellants, M/s Ghulam Murtaza Enterprises, Government Contractor Hyderabad, and M/s Abdul Rasheed Bhutto, Government Contractor Shikarpur, lodged separate complaints (vide letters dated 17.07.2019 and 20.07.2019, respectively) addressed to the Sindh Public Procurement Regulatory Authority as well as Chairman, Town Committee Diplo/ Chairman Complaints Redressal Committee (CRC) against two NITs having reference # TC/DPL/278/2019 & TC/DPL/280/2019 dated 14.06.2019 and 18.06.2019, respectively, floated by the Chairman, Town Committee Diplo, District Tharparkar 'the procuring agency' for procurement of fourteen (14) works¹. In turn, the Authority vide letters dated 29.07.2019 forwarded the appellants' matter to the procuring agency's CRC with an advice to redress the grievances and furnish its decision to the appellants as well as this Authority within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019). *It was also advised to the procuring agency to award contracts after decision of the CRC and in case of failure of the CRC to decide the complaints, the procuring agency shall not award the contracts 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 appellants (vide letters dated 31.07.2019 & 23.09.2019, respectively) lodged separate appeals to this Authority stating that they submitted their complaints to the procuring agency's CRC on 17.07.2019 & 20.07.2019, respectively, albeit the CRC had failed to decide their matter within stipulated time period; therefore, the appellants requested the Authority to place their matter before the Authority's Review Committee².

3. Resultantly, the appellants' matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 16.10.2019 at 11.00 a.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letter dated 04.10.2019 to appear before the Committee on scheduled date, time, and venue. In compliance, Mr. Mohan Lal, Chairman, Town Committee Diplo 'representative of the procuring agency' and Mr. Ghulam Murtaza, Proprietor, M/s Ghulam Murtaza Enterprises, as well as Mr. Abdul Rasheed Bhutto, Proprietor, M/s Abdul Rasheed Bhutto 'the appellants' appeared before the Committee's meeting.

Review Committee Proceedings

4. 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 asked the appellants to present their case/ version on the instant procurement before the committee.

¹ Detailed description/ nature of these works can be accessed through instant procurement's NITs available on PPMS website at IDs # T01346-18-0001 dated 29.06.2019 & T01346-18-0002 dated 30.06.2019 (containing six and eight works, respectively) [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>].

² Apropos of the appeal lodged by M/s Ghulam Murtaza Enterprises, the Authority vide letter dated 09.08.2019 advised the appellant to submit review appeal fee in pursuance of this Authority's office order No.Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 and same was received by this Authority on 24.09.2019 through pay order dated 23.09.2019.

Appellant's Version

5. Mr. Ghulam Murtaza 'the appellant' apprised the Committee that they had participated in the instant procurement NITs four (04) works³ and submitted their bids to the procuring agency through courier service 'TCS' in terms of Rule-24(2) of SPP Rules, 2010. When they approached the procuring agency's office to witness opening of bids on 15 & 16.07.2019, they found all the members of procurement committee as absent till office closing hours. Resultantly, they met with the Chairman, Town Committee Diplo/ Chairman CRC and also lodged a written complaint to the CRC, which failed to decide their matter. Subsequently, the procuring agency posted bid evaluation reports⁴ on the Authority's website whereby the schedules for receiving and opening of bids were deliberately mentioned as on second attempt/ schedule of NIT that was 31.07.2019 & 01.08.2019; however, such corrigendum to extend the schedules were neither issued to the bidders nor posted on the Authority's PPMS website.

6. Mr. Abdul Rasheed 'the appellant' apprised the Committee that they downloaded bid documents from the Authority's website and filled/ quoted their bids against all works of both NITs. When they approached the procuring agency's office to submit the bids on 15 & 16.07.2019, their bids were not received. Nevertheless, the Chairman and Executive Engineer of the procuring agency were present there in their office but both did not bother to meet with them⁵. *The appellant further highlighted that the procuring agency stance related to incomplete quorum of the procurement committee, during first attempt/ schedule of NITs, is unjustified as minutes of the meeting, posted on the Authority's website, explicitly indicate that firm/ contractor(s) did not participate in the bidding process, hence, the bids were received and opened in second attempt/ schedule of NIT.*

Procuring Agency's Version

7. Mr. Mohan Lal 'representative of the procuring agency' clarified that various firms/ contractors participated in the first attempt/ schedule of NITs whereby the quorum of the procurement committee was incomplete; hence, the procuring agency decided to receive and open the bids under second attempt/ schedule of NITs as per rules⁶;

- The chair and Syed Adil Gilani (Member of Review Committee) expressed that the procuring agency was required to issue corrigendum for extension in deadlines, submission and opening of bids, in a manner similar to the original advertisement as required under Rule-22 of SPP Rules, 2010, read with Clause # 4.10 of the Authority's Procurement Regulations (Works)⁷. *The Committee then asked the procuring agency as to why the appellant's (M/s Ghulam Murtaza Enterprises) bid was not considered under second attempt of NITs;*
 - ◆ The procuring agency stated that the appellant did not participate under second attempt/ schedule of the NIT. In case, the appellant had any grievances related to the bidding process then they were required to approach the CRC but they failed to do so⁸.
- The Committee pointed out that the appellant already submitted their bids to the procuring agency through TCS then there was no need to re-submit the bids. Even once the bid was received by the procuring agency then it was their responsibility to ensure its custodian unless the bidder

³ The appellant claimed to have submitted bids to the procuring agency under NITs works # 4 & 6 (NIT No.TC/DPL/278/2019) and 1 & 2 (NIT No.TC/DPL/280/2019). The appellant then presented photocopies of bid securities/ call deposits, submitted to the procuring agency, to the Committee.

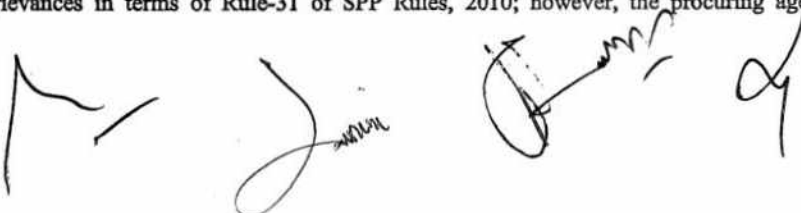
⁴ Evaluation reports can be accessed at ID # BE01346-18-0001 & 2 [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/ber>].

⁵ The appellant shared photocopies of bid securities/ call deposits, as an evidence for their intention to participate in bid process.

⁶ Minutes of the bid opening meeting posted by the procuring agency on PPMS website highlights that the contractor(s) had not participated under first attempt/ schedule of NIT; therefore, the bids were received and opened in second attempt.

⁷ <http://www.pprasinidh.gov.pk/downloads/files/Guidelines2010-11NewOriginal280511.pdf>

⁸ The Authority vide letters dated 29.07.2019 also forwarded three complaints, received from M/s AWE Karachi, M/s Abdul Rasheed Bhutto and M/s Ghulam Murtaza Enterprises, to the procuring agency's CRC with an advice to redress the complainants grievances in terms of Rule-31 of SPP Rules, 2010; however, the procuring agency failed to furnish any response.



submitted written notice of withdrawal of bid to the procuring agency prior to the deadline for submission of bids in terms of Clause # 7.2 of the Authority's Procurement Regulation (Works).

8. Ghulam Mustafa Memon, Assistant Executive Engineer, Town Committee Diplo '*representative of the procuring agency*' clarified that they received the appellant's (M/s Ghulam Murtaza Enterprises) bid through courier but same was found without any call deposit/ bid security⁹.

- The Committee pointed out that the procuring agency was required to open the bids publicly in the presence of all the bidders or their representatives in terms of Rule-41(4) of SPP Rules, 2010. Bid deficiencies, if it had existed, were required to be incorporated by the procurement committee under the bid evaluation report as required under Rule-45 read with Rules-8 & 42(1) of SPP Rules, 2010.
- Syed Adil Gilani expressed that the procuring agency charged exorbitant fee as PKR 5,000/, against issuance of bidding documents to the bidders. Rule-21(2) of SPP Rules, 2010, provides that '*the procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing*¹⁰;
 - ◆ The procuring agency stated that they charged bid document fees as PKR 5,000/ to cover the cost related to the publication of NITs in newspapers.
- The Committee urged the procuring agency to follow the rules and regulations relating to the public procurement and avoid charging exorbitant fees to cover the costs other than cost of preparation and printing of bid documents, otherwise the matter would be referred to as '*mis-procurement*' by virtue of Section-2(i) of SPP Act, 2009. Subsequently, the Committee asked the procuring agency to update the Authority regarding current status of instant procurement works;
 - ◆ The procuring agency stated that they had not awarded any contract so far. *The Committee directed the procuring agency not to award the contract till issuance of final adjudication.*

Review Committee Observations

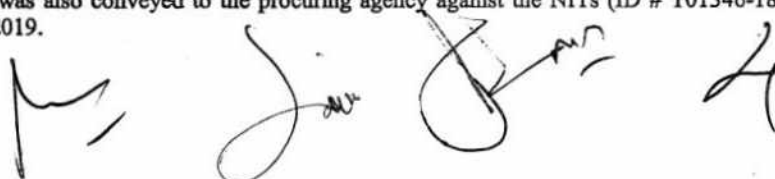
9. After hearing parties at length and perusal of the available record, the Review Committee observed that the procuring agency failed to comply with the following:-

- It was the responsibility of the procuring agency to adhere to the procurement rules, regulations, and instructions and to ensure that procurements were conducted in a fair and transparent manner and that the object of procurement must bring value for money to the agency and that the procurement process was efficient and economical in terms of Rule-4 of SPP Rules, 2010;
- The procuring agency was required to charge bidding documents fee, not exceeding the cost of preparation and printing, in terms of Rule-20(2) of SPP Rules, 2010. Such observation was also conveyed to the procuring agency vide this Authority's letter dated 11.07.2019, nevertheless the procuring agency failed to rectify the same;
- The procuring agency was required to issue corrigendum for extension in deadlines, submission and opening of bids, in a manner similar to the original advertisement as required under Rule-22 of SPP Rules, 2010, read with Clause # 4.10 of the Authority's Procurement Regulations (Works)
- 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, in the CRC as required under Rule-31(2)(b) of SPP Rules, 2010¹¹;

⁹ Bid evaluation reports posted on the Authority's website do not show the participation of the appellant in bidding process.

¹⁰ Such observation was also conveyed to the procuring agency vide this Authority's letter dated 11.07.2019.

¹¹ Such observation was also conveyed to the procuring agency against the NITs (ID # T01346-18-0001 & 2) through PPMS website on 01.07.2019.



- The procuring agency's CRC was required to decide the complainant's grievances within seven days and intimate the same to the appellant as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010;
- The procuring agency was required to open the bids publicly in the presence of all the bidders or their representatives in terms of Rule-41(4) of SPP Rules, 2010. Bid deficiencies, if it had existed, were required to be incorporated by the procurement committee under the bid evaluation report as required under Rule-45 read with Rules-8 & 42(1) of SPP Rules, 2010;
- The procuring agency was required to mention minimum amount of turnover of last three years under bidder's eligibility criteria in terms of Rule-46(1)(a)(ii) of SPP Rules, 2010, read with Clause # 7.9.2 of the Authority's Procurement Regulation (Works);
- The procuring agency was required to retain the bid, submitted by the appellant (M/s Ghulam Murtaza) through courier service, unless the appellant had not submitted written notice of withdrawal of bid to the procuring agency prior to the deadline for submission of bids in terms of Clause # 7.2 of the Authority's Procurement Regulation (Works).

Review Committee Decision


10. In light of the above observations as mentioned under para-9 and after due deliberation, the Review Committee unanimously decides that since the procuring agency had not awarded or signed procurement contracts against works mentioned under both NITs; hence, the procurement's proceedings for these work 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). **Compliance of this decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.**



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

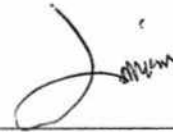


(Member)
Assadullah Soomro
Private Member
SPPRA Board

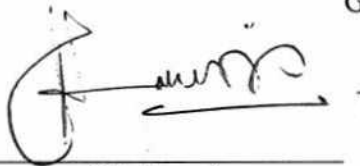


(Member)

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