



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-583/2019-20

1091

Karachi, dated the 25th November, 2019

To,

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

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S ABDUL GHANI MANGRIO & ASSOCIATES VERSUS PUBLIC HEALTH ENGINEERING DIVISION-I KHAIRPUR).

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 06th November, 2019 for your information and further necessary action under intimation to this Authority, at the earliest, please.


ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Chief Engineer, Public Health Engineering Department, Sukkur.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Executive Engineer, Public Health Engineering Division-I, Khairpur.
4. 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.]
5. The Staff Officer to the Chairman Review Committee/ Managing Director SPPRA/ Review Committee Members (all).
6. Advocate Abdul Ghani Mangrio, Office No. 505, 5th Floor, Lawyer Chamber, Opposite Light House, M.A. Jinnah Road, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-583/2019-20

Karachi, dated the November, 2019

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

(Appeal)

M/s Abdul Ghani Mangrio & Associates
Versus
Public Health Engineering Division-I, Khairpur
(NIT ID # T00692-18-0002 dated 10.04.2019)

Facts and background

The appellant, M/s Abdul Ghani Mangrio & Associates, Karachi, lodged a complaint on behalf of its client M/s Faqeer Muhammad Mithal Mangrio (vide letter dated 09.08.2019) addressed to this Authority as well as Chief Engineer, Public Health Engineering Department, Sukkur/ Chairman Complaints Redressal Committee (CRC) against the NIT # TC/990/2019 dated 05.04.2019 floated by Public Health Engineering Division-I, Khairpur 'the procuring agency' for procurement of twelve (12) works related to the construction, rehabilitation and other works etc.¹. In turn, the Authority vide letter dated 04.09.2019 forwarded the appellant's matter to the procuring agency's CRC with an advice to redress the grievances and furnish its decision to the appellant 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 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, 2010².

2. Subsequently, the appellant (vide letter dated 16.09.2019) lodged an appeal, along with review appeal fee, to this Authority stating that they submitted their complaint to the procuring agency's CRC, which failed to decide their matter within stipulated time period; hence, the appellant requested the Authority to place their matter before the Authority's Review Committee³.

3. Resultantly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 30.10.2019 at 11.00 a.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letter dated 15.10.2019 to appear before the Committee on scheduled date, time, and venue. In compliance, Advocate Abdul Ghani, Legal Advisor, and Engineer Salar Dost, Site Engineer, M/s Faqeer Muhammad Mithal Mangrio 'representatives of the appellant' appeared before the Review Committee; whereas, the representative of the procuring agency did not attend the meeting⁴, due to which the Committee decided to provide an opportunity to the procuring agency to appear in next meeting, scheduled on 06.11.2019, for defending its position/ case and notices in this connection were again issued to the parties concerned vide this Authority's letter dated 01.11.2019. In compliance, Mr. Shabir Ali Shaikh, Superintending Engineer, and Mr. Sajan Mal, Executive Engineer,

¹ Detailed description/ nature of these works can be accessed through instant procurement's NIT available on the PPMS website at ID # T00692-18-0002 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

² The procuring agency's CRC acknowledged receipt of the Authority's letter vide letter dated 06.09.2019 and further requested the Authority to share copy of complaint, submitted by the appellant. In turn, the Authority forwarded the same letter along with enclosures to the procuring agency through courier service [TCS] on 16.09.2019.

³ Apropos of the appeal lodged by the appellant, the Authority vide letter dated 01.10.2019 advised the appellant to submit remaining amount of review appeal fee, depending upon the estimated cost of works as required under this Authority's office order No.Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019. In response, the appellant vide its letter dated 10.10.2019 confirmed that their client participated under only one work, as listed at Sr. # 10 of the NIT (rehabilitation & improvement of Jamali side existing oxidation ponds & construction of oxidation ponds for banaras side at Khairpur City having estimated cost PKR 50 M)

⁴ This Authority also sent the meeting letter to the procuring agency via mail and whatsapp.

Public Health Engineering Division-I, Khairpur '*representatives of the procuring agency*' and Advocate Abdul Ghani, Legal Advisor, and Engineer Salar Dost, Site Engineer, M/s Faqeer Muhammad Mithal Mangrio '*representatives of the appellant*' 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. Then, the chair asked the appellant to present their case/ version on the instant procurement before the committee.

Appellant's Version

5. Advocate Abdul Ghani '*representative of the appellant*' apprised the Committee that they had submitted the bid under instant procurement's NIT work listed at Sr. # 10 [*rehabilitation & improvement of Jamali side existing oxidation ponds & construction of oxidation ponds for banaras side at Khairpur city*) whereby the procuring agency disqualified them in technical evaluation. In this connection, they lodged a complaint to the procuring agency's CRC as well as this Authority; however, the CRC failed to decide their matter and subsequently they approached the Authority's Review Committee.

- Mr. Assadullah Soomro (Member of Review Committee) asked the appellant about the reason(s) of their disqualification, if any, conveyed by the procuring agency;
 - ◆ The appellant stated that the procuring agency conveyed one reason for disqualification of their bid under technical evaluation i.e. non-provision of list and copies of award letters for completed and on-going works of water supply & drainage schemes & size⁵.

6. The appellant further stated that they have been working under the construction field since 1983 and they have completed various construction projects in relevant field of procurement. They submitted the record of these projects, including completed as well as on-going, along with their bid (20% below the estimated cost of work) submitted to the procuring agency; nevertheless, the procuring agency deliberately disqualified them. *The appellant showed proof of on-going works under relevant field of procurement from the procurement record (technical proposal) submitted by the procuring agency's representatives during the meeting*⁶.

Procuring Agency's Version

7. Mr. Shabir Ali Shaikh, Superintending Engineer, and Mr. Sajjan Mal, Executive Engineer, Public Health Engineering Division-I, Khairpur '*representatives of the procuring agency*' clarified that they adopted Single Stage Two Envelope bidding procedure under instant procurement whereby the appellant could not meet technical evaluation criterion # 9(b) of the NIT i.e. *list of ongoing works (04 Nos) of Water & Sewerage jobs with documentary evidence with copies of letter of award of works*; hence, the procurement committee disqualified them⁷.

- Syed Adil Gilani (Member of Review Committee) objected over adoption of Single Stage Two Envelope Bidding procedure, 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 as provided under Rule-47(2) of SPP Rules, 2010. Since the *procurement of works under instant procurement were of simple and routine nature, where no*

⁵ The appellant presented a photocopy of letter issued by the procuring agency vide letter dated 22.07.2019 for their disqualification under technical evaluation [Copy of such letter is available on the Authority's record].

⁶ Photocopies of the record brought by the procuring agency's representatives in Review Committee meeting is available to this Authority that verifies the appellant submitted proof (award of contracts) for on-going works along with their proposal submitted to the procuring agency.

⁷ Bid evaluation report posted on the Authority's PPMS website at ID # BE00692-18-0002-13 dated 27.08.2019 does not show the participation of the appellant under instant procurement's work as required under Rule-45 of SPP Rules, 2010, which expressly provides that '*procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract.*

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;

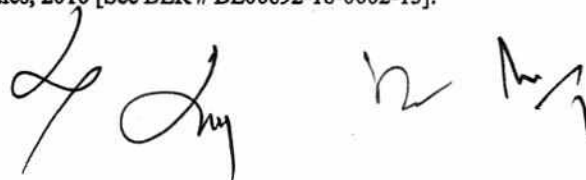
- ◆ The procuring agency's representatives stated that the works under instant procurement (oxidation, water supply and drainage) were of special and exclusive nature of works; hence, they adopted Single Stage Two Envelopment bidding procedure likewise previous years' procurements;
- Syed Adil Gilani noted that there was no technical complexity or innovation involved in these procurement works and the procuring agency routinely carries out these works on yearly basis; hence, Single Stage One Envelope bidding procedure was required to be adopted as per rules. Mr. Gilani also pointed out that the procuring agency required contractors/ firms to be registered with Pakistan Engineering Council (PEC) Category C-3, which renders the contractors (the appellant qualified this criteria) to perform project's construction work up to the estimated cost of PKR 500 million⁸. Nonetheless, the procuring agency formulated technical evaluation criteria that included a condition for bidders to have minimum four (4) on-going works related to water & sewerage; such condition falls under *discriminatory and difficult conditions* as expressly restricted under Rule-44 of SPP Rules, 2010⁹ and also conveyed, along with other observations, by this Authority to the procuring agency through PPMS website on 29 & 30.08.2019; however, the procuring agency failed to pay heed towards these operative observations¹⁰. *It was the primary responsibility of the procuring agency to strictly adhere to the SPP Rules while conducting public procurement, by using public funds, in terms of Rule-4 of SPP Rules, 2010 read with Section-2(l) & (m) of SPP Act, 2009.*
- The Committee, while examining the procurement record (bid evaluation report of the NIT work listed at Sr. # 10), observed that the procuring agency received total five bids including of: M/s Akhtar Ali Abro; M/s Abbas Ali Panhyar; M/s Abdul Khaliq Bhutto; M/s Muhammad Iqbal Shaikh & Co.; and M/s WSKB & Co.; whereas, **the bid submitted the appellant was nowhere mentioned in the bid evaluation report** as required under Rule-45 of SPP Rules, 2010;
 - ◆ The procuring agency's representative stated that there is a separate list of disqualified bidders/ firms wherein the appellant name is mentioned¹¹. The procuring agency's representative then shared photocopies of the technical evaluation reports and the appellant's technical proposal for perusal/ examination of the Committee.
- The Committee, after examining the given record, observed that the procurement committee awarded the appellant zero marks out of 20 against the criterion for on-going works of water supply & drainage schemes and size with copies of award letters. The appellant secured aggregate marks as 65 out of 100 under the technical evaluation criteria.
- Syed Adil Gilani pointed out that the procuring agency was required to allocate the number of marks by evenly distributing among each sub-criteria i.e. [bidder's] experience and past performance; personnel capabilities; equipment capability; financial; and other information, to ascertain the capability and resources of bidders (subject to the condition for use/ applicability of Single Stage Two Envelope bidding procedure if allowed under Rule-47(2) of SPP Rules). Subsequently, Mr. Assadullah Soomro asked the procuring agency to update the Authority regarding current status of the procurement works;
 - ◆ The procuring agency's representative stated that they have been following the similar criteria in previous NITs but would remain cautious to follow these rules in future, as the

⁸ https://www.pec.org.pk/fee_Pakistani.aspx

⁹ Discriminatory and Difficult Conditions – Save as otherwise provided, no procuring agency shall introduce any condition which discriminates among bidders. In ascertaining the discriminatory nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

¹⁰ NIT & BERs observations can be seen under the Authority's comments section [[https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender/T00692-18-0002 & BE00692-18-0002-1](https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender/T00692-18-0002&BE00692-18-0002-1)]

¹¹ List of disqualified bidders, showing reasons for their disqualification, was required to be posted on the Authority's website as required under Rule-45 of SPP Rules, 2010 [See BER # BE00692-18-0002-13].



procurement contracts under instant procurement have already been made and 80% of the work has been completed¹².

- Subsequently, Syed Adil Gilani asked the procuring agency as to why the procurement contracts were awarded when the Authority expressly already advised the procuring agency on 30.08.2019 to cancel and re-invite afresh tenders in terms of Rule-25 & 26 of SPP Rules, 2010 due to operative violations of the rules¹³. In addition to it, the procuring agency could not award the contract when a complaint, lodged by the appellant vide letter dated 09.08.2019, was pending for the CRC decision in terms of Rule-31(6) & Proviso of Rule-31(7) of SPP Rules, 2010
 - ◆ The procuring agency's representative stated that the appellant did not approach the procuring agency's CRC¹⁴ and the procuring agency awarded the contracts in the mid of August, 2019; the contract documents were also posted on the Authority's website¹⁵.
- The Committee pointed out as to how the procuring agency awarded the contracts before hoisting bid evaluation report on the Authority's website and why the contract documents, when issued, were not posted on the Authority's website as required under Rules-45 & 50 of SPP Rules, 2010.
 - ◆ The procuring agency's representative [Mr. Shabir Ali Shaikh] stated that he has recently assumed the charge of the post of Superintending Engineer; therefore, unable to comment over the procurement position in detail. The Chief Engineer concerned, who could have cleared the said position by attending this meeting, is empowered to approve the award of contracts having estimated cost under instant procurement.

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 cancel and re-invite fresh bids on receipt of this Authority's observations, as reproduced below, through PPMS website on 30.08.2019.

- The Procuring agency is required to upload newspaper clipping of NIT Published in at least three widely circulated leading dailies of English, Urdu and Sindhi languages in terms of Rule-17(2) of SPP Rules, 2010;
- PA is required to ensure that tender fee charged fulfills requirement of Rule-20(2) and is not beyond the cost of preparation and printing;
- The condition at 9(b) i.e 4 No. of works in hand seems discriminatory. PA to ensure compliance of Rule-44;
- The procuring agency has not uploaded bidding documents in term of Rule-21 of SPP Rules, 2010. PA may rectify'
- PA has not upload copy of Notification of Procurement Committee (PC) as per Rule-7 and Notification of Complaint Redressal Committee (CRC) in terms of Rule-31;
- The NIT does not mention the schedule of issuance clearly, as it mentions the last date of issuance of bidding documents, but it does not mention the date from which the bidding documents shall be issued to bidders. PA is required to rectify the infirmity at the earliest to ensure compliance of Rule-17(3)(c);
- PA has not mentioned bid validity period in terms of Rule-38 of SPP Rules, 2010;
- PA has not uploaded integrity pack in terms of Rule-89 of SPP Rules, 2010;
- The procuring agency is required to mention the brief description of items / scheme in "Tender title / description" column instead of mentioning the tender number or any other information;
- The procuring agency is required to rectify the observation generated by the system;
- The procuring agency is required to pay web-hosting charges;
- *P.A has not furnished replies of observations at NIT level as yet;*
- As per BER bids opened on 14-05-2019 after one of 2nd attempt i.e 13-05-2019 hence violated SPPRA Rule;
- **P.A is advised to cancel the tender in terms of Rule-25 and afresh tender in terms of Rule-26 of SPP Rules, 2010(Amended-2019). It is responsibility of Procuring Agency (P.A) to strictly observe the SPP Rules, 2010 in letter and spirit. Violation of any SPP Rule/Act/ Instruction will tantamount to mis-procurement.**

- 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

¹² The procuring agency has not posted the contract documents on the Authority's PPMS website as yet

¹³ See the Authority's BER observations conveyed to the procuring agency through PPMS website on 30.08.2019

¹⁴ The Authority forwarded the appellant's complaint to the CRC vide letter dated 04.09.2019 (also acknowledged by the CRC)

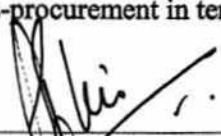
¹⁵ The contract documents are not available on the Authority's website as also verified by the procuring agency's representatives in the presence of the Committee.

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;

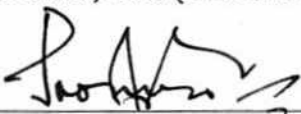
- The procuring agency's CRC was required to decide the complainant's grievances within seven days and intimate the same to the appellant as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010;
- The procuring agency was required to post bid evaluation reports, giving reasons for acceptance or rejection of bids, on the Authority's website at least three (3) working days prior to the award of contract. However, in the instant case, procuring agency posted three bid evaluation reports on the Authority's website on 27.08.2019 but awarded the contracts¹⁶ in the second week of August, 2019; hence, said rule violated;
- The procuring agency should have adopted Single Stage One Envelope bidding procedure for instant procurement as these works fall under simple and routine nature that does not require technical complexity or innovation in terms of Rule-47(1) of SPP Rules, 2010;
- 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 fifteen (15) days of signing 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; and
- The procuring agency's record submitted to this Authority transpired that the appellant submitted enough evidence against on-going works related to the instant procurement; however, the procurement committee awarded zero marks out of 20. The procuring agency could have sought clarification from the appellant in writing as provided under Rule-43(2) of SPP Rules, 2010.

Review Committee Decision


9. In light of the above observations, as mentioned under para-8, and due deliberation, the Review Committee unanimously declares the instant procurement's works 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).



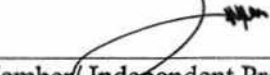
(Member)
Syed Adil Gilani
Private Member, SPPRA Board
Representative Transparency International



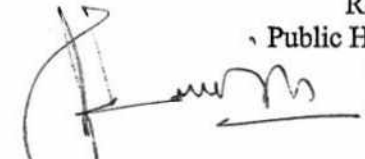
(Member)
Assadullah Soomro
Private Member
SPPRA Board



(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

¹⁶ As per verbal statement/ confirmation made by the procuring agency for issuance of award of contract