GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-766/2019-20/1203 Karachi, dated the 05th December, 2019

To,

- The Director (ADMN/ MVR),
  Excise, Taxation & Narcotics Control
  Karachi.

- M/s Mohsin Enterprises,
  Shop # 3 Iqbal Market, Soldier Bazar,
  Karachi.

Subject: **DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S MOHSIN ENTERPRISES VERSUS DIRECTORATE OF EXCISE, TAXATION & NARCOTICS CONTROL (ADMN/ MVR) KARACHI.**

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision taken in its meeting on 27th November, 2019 for your information and further necessary action, please.

05/12/2019

ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Govt. of Sindh, Excise Taxation & Narcotics Control Dept., Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. 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.]***
4. The Staff Officer 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-766/2019-20 Karachi, dated the December, 2019

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

(Appeal)

M/s Mohsin Enterprises
Versus
Directorate (ADMN/ MVR), Excise, Taxation & Narcotics, Karachi

(NIT ID # T01215-19-0003 dated 09.08.2019)

Facts and background

The appellant, M/s Mohsin Enterprises, Government Contractor Karachi, lodged a complaint (vide letter bearing No.ME/Excise/786/2019-20 dated 05.11.2019) addressed to the Director General (Excise & Taxation), Excise, Taxation & Narcotics Control Sindh/ Chairman Complaint Redressal Committee (CRC) and copy endorsed to this Authority and others – for taking necessary action – against the NIT # DVR/MR(43)/Procurement/NP-TTS-U/2019-20/1349 dated 09.08.2019 floated by Director (ADMN/MVR), Excise, Taxation & Narcotics Control, Karachi ***'the procuring agency'*** for procurement of uniforms and protective clothing[1].

2. Subsequently, the appellant (vide letter bearing No.ME/Excise/786/2019-20 dated 12.11.2019) preferred an appeal, along with review appeal fee[2], before this Authority stating that the procurement committee announced the appellant's bid as the lowest submitted bid among others while opening of tenders on 24.09.2019; albeit, later on the procurement committee called another meeting on 01.11.2019 to communicate the evaluation results whereby the appellant was announced/ notified as disqualified on the grounds of non-provision of sample *'Peshawari Chappal'*. In this connection, the appellant alleged that the procurement committee intentionally misplaced their sample to favor another bidder, against which they lodged a complaint to the CRC and now prefers to lodge an appeal before the Review Committee to enquire into the matter in light of the given facts and circumstances of the case.

3. In turn, the Authority (vide letter of even number dated 18.11.2019) advised the procuring agency to update the Authority regarding current status of the bid security, submitted by the appellant along with the bid, as well as furnish the CRC decision, if any, with regard to the complaint lodged by the appellant to proceed the case as required under Rule-32(1) of SPP Rules, 2010[3]. In response, the procuring agency (vide letter bearing No.DVR/MR(43)/Procurement/NP-TTS-U/2019-20/2069 dated 19.11.2019) furnished a copy of the CRC decision, **as reproduced blow**, and also confirmed the appellant's bid security submitted vide CDR # 11933166 amounting to PKR 130,000/ is still intact with the procuring agency:

> ***"[Excerpt of CRC decision dated 11.11.2019]:*** *The complainant Mr. Saeed Ahmed of M/s Mohsin Enterprises raised the objection in his complaint that the Technical Committee, intentionally misplaced the sample of Peshawari Chappal from their samples bag, on the basis of favoritism during the course of scrutiny of documents and samples. The Chairman Procurement*

[1] Detailed description/ nature of the procurement can be accessed through instant procurement's NIT and bid document available on the PPMS website at ID # T01215-19-0003 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]
[2] SPPRA's Office Order No.Dir(A&F) /SPPRA/18-19/0325 dated 26.07.2019
[3] Rule-32(1) provides that a bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review Committee within ten (10) days of announcement of the decision provided that he has not withdrawn the bid security, if any, deposited by him.

Committee present in the meeting, stated that samples were opened in front of all the participating bidders and sample of Sandals (Peshawari Chappal) was found missing when the plastic bag carrying the samples of M/s Mohsin Enterprises was opened. Having gone through the available record, and hearing the complaint and the Chairman Procurement Committee, ***the Complaint Redressal Committee, has reached at the conclusion that the complainant has failed to provide substantial evidence in support of his contention, hence, nothing have been found inconsistent with the Rules and Regulation of SPPRA Rules, 2010 (Amended 2019).***[4]

4. Resultantly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 27.11.2019 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letter dated 21.11.2019 to appear before the Committee on scheduled dated, time, and venue. In compliance, Mr. Waheed Shaikh, Deputy Director, Directorate (Admn/MVR), Excise, Taxation & Narcotics Control, Karachi *'representative of the procuring agency'* and Mr. Saeed Ahmed, Proprietor, M/s Mohsin Enterprises *'representative of the appellant'* appeared before the Committee's meeting.

Review Committee Proceedings

5. 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

6. Mr. Saeed Ahmed *'representative of the appellant'* apprised the Committee of the appellant's working experience of around twenty (20) years in the relevant field of procurement. The appellant claimed to have submitted the bid along with requisite documents and product samples by hand to the procuring agency on 24.09.2019 that were accepted/ opened on the same date by the procurement committee after signing bidders' attendance sheet. The committee checked and approved the appellant's samples and then opened the financial bids of all bidders whereby the appellant's bid was found as the lowest submitted bid as compared to other bidders. Subsequently, the procurement committee called another meeting, which was unique and never happened in previous cases of similar procurement, probably to satisfy the appellant for awarding contract to another bidder.

- Syed Adil Gilani (Member of Review Committee) asked the appellant to share sample approval report issued by the procuring agency;
    - The appellant stated that the procuring agency did not issue any formal report to the bidders, including the appellant, with regard to the receipt and acceptance/ rejection of samples under instant procurement then how could they provide evidence that would demonstrate the submission of their samples to the procuring agency. The appellant submitted a sealed bag containing samples against all products including Sandal *Peshawari Chappal.*
- The Chair pointed out that the appellant, in the earlier complaint and appeal lodged before this Authority, alleged to have their samples intentionally misplaced by the procuring agency and CRC has responded to the alleged matter.

Procuring Agency's Version

7. Mr. Waheed Shaikh, Deputy Director, Directorate (Admn/MVR), Excise, Taxation & Narcotics Control, Karachi clarified that the procuring agency solicited bids for supply of uniforms and protecting

[4] http://e.pprasindh.gov.pk/crcdecision

clothing under Single Stage One Envelope bidding procedure where total number of eight (8) bidders participated. The procurement committee comprising of five (5) members opened the sealed envelopes and read aloud the bids, including bidders' samples submitted, publicly in presence of the bidders' authorized representatives and thereafter referred the samples to the sub-committee constituted for authentication of samples specification in conformance to the products' specification mentioned in the bidding document. The appellant did not submit sample of one item (Sandal – Peshawari Chappal) that was also announced publicly after opening of the bids.

- Syed Adil Gilani pointed out if the procurement committee read aloud total amount of each bid and samples submitted with the bids then the procurement committee would have definitely prepared and issued the minutes of the opening of tenders as required under Rule-41(9) of SPP Rules, 2010[5]. Mr. Gilani asked the procuring agency's representative to share copy of such report/ minutes of the meeting for opening of bids duly signed by all the members of procurement committee;
    - The procuring agency's representative shared a copy of the minutes of the meeting for opening of bids duly signed by all the members of procurement committee whereby it was mentioned that (excerpt of the minutes reproduced herewith) *'the duly sealed box was opened in front of all the members and the bidders which contained eight (08) sealed envelopes containing both technical as well as financial bids/ proposals. The Procurement Committee signed the sealed envelopes before opening the same.* ***The parcels of samples of uniform were also checked in accordance with the items list mentioned in the RFP/ bidding document.*** *Since, the mode of bid/ tender was single stage one envelope, so the financials were also announced simultaneously in front of all the bidders.* ***It was unanimously decided by the procurement committee to send all eight technical proposals along with samples of uniform and protective clothing submitted by the participating bidders to the Technical Committee in order to evaluate the same and submit report with specific recommendations to the procurement committee to proceed further.*** [6]'
- Syed Adil Gilani diverted the attention of the procuring agency's representative towards the report by pointing out that there is nowhere mentioned in the minutes that the appellant had not submitted sample along with the bid. If the appellant's did not submit sample of an item then the procurement committee was required to incorporate the same under the minutes of meeting for opening of bids for the sake of transparency and fairness in the bidding process as well as compliance of Rule-41(9) of SPP Rules, 2010.
    - The procuring agency's representative stated the samples received along with the bids were announced publicly and then incorporated in the minutes of technical committee's meeting that was held on 01.11.2019.
- Syed Adil Gilani reiterated that any discrepancy in the appellant's bid was required to be incorporated in the minutes of meeting for opening of tenders otherwise it would raise a serious doubt that the appellant's sample might have been deliberately taken by someone before these samples were handed over to the technical committee, as also alleged by the appellant. Subsequently, Mr. Assadullah Soomro (Member of Review Committee) asked the procuring agency to update the Authority with regard to the current status of instant procurement;
    - The procuring agency's representative stated that contract has not been awarded as yet.

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[5] Rule-41(9) provides that the procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

[6] See minutes of the meeting posted along with the bid evaluation report on the Authority's website at ID # BE01215-19-0003-1 dated 11.11.2019 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber]

Review Committee Remarks

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

- 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 minutes of the bid opening meeting highlight that the *'the parcels of samples of uniforms were also checked in accordance with the items list mentioned in the RFP/ bidding document'*, which implies that the procurement committee checked requisite physical samples available/ submitted by the bidders along with the bid and then forwarded/ hand over the same to the Technical Committee. Any discrepancy (non-provision of sample by the appellant) was required to be confirmed and incorporated under the minutes for opening of tenders by the procurement committee as required under Rule-41(9) of SPP Rules, 2010;
- The procuring agency was required to furnish compliance with regard to instant procurement's NIT observations as conveyed by the Authority through PPMS website on 11.09.2019[7].

Review Committee Decision

09. In light of the observations and violations of rules as mentioned under para-8, and after due deliberation, the Review Committee unanimously decides that the instant procurement's proceedings may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010, and fresh tenders be floated, after modifying the contents of notice inviting tender/ bid documents, in terms of Rule-23(2) of SPP Rules, 2010.

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

(Member)
Assadullah Soomro
Private Member
SPPRA Board

—Not attended—
(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

[7] See observations under NIT's comments section [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]