GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-705/2019-20 /1235 Karachi, dated the 11th December, 2019

To,

- The Executive Engineer,
  Provincial Buildings Division,
  Shaheed Benazirabad.

- M/s Muhammad Awais Kathio,
  Cannal View House No. A259, Abid Colony,
  Khairpur Mirs.

Subject: **DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S MUHAMMAD AWAIS KATHIO VERSUS PROVINCIAL BUILDINGS DIVISION SHAHEED BENAZIRABAD).**

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.

11/12/2019

ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Works & Services Department, Karachi.
2. The Chief Engineer (Buildings), Works & Services Department, Sukkur.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
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. M/s Mudasir Adil Co., Government Contractor, House # B-1, Star Bungalows, Main Naseem Nagar Chowk, Qasimabad, Hyderabad.

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-705/2019-20 Karachi, dated the December, 2019

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

(Appeal)

M/s Muhammad Awais Kathio
Versus
Provincial Buildings Division, Shaheed Benazirabad

(NIT ID # T00683-19-0002 dated 24.09.2019)

Facts and background

The appellant, M/s Muhammad Awais Kathio, Government Contractor Khairpur Mirs, lodged a complaint (vide letter dated 17.10.2019) addressed to the Chief Engineer (Buildings), Works & Services Department, Sukkur/ Chairman Complaint Redressal Committee (CRC) against the NIT # TC/G-55/425 dated 19.09.2019 floated by the Executive Engineer, Provincial Buildings Division, Shaheed Benazirabad ***'the procuring agency'*** for procurement of construction and repair maintenance works etc.[1] Subsequently, the appellant lodged another complaint (vide letter dated 18.10.2019 and followed by reminder letter dated 25.10.2019) addressed to this Authority with request to direct the CRC to redress their grievances in accordance with the rules. In turn, the Authority (vide letter of even number dated 28.10.2019) 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 the procuring agency to award the procurement 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, 2010.*

2. In response to the aforementioned Authority's letter and the appellant's complaint, the Chief Engineer Buildings, Sukkur/ Chairman CRC (vide letter bearing No.CE(B)/SUK/B.B/4135 dated 06.11.2019) conveyed a report compiled by the procuring agency whereby it was held that the appellant had neither participated in the bidding process nor obtained bid document; hence, the Chairman CRC asked the appellant to provide further evidence in support of his complaint.

3. Subsequently, the appellant (vide letter dated 14.11.2019) preferred an appeal, along with review appeal fee[2], before this Authority stating that the procuring agency's CRC had failed to pay any heed towards their complaint, which was also forwarded by the Authority to the CRC; hence, the appellant requested the Authority to place their matter before the Authority's Review Committee in terms of Rule-31(5) read with Rule-32 of SP Rules, 2010.

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. Muhammad Ismail Rajpar, Executive Engineer, Provincial Buildings Divison, Shaheed Benazirabad *'representative of the procuring agency'* and Mr. Nazir Ahmed Kathio, Proprietor M/s Muhammad Awais Kathio *'representative of the appellant'* appeared before the Committee's meeting.

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[1] Detailed description/ nature of the works can be accessed through instant procurement's NIT and bid document available on the PPMS website at ID # T0683-19-0002 [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

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. Nazir Ahmed Kathio *'representative of the appellant'* apprised the Committee of the appellant's interest to participate in the instant bidding process, due to which the appellant visited the procuring agency's office various times for issuance of bid documents; however, the procuring agency absolutely denied to issue the documents in order to favor particular bidder(s). Subsequently, they lodged a complaint to the procuring agency's CRC on 17.10.2019 that failed to redress their grievances; hence, the appellant preferred to lodge an appeal before the Review Committee.

- Syed Adil Gilani (Member of Review Committee) asked the appellant about his participation/ submission of bid to the procuring agency;
  - The appellant stated that the procuring agency undertook bidding process in such a way where bid documents were not issued to the bidders; even the appellant approached the procuring agency on the scheduled date for submission and opening of bids where the appellant found the procurement committee's members as absent and there was no tender box or cabinet for bidders to insert their bids. ***The appellant then shared a copy of bid security/ call deposit as a probative evidence for his intention to participate in the bidding process;***
- The Chair asked the appellant as to why he did not download the bid document from the Authority's website which is an alternative source for obtaining bid documents in terms of Rule-24(2) of SPP Rules, 2010[3];
  - The appellant stated that the he did not download the documents from the Authority's website on reliance that same would be issued by the procuring agency on the scheduled date for submission/ opening of bids that was 15.10.2019 as usually happens. Following the previous practice, the appellant visited the procuring agency's office on 15.10.2019 whereby the procuring agency urged the appellant to visit the office on 16.10.2019 to discuss the issue for award of contract which the appellant denied being a professional contractor. The appellant accepted mistake on his own part over not downloading the documents from the Authority's website.

Procuring Agency's Version

7. Mr. Muhammad Ismail Rajpar, Executive Engineer, Provincial Buildings Davison, Shaheed Benazirabad *'representative of the procuring agency'* clarified that the appellant did not visit the procuring agency's office until 15.10.2019. The appellant, like other bidders who participated in the instant bidding process, could visit the procuring agency's office during response time (between 24.09.2019 to 15.10.2019)[4] for issuance of bid documents by submitting tender fee, as there was not any restriction on bidders to obtain the documents on deadline for submission and opening of bids. Indeed, the appellant approached the procuring agency on 16.10.2019 at 04.10 p.m. (after deadline for submission and opening of bids) whereby the appellant was informed that bid documents can be neither issued nor entertained at this stage as per rules. Thereafter, the appellant had never approached to the procuring agency or CRC but the Authority forwarded the appellant's complaint to the CRC that was responded by communicating the position as stated hereinabove.

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[3] Rule-24(2) provides that the bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand.

[4] ibid.

- Syed Adil Gilani asked the procuring agency about the status or action taken with regard to the complaint lodged by M/s Mudasir Adil & Co. in the instant procurement[5];
    - The procuring agency's representative stated that M/s Mudasir submitted bid through courier service (TCS) that was also received after the deadline for submission of bids; hence, the bid was not entertained by the procuring agency[6].
- Syed Adil Gilani pointed out that the record (TCS Tracking ID # 5564545070) reveals the complainant's (M/s Mudasir Adil) bid was received by the procuring agency on 16.10.2019 at 11.25 a.m. (before the deadline for submission of bids) then why such bid was not entertained by the procuring agency;
    - The procuring agency's representative stated that they mentioned a condition at Sr. # 20 of the NIT which provides that ***'no tender will be accepted by post or courier'***; nevertheless, M/s Mudasir submitted bid through TCS; secondly, the representative of M/s Mudasir was absent while opening of the bids. Therefore, the procuring agency did not entertain the bid submitted by M/s Mudasir.
- Mr. Assadullah Soomro (Member of Review Committee) pointed out that the condition to restrict bidders not to submit their bids through courier service was in contravention of Rule-24(2) of SPP Rules, 2010, which provides that ***'the bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand.'*** The Authority vide letter dated 07.11.2019 already communicated the referred observation, along with NIT's other observations[7], to the procuring agency; nonetheless, the procuring agency failed to take any action or respond to the Authority with regard to these observations. Subsequently, Mr. Soomro asked the procuring agency to update the Authority regarding current status of instant procurement works;
    - The procuring agency's representative stated that the NIT was floated by his predecessor and the procuring agency had cancelled the NIT's work # 1 (Construction of RHC at Kareja Chandio Taluka Moro, District Naushahro Feroze) against which M/s Mudasir submitted bid to the procuring agency. On the first attempt/ schedule of NIT (submission and opening of bids), the bidding process was cancelled as not a single bidder purchased bid documents from the procuring agency's office. On next attempt, two group of contractors started to fight each other in the procuring agency office; therefore, the procuring agency had to cancel the bidding process. Subsequently, the procuring agency's representative submitted written statement **as reproduced verbatim herewith** *"[it is submitted that NIT NO. TC/G-55/425 dated 19.09.2019 dated 15.10.2019 issuing date and 16.10.2019 the opening date that for some technical issues work Sr. # 4 and 8 was cancelled at that time and remaining works were proceeded for tendering process for issuing the work orders. Remaining works were gear up and* ***no work orders were issued*** *– signed by Muhammad Ismail Rajpar, Executive Engineer Provincial Buildings Shaheed Benazirabad Division dated 27.11.2019]."***

Review Committee Remarks

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

- The procuring agency was required to rectify infirmities/ observations with regard to the instant procurement's NIT as conveyed by this Authority through PPMS website on 26.09.2019[8]. Such

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[5] The Authority vide letter dated 28.10.2019 forwarded the complaint (M/s Mudasir Adil & Co.) to the procuring agency's CRC with an advice to redress the matter in accordance with Rule-31 of SPP Rules, 2010.

[6] The complainant (M/s Mudasir Adil & Co.) submitted bid to the procuring agency through courier service (TCS Tracking ID # 5564545070) which revealed the procuring agency received the complainant's bid on 16.10.2019 at 11.25 a.m. (before the deadline for submission of bids). **The procuring agency in its report submitted to the Chief Engineer Buildings vide letter dated 28.10.2019 affirmed to have received the complainant's bid through TCS.**

[7] See instant procurement's NIT observations dated 26.09.2019 on the Authority's PPMS website at ID # T0683-19-0002 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

[8] ibid.

observations were reiterated to the procuring agency through PPMS website on 01.11.2019[9] as well as this Authority's letter dated 14.11.2019;

- The procuring agency failed to respond the Authority's observations **(reproduced in the box)** as communicated vide letter dated 07.11.2019; hence, the Rules-21(2), 22(2) and 24(2) of SPP Rules, 2010, were violated;

> - **The procuring agency has not furnished compliance against instant procurement's NIT observations as conveyed by this Authority through PPMS website on 26.09.2019;**
> - **The NIT condition listed at Sr. # 20 (no tender will be accepted by post or courier) was in contravention to Rule-24(2) of SPP Rules, 2010 (Amended 2019), which provides that *'the bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand*;**
> - **The procuring agency has not posted the corrigendum for extension of time period for submission and opening of bids (works listed at Sr.# 4 & 8) as required under Rule-21(2) read with Rule-22(2) of SPP Rules, 2010.**

- 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 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; however, the procuring agency failed to comply with these requirements.

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

[9] See Observations dated 01.11.19 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber?nitCode=%27T00683-19-0002%27]