



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-666/2019-20/1237

Karachi, dated the 12th December, 2019

To,

The Vice Chancellor,
Jinnah Sindh Medical University,
Karachi.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S KASHIF CONSTRUCTORS VERSUS JINNAH SINDH MEDICAL UNIVERSITY 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 20th November, 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, Universities & Boards Department, 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).
5. M/s Kashif Constructors, Office No. B 1-006 Clifton Garden-II, Block-III, Kehkashan Clifton, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-666/2019-20

Karachi, dated the November, 2019

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

(Appeal)

M/s Kashif Constructors

Versus

Jinnah Sindh Medical University, Karachi

(NIT ID # T00533-19-0009 dated 09.08.2019)

Facts and background

The appellant, M/s Kashif Constructors, Karachi, lodged a complaint (vide letter bearing No.KC/MD/SPPRA/KHI/2032 dated 02nd October, 2019) addressed to this Authority as well as Vice Chancellor, Jinnah Sindh Medical University, Karachi, against the NIT # JSMU/PROC/NIT/8974 dated 06.08.2019 floated by Advisor Works/ Services & Procurement, Jinnah Sindh Medical University, Karachi '*the procuring agency*' for procurement of work i.e. construction of mortuary building¹, whereby the appellant requested to direct the procuring agency for constitution of complaint redressal committee (CRC) to resolve their grievances with regard to their disqualification under technical evaluation. In turn, the Authority (vide letter dated 09.10.2019) advised the procuring agency to post a copy of the CRC notification on the Authority's website², so as aggrieved bidder(s) may lodge complaint, if any, at such forum in terms of Rule-31(3) of SPP Rules, 2010 (Amended 2019).

2. Pursuant to the aforementioned letters, the procuring agency (vide letters bearing No. JSMU/ Proc/9757 & 231/9414 dated 10 & 16.10.2019, respectively) stated that the appellant's bid was found technically non-responsive on the grounds of less working experience and capabilities, compared to the evaluation criteria given in the bidding documents, in terms of Rule-46(2)(e) & (h) of SPP Rules, 2010³. Moreover, the procuring agency shared a copy of the CRC notification by stating that the same was posted on the Authority's website while posting instant procurement's NIT⁴; however, due to the technical error of the Authority's website, the notification is not accessible publicly via website⁵.

3. Subsequently, the appellant (vide letters dated 17.10.2019 & 07.11.2019) raised concerns over the procuring agency's response/ clarification and preferred an appeal before this Authority by stating that the procuring agency has failed to redress/ decide their grievances through its CRC within stipulated time period; hence, the appellant requested to place their matter before the Authority's Review Committee⁶.

¹ Detailed description/ nature of these works can be accessed through instant procurement's NIT and bid documents available on the PPMS website at ID # T00533-19-0009 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

² *ibid*.

³ Rule-46(2)(e) & (h) provides that procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements. Financial bids of bids found technically non-responsive shall be returned un-opened to the respective bidders.

⁴ *ibid*.

⁵ The procuring agency endorsed copy of the letter dated 10.10.2019 along with CRC notification to the appellant, who acknowledged receipt of letter by referring the same into the appeal lodged to this Authority vide letter dated 17.10.2019.

⁶ Pursuant to the appeal lodged by the appellant, the Authority vide letter dated 05.11.2019 advised the procuring agency to update/ confirm the appellant's bid security status *latest by 12.11.2019* otherwise it would be presumed that the appellant has not withdrawn their bid security and matter shall be referred to the Review Committee. The Authority also endorsed a copy of the referred letter to the appellant with an advice to submit review appeal fee, depending upon the estimated cost of work in pursuance of this Authority's office order No.Dir(A&F) /SPPRA/18-19/0325 dated 26.07.2019, which was submitted by the appellant to this Authority on 07.11.2019. The procuring agency vide letter dated 09.11.2019 stated that they have called CRC meeting on 12.11.2019 to decide the matter of appellant, who has not withdrawn their bid security to date.

Simultaneously, the procuring agency called its CRC meeting on 12.11.2019 that was also attended by the appellant, whereby it was held that *'[the appellant] firm's complaint is not valid as the firm does not possess relevant work experience of similar nature as per technical proposal submitted by M/s Kashif Constructors and failed to provide any proof of false blames on JSMU Karachi vide letter NO.KC/MD/SPRA/Khi/2035 dated 17.10.2019.'*

4. Resultantly, the appellant's matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 20.11.2019 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letter dated 15.11.2019 to appear before the Committee on scheduled date, time, and venue. In compliance, Muhammad Azam Uqaili, Director Works & Services, and Engineer Muhammad Salman, Assistant Engineer, Jinnah Sindh Medical University, Karachi *'representatives of the procuring agency'* and Mr. Anwar Bhutto, Chief Executive Officer, and Engineer Farhan Ahmed Mughal, M/s Kashif Constructors *'representatives 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. Engineer Farhan Ahmed Mughal *'representative of the appellant'* apprised the Committee of appellant's submission of bid, along with requisite documents, under instant procurement whereby the procuring agency disqualified appellant under technical evaluation by non-considering their work orders (works completed and/ or in hand), as happened during last tendering process⁷. The procuring agency has threatened for blacklisting/ debarring appellant, when it was requested to consider appellant's work orders and thereof assign marks as per criteria. In this regard, appellant approached the CRC⁸, in due course of time. Consequently, the appellant approached the Authority and thereafter the CRC called its meeting, though appellant was not given proper opportunity by the CRC for hearing their grievances in detail. The CRC responded appellant after lapse of two months.

7. Mr. Kashif Bhutto *'representative of the appellant'* apprised the Committee of the procuring agency that it did not consider appellant's work order bearing No. SMIU/W&S/2018/2093 dated 01.11.2018 issued by Sindh Madressatul Islam University for *'development of SMIU Model School & University at Academic Block at SMIU, City Campus, Karachi (PKR 73.20 M)'*⁹ which was submitted along with their technical proposal/ bid and also with their complaint. **The appellant alleged that the procuring agency deliberately removed copies of their work order as submitted along with their technical proposal.** Moreover, the appellant raised concern over the technical evaluation criteria by adding that the estimated cost of instant procurement work was PKR 29 million then why the procuring agency restricted bidders to have experience, under similar nature and complexity of works, of project's cost PKR 50 million or above.

- The Chair of the Committee asked the appellant to clarify whether such concern (removal/ detachment of their work order from technical proposal) was raised in their earlier complaint¹⁰?
- ◆ The appellant responded that such grievance was not part of their complaint. They further added that the procuring agency opened their technical proposal publicly whereby the initial/ preliminary assessment was carried out but not the detailed technical evaluation.

⁷ NIT # T00533-18-0020 dated 23.02.2019 floated for procurement of work *'Construction of Dental OPD Annexe Building'*

⁸ The appellant claimed to have lodged a complaint to the procuring agency through online portal/ PPMS website on 01.10.2019. The Authority examined the referred matter and found the appellant's grievances (constitute the CRC) as raised vide letter of even number dated 02.10.2019, which the procuring agency responded vide letter dated 10.10.2019.

⁹ C00014-18-0002-1 dated 06.11.2019 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/contract_list]

¹⁰ The appellant in their complaint lodged vide letter dated 17.10.2019 alleged that the procuring agency disqualified them without opening technical proposal.



Procuring Agency's Version

8. Muhammad Azam Uqaili, Director Works & Services, and Muhammad Salman, Assistant Engineer, Jinnah Sindh Medical University, Karachi '*representatives of the procuring agency*' clarified that the procuring agency convenes the CRC meeting in a timely manner as and when an aggrieved bidder lodges a complaint before the CRC. In this case, the appellant submitted their first letter dated 02.10.2019 whereby it was alleged that the procuring agency had neither opened their technical proposal nor constituted the CRC that could hear the aggrieved bidders' grievances. In response, the procuring agency vide letter dated 10.10.2019 furnished response along with evidence (copy of the CRC constituted vide procuring agency's notification dated 08.10.2018) to the Authority as well as the appellant. Though the appellant did not approach directly to the procuring agency's CRC, nevertheless, the procuring agency called the CRC meeting, as per opinion of the procuring agency's legal experts, whereby the appellant's grievances were heard and later on the decision was intimated to the appellant as well as Authority within three working days¹¹.

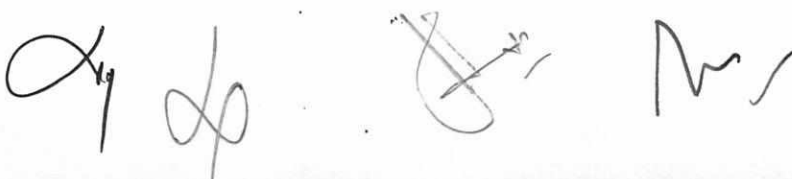
- Syed Adil Gilani (Member of Review Committee) asked questions from the procuring agency about preparation of bidding document and its evaluation criteria for post qualification with the use of Single Stage Two Envelope bidding procedure, which is applicable for procurement of goods, works and services 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. Mr. Gilani pointed out that the construction work under instant procurement seems related to the simple and routine nature work, **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's representative stated that they appointed M/s National Engineering Services Pakistan (NESPAK)¹² as consulting firm which prepared the bidding document, including evaluation criteria, and was also part of the technical and financial evaluation committees. The Senior Engineer M/s NESPAK, who also appeared before the Review Committee, affirmed to have prepared these bid documents with the adoption/ recommendation of Single Stage Two Envelope bidding procedure in order to ascertain the qualified contractors. The Senior Engineer M/s NESPAK further added that the procuring agency may use this method, like pre-qualification, for procurement of works having an estimated cost of PKR 20 million or above as per SPPRA Rules.
- Syed Adil Gilani made observation (obiter dictum) that the consulting firm (M/s NESPAK) had primary responsibility to assist the procuring agency in moving right direction while conducting procurement under SPP Rules; and there is no ambiguity in these rules to choose an appropriate procurement method, subject to conditions that it complies with precision of conditions prescribed in Rule-47 of SPP Rules, 2010. Mr. Gilani also pointed out that the appellant is registered with Pakistan Engineering Council (PEC) under Category C-2, which renders them to perform project's construction work up to the estimated cost of PKR 1000 million¹³.
- Subsequently, the Chair highlighted that the procuring agency disqualified the appellant owing to non-submission of work orders having estimated cost for procurement of works equivalent to or above PKR 50 million; whereas, the appellant is claiming to have submitted copies of work orders along with their bid submitted to the procuring agency;
 - ◆ The procuring agency's representative shared copy of technical evaluation criteria showing marks allocated under each criterion and its sub criteria in the bid document and marks assigned to the appellant under each criterion of the technical evaluation result¹⁴. The representative highlighted that it was mandatory for the bidder to secure at least 60%

¹¹ The referred letters were received by the Authority from the procuring agency and are available on record.

¹² Procuring agency's consulting firm

¹³ https://www.pec.org.pk/fee_Pakistani.aspx

¹⁴ Evaluation report can be accessed on the Authority's PPMS website at BER ID # BE00533-19-0009-9-1 dated 25.10.2019



marks in each criterion and 70% marks on overall/ cumulative basis as per terms and conditions of the bid document¹⁵; whereas, the appellant could secure only 33% & 40% marks under criteria # 2 & 4 (experience and equipment) respectively, and their overall marks stood as 67%.¹⁶ Such criteria and its benchmark to award marks were clearly spelled out in the bid documents. The procuring agency's representative then elucidated that the appellant did not submit copy of work order issued by Sindh Madressatul Islam University; however, copies of following work orders were found with their technical proposal which were considered/ unconsidered on following grounds:

Sr.	Name of Completed Project (PKR in Million)	Marks Considered (Yes/ Not) ¹⁷
I.	Construction of existing degree college at Bozdar Wada Taluka Thari Mirwah District Khairpur (ADP # 421 2016-17 Program) (PKR 86.34)	Yes – awarded 10 marks out of 10.
II.	Construction of Bilawal Bhutto Zardari Peoples Park at Larkano (ADP No. 1639 of 2016-17) (PKR 53.39)	Not – project' scope did not fall under similar project & complexity of work.
III.	External electrification and establishment of electrical sub-station at MUET, Shaheed Z.A Bhutto Campus Khairpur Mirs (PKR 41.39)	Not – project's cost found below PKR 50 million
IV.	Construction of hostel for 200 boys and court yard wall for hostel for project 'Strengthening of Academic Facilities' at Shah Abdul Latif University, Khairpur (PKR 126.40) (M/s Kashif Constructors JV Crystal Enterprises)	Not – as per condition # 3.1 of bid documents 'sub-contractor's/ joint venture experience and resources shall not be taken into account in determining the applicant's compliance with the qualifying criteria.' ¹⁸
V.	Providing and fixing iron steel grill, left and right bad with pavers work, construction of new electric sub-station and garbage pit in Barrage Township Sukkur	Not – project's cost and scope did not fall under similar project & complexity of work etc.
VI.	Construction of extension of administration block & extension of Date Palm Research Institute (DPRI) building works for project 'Strengthening of Academic Facilities' at Shah Abdul Latif University, Khairpur	Not – as work order was issued to M/s R&M Associates & Developers, which subsequently sublet the work to M/s Kashif Constructors.

Source: Appellant's work orders found with technical proposal as shared by the procuring agency

- Syed Adil Gilani pointed out that the procuring agency at its own level could ask the clarification from the appellant in terms of Rule-43 of SPP Rules, 2010¹⁹ read with Instruction to Bidders Clause # 16.3 and Post-Qualification of Contractors Clause # 3.1 of bidding documents, which provides that *'to assist in the examination, evaluation and comparison of bids the engineer/ procuring agency may, at its discretion, ask the bidder for a clarification of its bid. The request for clarification and the response shall be in writing and no change in the price or substance of the bid shall be sought, offered or permitted (Rule-43)'* and *'the employer reserves the right to verify and seek clarification/ substantiation of the information furnished by the applicants. The employer may reject any application for any misrepresentation knowingly made by any applicant*

¹⁵ See detailed evaluation under paragraph 3.4 of the bid document posted along with NIT ID # T00533-19-0009

¹⁶ *ibid.*

¹⁷ Benchmark: similar nature of complexity of work of cost PKR 50 million or more each completed during last five (5) years

¹⁸ *ibid.*

¹⁹ Rule-43(1) provides that no bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bids; provided that procuring agency may ask the bidders for clarifications needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid. Any request for clarification in the bid, made by the procuring agency, shall invariably be in writing. The response to such request shall also be in writing.

in, or pursuant to, their application or for any statement furnished in connection therewith, and intended to be relied upon by the employer, which is incorrect in any respect²⁰

- ◆ The procuring agency's representative stated that the technical evaluation result was forwarded to the appellant vide letter dated 26.09.2019 (before opening of financial bids). The appellant, in response to the technical evaluation result, lodged their first complaint vide letter dated 02.10.2019, to which the procuring agency responded in detail vide letter dated 10.10.2019. Subsequently, the appellant lodged another complaint, along with copy of work order (Sindh Madressatul Islam University), vide letter dated 17.10.2019 when the procuring agency had already opened technical and financial proposals. *Any complaint or bid supporting document was required to be furnished by the appellant to the procuring agency in a timely manner. Nevertheless, the procuring agency convened the CRC meeting to redress the appellant's grievances and thereafter awarded the contract.*
- Mr. Assadullah Soomro and Engineer Munir Ahmed Shaikh (Members of Review Committee) queried the procuring agency as to why the joint venture of firms was not allowed under instant procurement; and why the bidders were restricted to have experience of similar nature & complexity of work having cost PKR 50 million or above. Syed Adil Gilani pointed out that as per prudent practice the procuring agency was required to ask the bidders to have project's work experience worth 50% of the estimated cost of instant procurement's work due to the local currency rate depreciation by 50% when compared to the US dollar in last five years²¹; nonetheless, the procuring agency asked the bidders to have completed projects worth 172% of the estimated cost of instant procurement's work that may fall under discriminatory conditions among bidders as restricted under Rule-44 of SPP Rules, 2010;
 - ◆ The Senior Engineering M/s NESPAK clarified that as far as the cost of similar projects completed is concerned, it was the consultants intention to award the contract to a bidder that does not compromise the quality of work and its completion on time as experienced by the procuring agency in last projects. The appellant and rest of the contractors, which participated or intend to participate under instant procurement, had not raised any grievances to the procuring agency, in this regard.
 - ◆ The procuring agency's representative stated that on recommendations of M/s NESPAK, the Work Order to contractor was issued on 14.11.2019. The requirement to post contract documents – contract 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, would be complied by 29.11.2019.

Review Committee Observations

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

- **Appellant's Case:** Any bidder being aggrieved by any act or decision of the procuring agency after issuance of notice inviting tender may lodge a written complaint and the CRC is required to decide the complainant's matter within seven days otherwise **the complaint shall stand transferred to the Review Committee**, if the aggrieved bidder files the review appeal within ten (10) days of such transfer in terms of Rule-31 (3) & (5) read with Rule-32 of SPP Rules, 2010. In the instant case, the appellant in its complaint lodged to the procuring agency vide letter dated 02.10.2019 raised grievances with regard to their disqualification under technical evaluation which the procuring agency could not decide within specified time period; hence, the appellant

²⁰ *ibid.*

²¹ <https://www.exchange-rates.org/>



preferred an appeal to this Authority²². The Committee examined the technical evaluation report and its supported documents whereby the procurement committee held that the appellant was disqualified under criteria # 2 & 4 (experience and equipment) of technical evaluation, as mentioned under paragraph 3.4 of bid document²³;

- The appellant claimed in its appeal preferred before this Authority that the procuring agency declared appellant disqualified without opening their technical proposal. Contrary to it, the appellant while arguing the case affirmed before the Committee that the technical proposal was opened publicly and their preliminary assessment was conducted in presence of appellant's representative; however, their work order (Sindh Madressatul Islam University) submitted along with their proposal was deliberately removed/ detached by the procuring agency. The Committee examined the appellant's technical proposal but could not find copy of the referred work order; hence, the Committee cannot confirm/ verify whether copy of the referred work order was submitted by the appellant along with the bid or not as such allegation requires proof/ evidence beyond reasonable doubt and the burden of such proof falls on the appellant/ claimant as per general principle of law. Secondly, the Committee opined that even in the presence of such work order, the appellant again stood disqualified as per criterion # 4 of bid documents due to their marks as 40% against the required 60% to qualify²⁴, for which the appellant did not argue or provided substantial evidence to the Committee;
- It is presumed by the procuring agency that when a bidder submits bid, s/he agrees to all the explicit terms and conditions of the bid documents. In order to avoid such ambiguity, an interested bidder, who obtains bid document, should request the procuring agency for clarification of the contents (when required) of the bidding documents in writing, and the procuring agency is bound to respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bids in terms of Rule-23(1) of SPP Rules, 2010;
- **Procurement Related Observations:** The procuring agency's CRC called its meeting on 12.11.2019 to redress the complainant/ appellant's grievances and then announced its decision on 14.11.2019 in terms of Rule-31 of SPP Rules, 2010²⁵. Meanwhile, the Authority vide letter dated 15.11.2019 expressly advised the procuring agency not to award the contract till the final decision of the Review Committee in terms of Rule-32 read in conjunction with proviso of Rule-31(7) of SPP Rules, 2010; however, the procuring agency awarded the procurement contract in violation of the said instructions/ rules;
- Syed Adil Gilani (Member of Review Committee) – The procuring agency was required to ask the bidder's to have completed similar nature and complexity of works having cost within the limit of 50% rather than 172% of the estimated cost of procurement, which happened in the instant procurement on the grounds of irrational justification. The Gilani pointed out that the criteria for asking bidder's to have completed 172% of the estimated cost of procurement may fall under Rule-44 of SPP Rules, 2010²⁶. Such observation was also endorsed by Mr. Assadullah Soomro (Member of Review Committee).

Review Committee Decision

10. In light of the above observations and violations (procurement related) of Rules as mentioned under para-9, and after due deliberation, the Review Committee unanimously declares the said procurement as **Mis-Procurement** in light of Rule-32(7)(g) of SPP Rules, 2010, read with Section-2(i) of SPP Act, 2009 (as the contract is already awarded and construction work is in progress) and decides to

²² *M/s Adamjee Insurance Company Limited v University of Sindh* (2019) (See observation # 1 under Paragraph # 8)
<http://www.pprasindh.gov.pk/rpdecisions/45RCUOSADAMJEE140619.PDF>

²³ *ibid.*

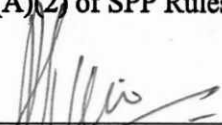
²⁴ *Ibid.*

²⁵ <http://e.pprasindh.gov.pk/crcdecision>

²⁶ Rule-44 provides that 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..




refer the matter to the Competent Authority for initiating disciplinary proceedings against those responsible for use of Rule-46(2) and non-complying Rule-44 of SPP Rules leading to mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010 (Amended 2019).



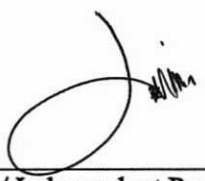
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International




(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