



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-742/2019-20/1294

Karachi, dated the 19th December, 2019

To,

- The Executive Engineer,
Shahbaz Irrigation Division,
Sehwan.
- M/s Ghulam Murtaza Enterprises,
Bungalow No. C-377/3, Phase-I, Qasimabad,
Hyderabad.
- M/s Rabbi Traders,
House # 99m, Civil Court Road, Bhatti Para, Kotri,
Jamshoro.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEALS LODGED BY M/S GHULAM MURTAZA ENTERPRISES, AND M/S RABBI TRADERS VERSUS SHAHBAZ IRRIGATION DIVISION SEHWAN).

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 11th December, 2019, for your information and further necessary action, please.


ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Irrigation Department, Karachi.
2. The Director Design, Irrigation in Sindh, Shahbaz Building, Block-D, Hyderabad.
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 F.B. Enterprises, A/26, Faraz Villas Phase-III, Qasimabad, Hyderabad.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-742/2019-20

Karachi, dated the December, 2019

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

(Appeals)

M/s Rabbi Traders; and M/s Ghulam Murtaza Enterprises

Versus

Shahbaz Irrigation Division Sehwan, Irrigation Department

(NIT ID # T00681-19-0001 dated 24.07.2019)

Facts and background

The appellant¹, M/s Rabbi Traders, Government Contractor Jamshoro, lodged a complaint (vide letter No. NIT/XEN-IRR-SD-SWN/243/2019 dated 28.08.2019) addressed to the Director General, Monitoring & Evaluation Cell, Irrigation Department/ Chairman Complaints Redressal Committee (CRC) as well as this Authority and others, against the NIT bearing No. TC/G-55/1138/2019 dated 19.07.2019 floated by Executive Engineer, Shahbaz Irrigation Division, Sehwan 'the procuring agency' for procurement of 'left over essential works of Sehwan area (Construction of lift channels over RBOD system for feeding tail reaches of Dadu Canal) (ADP #.1096/2019-20)²' whereby the appellant requested the authorities concerned to advise the procuring agency for announcing the schedule to open the financial bids. In turn, the Authority (vide letter dated 01.10.2019) forwarded the matter to the procuring agency's CRC with an advice to furnish the decision to this Authority in terms of Rule-31(5) of SPP Rules, 2010 (Amended 2019)³; however, the CRC did not furnish any response against the referred letter.

2. Subsequently, the appellant⁴ (vide letter No. NIT/XEN-IRR-SWN/249/2019 dated 04.11.2019) lodged another complaint addressed to the CRC as well as this Authority and others whereby it was alleged that the procuring agency previously cancelled NITs for similar work⁵ and re-floated afresh NIT by changing procurement procedure and evaluation criteria on the pretext to favor a particular contractor in contravention of the rules; hence, the appellant requested the authorities concerned to ascertain the evaluation criteria and scoring assigned thereof for qualification are in conformance with the rules. Simultaneously, another appellant⁶ M/s Ghulam Murtaza Enterprises (vide letter dated 03.11.2019) lodged a complaint addressed to this Authority as well as the CRC and others whereby the appellant raised concerns over their disqualification under technical evaluation. In turn, the Authority (vide letters dated 12 & 15.11.2019) forwarded the appellants' complaints 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) read with Rule-31(6) & (7) of SPP Rules, 2010⁷.

3. Thereafter, the appellants⁸ (vide letters dated 18.11.2019 & 12.11.2019, respectively) preferred separate appeals, along with review appeal fee⁹, before this Authority by stating that the procuring

¹ Appellant # I (M/s Rabbi Traders)

² Detailed description/ nature of the work can be accessed through instant procurement's NIT and bid document available on the PPMS website at ID # T00681-9-0001 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

³ Rule-31(5) provides that the complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

⁴ ibid.

⁵ See details of earlier cancelled NITs available on the Authority's website at IDs # T00681-18-0002 & 3 dated 12.02.2019 & 22.04.2019, respectively [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁶ Appellant # II (M/s Ghulam Murtaza Enterprises)

⁷ Rules-31(6) & (7) provide that the procuring agency shall award the contract after the decision of the complaint redressal committee; mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings; provided that in case of failure of the Complaint Redressal Committee 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.

⁸ Appellant # I & II (M/s Rabbi Traders; and M/s Ghulam Murtaza Enterprises)

⁹ SPPRA's Office Order No.Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019

agency's CRC had failed to redress/ decide their grievances within stipulated time period; hence, the appellants requested the Authority to place their matter before the Review Committee in terms of Rule-31(5) read with Rule-32 of SPP Rules, 2010¹⁰.

4. Resultantly, the appellants 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 letters dated 21.11.2019) to appear before the Committee on scheduled dated, time, and venue. Meanwhile, the procuring agency (vide letters bearing No.TC/G-55/1770 & 1786/2019 dated 25 & 28.11.2019, respectively) furnished para-wise replies, to the Authority, with regard to the appellants concerns by adding that *'the lodging of appeals by the bidders/ complainants to the Review Committee are not maintainable in terms of Rule-32(1) of SPP Rules, 2010¹¹ as the bidders/ complainants had taken back their bid securities on 30.10.2019 before lodging of complaints'*

5. Subsequently, the Authority (vide letters dated 27.11.2019) forwarded the procuring agency's aforementioned response along with enclosures to the appellants with an advice to confirm the position with regard to their withdrawal of bid securities. In response, the appellants (vide letters dated 28.11.2019 & 02.12.2019) rejected the procuring agency's stance with regard to their volunteer withdrawal of bid securities and indeed both the appellants claimed to have received envelopes (proposal/ bid security) at their home/ office through an official of the procuring agency. The appellant # II further disowned Mr. Majeed Rind who acknowledged receipt of the envelope/ bid security; hence, both the appellants requested to place their case before the Authority's Review Committee. Meanwhile, the procuring agency (vide letters bearing No.DD/CRC/288 & 289/2019 dated 29.11.2019) also called the appellants to appear before the CRC on 03.12.2019 which the appellants (vide letters dated 02.12.2019 & 30.11.2019) denied to attend due to the pendency of their case for hearing by the Authority's Review Committee.

6. In view of the aforementioned patent ambiguity/ uncertainty¹² and deciding maintainability of the cases/ appeals for further hearing, a meeting of the Review Committee was scheduled on 11.12.2019 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letters dated 05.12.2019) to appear before the Committee on scheduled dated, time, and venue. In compliance, the meeting was attended by the following (representatives):

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Mr. Sajid Ali Bhutto, Superintending Engineer	Southern Sindh Circle, Dadu
II.	Mr. Mahesh Kumar, Executive Engineer	Shahbaz Irrigation Division Sehwan
Appellants		
I.	Mr. Adnan Gul Bhatti, Proprietor	M/s Rabbi Traders
II.	Mr. Ghulam Murtaza, Proprietor	M/s Ghulam Murtaza

REVIEW COMMITTEE PROCEEDINGS

7. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the Chair asked the appellants to present their case/ version, one by one, on the instant procurement before the committee.

Appellant's Version

8. **M/s Ghulam Murtaza Enterprises:** Mr. Ghulam Murtaza *'representative of the appellant # II'* apprised the Committee of the appellant's submission of bid along with requisite documents, as required under instant procurement, to the procuring agency on 09.08.2019; however, the procuring agency disqualified the appellant under technical evaluation after passing around three months for opening of bids. Earlier, the procuring agency solicited bids for similar work twice times whereby the schedule for submission/ opening of bid(s) was repeatedly extended, nevertheless, the appellant participated by

¹⁰ ibid.

¹¹ 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.

¹² An ambiguity that is apparent on the face of the document and arises from inconsistent or uncertain language – uncertainty is quality or state of uncertain or doubt (<https://www.merriam-webster.com>)

submitting a competitive bid as PKR 115 million but the procuring agency cancelled the bidding process. This was the third time where the procuring agency solicited bids by changing bidding procedure and evaluation criteria as the previous NITs were floated using Single Stage One Envelope bidding procedure and this time Single Stage Two Envelope bidding procedure was adopted as laid down under Rule-46(2) read with Rule-47(2) of SPP Rules, 2010¹³. The appellant further apprised that M/s Madni Engineering Construction Company, which is the only technically qualified bidder and quoted/ submitted bid as PKR 211.31 Million under instant procurement¹⁴, quoted bid in previously cancelled NIT as PKR 150 million and found disqualified. Secondly, M/s Madni did not submit required amount of bid security (of quoted bid) as well as copy of valid Pakistan Engineering Council (PEC) certificate along with the bid submitted under instant procurement, nonetheless, the procuring agency technically qualified the bidder even in the absence of the valid PEC certificate, which was even issued by the PEC to M/s Madni on 28.11.2019. The appellant further apprised that they had never made any request to the procuring agency for withdrawal of bid security; indeed, the procuring agency, through its official, delivered the bid security at their door step. The appellant again lodged a complaint to the procuring agency's CRC after receipt of disqualification letter but the CRC failed to redress their grievances.

- Syed Adil Gilani (Member of Review Committee) asked the appellant to share any evidence/ proof with regard to receipt of the bid security at home address through an official of the procuring agency. In addition, Mr. Assadullah Soomro (Member of Review Committee) asked the appellant whether the encashment of bid security was made or not;
 - ◆ The appellant stated that the encashment of call deposit was made but they did not voluntarily withdraw the bid security; indeed, the person Mr. Majeed Rind who received their bid security, as per procuring agency's report, is unknown (rogue identity) to him.
- Engineer Munir Ahmed Shaikh (Member of Review Committee) pointed out if the appellant had not voluntarily withdrawn the bid security then why encashment of security was made;
 - ◆ The appellant stated that the procuring agency posted report on the Authority's website that is why they made encashment of instrument but the Committee should check the bidding process and also confirm the status of PEC certificate submitted by M/s Madni, *to which Syed Adil Gilani noted if the bidder (M/s Madni) had submitted valid PEC certificate or its renewal request made to the PEC then only in such case the contractor shall be decided as eligible in terms of PEC instructions.*

9. **M/s Rabbi Traders:** Mr. Adnan Gul Bhatti '*representative of the appellant # I*' supported the version presented by representative of the appellant # II.

Procuring Agency's Version

10. Mr. Sajid Ali Bhutto, Superintending Engineer, Southern Sindh Circle, Dadu '*representative of the procuring agency*' clarified that the instant procurement of left over essential works is based on various works including: construction of pumping station for feeding tail area of Daim Branch; construction of pumping station for feeding of Bhambha Distry; and construction of village bridges etc.¹⁵ Mr. Bhutto then highlighted that the appellants lodged appeals to this Authority on 03.11.2019 i.e. after withdrawal of their bid securities on 30.10.2019 from the procuring agency's office; hence, these appeals are not maintainable to be heard by the Review Committee in terms of Rule-32(1) of SPP Rules, 2010.

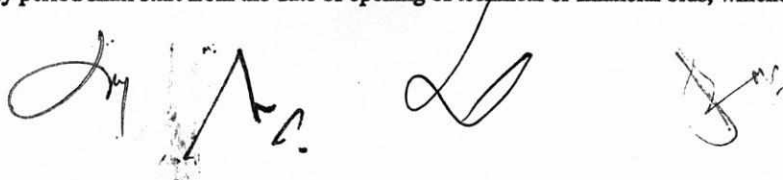
- Syed Adil Gilani pointed out that the appellants withdrew their bid securities during expiry of original bid validity period in terms of Rules-38(1) & 1(A) of SPP Rules, 2010¹⁶; during that period, the appellants lodged complaints, also forwarded by the Authority, to the procuring agency's CRC then what action was taken in pursuance of these complaints;

¹³ Rule-47(2) provides that [Conditions for use of] Single Stage Two Envelope Bidding Procedure shall be used for 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.

¹⁴ Bid Evaluation Report at ID # BE00681-19-0001-1 dated 06.11.2019 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

¹⁵ Ibid.

¹⁶ Rule-38(1) & (1A) provides that a procuring agency keeping in view nature of procurement, shall subject the bid to a validity period, which shall be specified in the bidding document and shall not be more than 90 days in case of National Competitive Bidding....the bid validity period shall start from the date of opening of technical or financial bids, whichever is earlier.



- ◆ The procuring agency's representative stated that they could not call the CRC meeting due to the absence of Chairman CRC/ Director General Monitoring & Evaluation Cell.

11. Mr. Mahesh Kumar, Executive Engineer, Shahbaz Irrigation Division Sehwan '*representative of the procuring agency*' clarified that the procuring agency solicited bids for instant procurement work under Single Stage One Envelope bidding procedure in January, 2019 that (bidding process) was later on cancelled. Subsequently, the procuring agency solicited bids in April, 2019 using similar procurement procedure and again cancelled the same in terms of Rule-25 of SPP Rules, 2010. The procuring agency asked the bidders to submit fixed amount of bid security (5% of the estimated cost of procurement) and the bidder M/s Madni submitted bid security of the required amount.

- Syed Adil Gilani (Member of Review Committee) pointed out that the **procuring agency opted Single Stage One Envelope bidding procedure during previously cancelled NITs¹⁷** wherein the appellant # II was the lowest submitted bidder (with total bid quoted as PKR 115 million in second NIT) then why the bidding procedure changed during instant procurement's NIT, floated for the third time. **The change in bidding procedure was illegal in either previously cancelled or instant procurement which has laid the bid price to surge from PKR 115 million to PKR 211.31 Million (an increase of 84%).** The Chair pointed out that if any technical complexity or innovation was involved for instant procurement work then the question arises why the procuring agency did not opt existing bidding procedure in previously cancelled NITs in terms of Rule-47 of SPP Rules, 2010¹⁸;

- ◆ The procuring agency's representative stated that Single Stage Two Envelope bidding procedure is the requirement for this procurement as it involves **highly technical complexity**. The procuring agency cancelled the first NIT due to absence of one member of procurement committee and in the second NIT, the bidders quoted bids below 30% of the estimated cost and without mandatory documents, hence the procuring agency cancelled these NITs.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative to confirm whether the bidder M/s Madni provided required documents *including: company profile; list of three years similar type of works; photocopy of financial statement showing annual turnover of PKR 250 million for last three years and income tax paid for last three years; affidavit of no litigation with Irrigation Department; power of attorney in original on affidavit; and details of equipment, machinery and transport owned by the contractor* against which the bidder was previously disqualified. Mr. Gilani further asked the representative to confirm whether M/s Madni submitted valid PEC certificate (unexpired);

- ◆ The procuring agency's representative confirmed that the bidder M/s Madni provided these documents along with technical proposal under instant procurement; however, **M/s Madni submitted PEC certificate that was expired in June, 2019; any request made by the bidder M/s Madni to the PEC for renewal of certificate was not provided along with the bid.** As per policy/ criteria/ SPPRA rules, the procuring agency does not receive/ accept any document from any bidder after submission of bids.

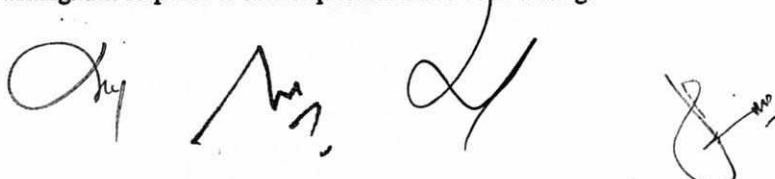
- The Chair pointed out that the procuring agency could seek clarification from the bidder(s) in terms of Rule-43 of SPP Rules, 2010¹⁹, in order to extend the bidding process. Engineer Munir Ahmed Shaikh pointed out that the procuring agency cannot award the contract in the absence of valid PEC license; sometimes the PEC issues a general letter for relaxation of contractors to renew their certificate within a limited period of time but the procuring agency had to confirm this position while evaluating bids.

- ◆ The procuring agency's representative stated that they did not seek such information or clarification from the PEC or the bidder.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Rule-43 provides that no bidder shall be allowed to alter or modify his bid(s) after the expiry of the deadline for the receipt of the bids; provided that the 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 made, made by the procuring agency, shall invariably be in writing. The response to such request shall also be in writing.



- Syed Adil Gilani asked the procuring agency's representative for the number of bidders who participated and technically qualified under instant procurement;
 - ◆ The procuring agency's representative stated that nine (9) bidders participated, out of which only one bidder was found as technically qualified under the instant procurement.
- Subsequently, Mr. Assadullah Soomro asked the procuring agency about the current status of instant procurement
 - ◆ The procuring agency's representative stated that they have not awarded the procurement contract yet.

Review Committee Observations/ Remarks

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

- The procuring agency could not satisfy the Committee for change in bidding procedure from Single Stage One Envelope (used in previously cancelled NITs) to Two Envelope which laid to surge the total bid cost by 14.44% of the estimated cost of instant procurement work. It is unique case where the same bidder (M/s Madni) quoted bid, for similar nature of work, more than PKR 61.00 Million as compared to previously quoted bid where the same bidder found disqualified/ineligible. As far as the maintainability of the case is concerned, the procuring agency had to provide probable evidence in connection to withdrawal (*meaning: take back or to draw or to remove from consideration*)²⁰ of bid security – *for instance: a letter or written request submitted by the appellant(s) for releases of bid security* – the question arises why the procuring agency released the bid security to a rogue identity in the absence of any written request/ consent of these appellants and if a written request was made by these appellants then why such evidence was not provided to the Authority before or during hearing of the cases/ appeals;
- 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 (rather than assigning weightage points) to ask the bidders to have mandatory/ valid electrical license issued by the Electrical Inspector for execution of electrical works as required under Clauses # 2.20, 2.6, 4.2(j), and 7.6(B)(i)(1)(D) of the Authority's Procurement Regulations (Works)²¹ read with Rule-29(4) of SPP Rules, 2010;
- The procuring agency's CRC was required to decide the complainants grievances within seven days and intimate the same to the appellants 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 these requirements;
- The procuring agency failed to award the procurement contract within original bid validity period, which expired on 06.11.2019 in terms of Rules-38(1) & 1(A) read in conjunction with Rule-49 of SPP Rules, 2010 (Amended 2019). The procuring agency should have extended, if required, the bid validity period before the expiry of original bid validity period in terms or Rules-38(2) & (3) of SPP Rules, 2010 (Amended 2019).

Review Committee Decision

13. In light of the above observations/ remarks, as at para-12, and after due deliberation, the Review Committee unanimously decides that since the procuring agency had not awarded or signed contract against the procurement work, therefore, the procurement proceedings for the instant work may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010, and fresh tenders be floated in terms of Rule-

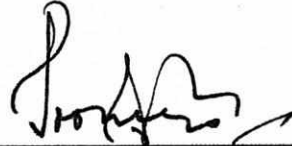
²⁰ Rule-2(2) provides that the expression used but not defined in these rules shall have the same meanings as are assigned to them in the Act and, if not defined there, as in the ordinary usage of language (<https://www.merriam-webster.com/dictionary/withdraw>).

²¹ <http://www.pprasindh.gov.pk/downloads/files/Guidelines2010-11NewOriginal280511.pdf>

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



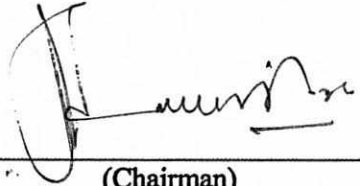
(Member)
Assadullah Soomro
Private Member
SPPRA Board

(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