



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-838/2019-20//1900

Karachi, dated the 26 February, 2020

To,

- The Chairman,
Union Council Hatri,
District Hyderabad.
- The District Engineer,
District Council,
Hyderabad.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY.

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision (*M/s Ghulam Murtaza Enterprises and M/s Nawab & Sons Construction Services v Union Council Hatri, District Hyderabad*) held on 12th February, 2020, for your information and further necessary action under intimation to this Authority, at the earliest.


26/02/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Govt. of Sindh, Local Government 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/ Members Review Committee.
5. M/s Ghulam Murtaza Enterprises, B # C-377/3, Phase-I, Qasimabad, Hyderabad.
6. Ms Nawab & Sons Construction Services, House # C-147, Block-3, Phase-I, Near Markazi Jamia Masjid, Qasimabad, Hyderabad.



GOVERNMENT OF SINDH
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NO.AD(L-II)/SPPRA/CMS-838/2019-20

Karachi, dated the February, 2019

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

(Appeals)

M/s Ghulam Murtaza Enterprises and M/s Nawab & Sons Construction Services

Versus

Union Council Hatri, District Hyderabad

(NIT ID # T01474-19-0006 dated 15.11.2019)

Facts and background

The appellants¹, M/s Ghulam Murtaza Enterprises and M/s Nawab & Sons Construction Services, Government Contractors Hyderabad, lodged separate complaints (vide letters dated 13 & 28.12.2019, respectively) addressed to the Chairman Union Council Hatri/ Chairman Complaints Redressal Committee (CRC) as well as this Authority against the NIT # UC/Hatri/199/2019 dated 12.11.2019 floated by the Chairman Union Council Hatri District Hyderabad '*the procuring agency*' for procurement of works '*construction of concrete blocks, paving blocks and open surface etc.*'² whereby the appellants alleged that they visited the procuring agency's office on the scheduled date(s)³ for submission/ opening of bids where they found the procurement committee's members absent and office rooms locked, which showed the procuring agency's intention to award the procurement contracts to pre-selected contractors in an illegal manner as enjoined under the rules⁴. In turn, the Authority (vide letters dated 18.12.2019 & 08.01.2020, respectively) also forwarded the matter to the procuring agency's CRC with an advice to redress the appellants' grievances and then furnish decisions within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019)⁵.

2. Subsequently, the appellants (vide letters dated 23 & 11.01.2020, respectively) preferred separate appeals, along with review appeal fee⁶, stating that the CRC had failed to decide their matter – complaints as referred above – within stipulated time period, therefore, requested the Authority to place the cases before the Review Committee in terms of Rule-32 of SPP Rules, 2010⁷. In turn, the Authority (vide letter dated 30.12.2019) advised the appellants to submit copies of bids – quoted on bid documents downloaded from the Authority's website in terms of Rule 24(2) of SPP Rules, 2010⁸ – along with bid securities and tender fee in order to *ascertain the maintainability of the cases* in terms of Rule-2(1)(f) of SPP Rules, 2010⁹ that were submitted by the appellants vide letters dated 13 & 27.01.2020, respectively. Meanwhile, the Chairman CRC (vide letter No.UC/Hatri/04/2020 dated 16.01.2020) furnished para-wise comments with reference to the grievances raised by the appellant # I and excerpt of which is reproduced herewith *[the tenders were opened on 11.12.2019 by procurement committee in presence of bidders. Necessary attendance sheet of bid opening process is attached. The complainant has not enclosed any evidence pertaining to bid documents call deposits hence presumably he is not agreed party, the CRC is properly*

¹ Appellant # I: M/s Ghulam Murtaza Enterprises; and Appellant # II: M/s Nawab & Sons Construction Services

² Detailed description/ nature of the works can be accessed through instant procurement's NIT available on the PPMS website at ID # T01474-19-0006 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

³ Corrigendum# UC/Hatri/204/19 dated 22.11.2019 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁴ Rule-4 provides that while procuring goods, works & services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical

⁵ 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 under rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

⁶ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

⁷ Sindh Public Procurement Rules, 2010 (Amended 20119) [<http://www.pprasindh.gov.pk/SPPACT15MARCH2019.pdf>]

⁸ Rule-24(2) provides that the bidder 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

⁹ Rule-2(1)(f) defines a bidder as a person or entity submitting a bid or who intends to submit bid and is able to substantially prove such intention

constituted but he has lodged no complaint hence question of action by committee is not involved.....it is clear that complaint is baseless and is made simply to raise hindrance in way of public welfare works, hence same may be rejected summarily].

3. Accordingly, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 12.02.2020 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 30.01.2020) to appear before the Committee on scheduled date, time, and venue¹⁰. In compliance, the meeting was attended by the following (representatives):

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Mr. Mehboob Ali Malik, District Engineer	District Council Hyderabad
Appellants		
I.	Mr. Mujeeb Rind, Proprietor	M/s Ghulam Murtaza Enterprises
II.	Mr. Taj Muhammad Soomro, Proprietor	M/s Nawab & Sons Construction Services

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 appellants to present the case/ version, one by one, on the instant procurement before the committee.

Appellant's Version

5. **M/s Ghulam Murtaz Enterprises:** Mr. Mujeeb Rind 'the appellant # I' apprised the Committee of his intention to participate under instant bidding process and in this regard the appellant approached the procuring agency's office on 11.12.2019 to submit bids, along with call deposit and other requisite documents, under NIT's works listed at Sr. # 1, 6, 22, 32 & 33, where the appellant found the procurement committee's members as absent. The appellant claimed that the procuring agency did not place any tender box where the bidders could drop their bids, thus no formal bidding process as required under the rules took place. In this connection, they lodged complaints to the procuring agency's CRC which also failed to redress the grievances.

6. **M/s Nawab & Sons Construction Services:** Mr. Taj Muhammad Soomro 'the appellant # II' apprised the Committee of his intention to participate under instant procurement's NIT's works listed at Sr. # 10, 11, 12, 13 & 14 through submitting bids along with other requisite documents – copies of which already provided to the Authority – however, there was not any officer of the procuring agency present on the scheduled date for submission/ opening of bids. The appellant highlighted that the procuring agency's office is located in a privately owned place/ diary form despite having their newly established office constructed two years ago. Furthermore, the appellant contended that the procuring agency invited bids against similar nature of works – containing 79 works – through earlier NIT that was cancelled without assigning any reason¹¹.

- Syed Adil Gilani (Member of Review Committee) asked the appellants as to why the bids were not submitted through mail – reliable courier service – when such alternate option is also available to bidders under Rule-24(2) of SPP Rules, 2010¹²;
- ◆ The appellant # I stated that courier services – TCS, UMS etc. – do not work within the locality of the procuring agency and the procuring agency did not mention proper address and contact details in the NIT/ bidding documents as required under the rules. The appellant # II added that the procuring agency's temporary office is actually located in a village namely Kako Mangwano that was not mentioned in the NIT or bid documents.

¹⁰ The Review Committee's meeting for hearing instant cases was earlier scheduled on 31.01.2020; however, the meeting was rescheduled on 12.02.2020 due to unavailability of the members. Meanwhile, the Authority vide letter dated 24.01.2020 advised the procuring agency not to award the procurement contract till the final decision of the Review Committee in terms of Rule-32 read in conjunction with proviso of Rules-31(7) & 32(7)(a) of SPP Rules, 2010.

¹¹ Cancelled NIT ID # T01474-19-0001 [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

¹² Ibid.

Procuring Agency's Version

7. Mr. Memboob Ali Malik, District Engineer, District Council Hyderabad 'representative of the procuring agency' stated that the bids were opened on the schedule date for submission/ opening of bids that was 11.12.2019 where total number of thirty (30) bidders participated against thirty seven (37) works.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative to clarify *a) the reason(s) for cancellation of previous tendering process containing 79 works; b) the reason(s) for splitting the works of previously cancelled NIT; c) location/ complete address where the bids were submitted/ opened under instant procurement; d) the reasons as to why less than three bidders participated under each procurement work;*
 - ◆ The procuring agency's representative stated that the bids were opened in the procuring agency's office on the scheduled date/ time and as far as the previously cancelled NIT is concerned, the Chairman can respond to such queries as he (the procuring agency's representative) was assigned responsibility to execute instant procurement assignment. *The procuring agency's representative could not clarify the queries related to the complete address of the procuring agency, splitting of procurement works, and cancellation of previous NIT.*
- The Chair asked the procuring agency's representative to update about the CRC decision with regard to the complaints lodged by the appellants and/ or forwarded by the Authority as well as current status of the NIT's works;
 - ◆ The procuring agency's representative stated that he is unaware for the action taken by the CRC and further added that the Chairman Union Council Hatri, who is also the Chairman of CRC, can update the exact position for the CRC action/ decision, if any held. *The procuring agency's representative confirmed that the procurement contracts have not been made and even the bid evaluation reports have not been posted on the Authority's website in pursuance of the Authority's directions conveyed vide letter dated 24.01.2020.*

Review Committee's Observations/ Findings

8. After hearing the parties at length and close scrutiny of the procurement record, the Review Committee observed that:

- **Appellants' Cases:** The appellants submitted documents – copies of bids along with tender issuance fee and bid security to the Authority – that sufficed to entertain/ ascertain the maintainability of cases for hearing in terms of Rule-2(1)(f) read with Rules-31(5) & 32 of SPP Rules, 2010¹³; however, it cannot be conclusively ascertained whether the appellants approached the procuring agency to submit bids on the scheduled date for submission/ opening of bids as the Committee members were not physically present there in the procuring agency's office. The appellants could opt an alternative approach, but not mandatory, to submit bids through mail – reliable courier service – in terms of Rule-24(2) of SP Rules, 2010¹⁴, however, the procuring agency did not mentioned its complete address in the bidding documents as required under Rule-21(1)(e) of SPP Rules, 2010¹⁵; even the procuring agency's representative was unaware with regard to the complete the procuring agency's address when asked by the Committee.
- **Procurement Observations:** The procuring agency failed to comply the following requirements as required under the referred rules:
 - ◆ The procuring agency failed to mention its complete address in the bidding documents for ease of bidders to communicate and/ or submit bids through mail to the procuring agency in terms of Rule-21(1)(e) read with Rule-24(2) of SPP Rules, 2010¹⁶;

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Rule-21(1) provides that the bidding documents shall include the information including: manner and place, date and time for submission of bidding documents

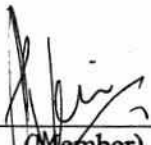
¹⁶ Ibid.




- ◆ The procuring agency issued a corrigendum vide its letter No.UC/Hatri/204/2019 dated 22.11.2019¹⁷ that did not contain the schedule for submission of bids as required under Rules-41(1) & (3) read with Rule-22 of SPP Rules, 2010¹⁸;
- ◆ The procuring agency's CRC failed to decide the complainants grievances within seven days and intimate the decision to the appellants as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010;

Review Committee Decision

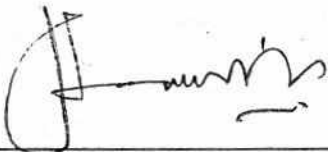
9. In light of the above observations/ findings, as mentioned at para-8, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed contract against the procurement works, therefore, the procurement proceedings for these works may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010¹⁹, and fresh tenders be floated in terms of Rule-23(2) & 26 of SPP Rules, 2010. **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/ 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

¹⁷ Ibid.

¹⁸ Rule-41(1), (3) & 22 provides that the date for opening of bids and the last date for submission of bids shall be the same, as given in the bidding documents and in the notice inviting tender. The bids shall be opened within one hour of the deadline for submission of bids. The procuring agency may extend the deadline for submission of bids...provided that the advertisement of such extension in time shall be made in a manner similar to the original advertisement

¹⁹ Rule-32(7)(f) provides that [the Review Committee may] direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.