



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-867/2019-20/1899

Karachi, dated the 26 February, 2020

To,

- The Municipal Commissioner,
Sukkur Municipal Corporation,
Sukkur.
- The Executive Engineer,
Sukkur Municipal Corporation,
Sukkur.

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 Fatima & Co. Works & Services v Sukkur Municipal Corporation*) held on 13th 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 Fatima & Co Works & Services, A-493/1, Shahi Bazar Old Sukkur.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-867/2019-20

Karachi, dated the February, 2019

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

(Appeal)

M/s Fatima & Co Works & Services

Versus

Sukkur Municipal Corporation

(NIT ID # T01150-19-0002 dated 21.11.2019)

Facts and background

The appellant, M/s Fatima & Co Works & Services, Government Contractor Sukkur, lodged a complaint (vide letter No.786/110/02 dated 30.12.2019) addressed to the Municipal Commissioner, Sukkur Municipal Corporation District/ Chairman Complaints Redressal Committee (CRC) and copy endorsed to this Authority against the NIT # SMC/XEN/577 dated 11.11.2019 floated by Executive Engineer, Sukkur Municipal Corporation 'the procuring agency' for procurement of goods and works¹ whereby the appellant raised concerns over the procuring agency's refusal to receive the bids duly submitted/ quoted on the bid documents downloaded from the Authority's website. In turn, the Authority (vide letter dated 31.12.2019) also forwarded the matter to the procuring agency's CRC with an advice to redress the appellant's grievances and furnish its decision to the appellant as well as the Authority within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019)².

2. Subsequently, the appellant (vide letter No.786/110/03 dated 06.01.2020) preferred an appeal, in the absence of review appeal fee³, stating that the CRC had failed to redress the grievances and requested the Authority to place the case before the Review Committee. In turn, the Authority (vide letter dated 13.01.2020) advised the appellant to submit review appeal fee along with evidence – complete set of documents prepared – in support of his intention to participate in the bidding process *for ascertaining maintainability of the case* in terms of Rule-2(f) of SPP Rules, 2010⁴ and such documents were submitted by the appellant (vide letter No.786/110/04 dated 15.01.2020). Meanwhile, the Chairman CRC (vide letter No.SMC/XEN/35 dated 10.01.2019) furnished the CRC decision as reproduced herewith [with reference to your application captioned under reference on the subject 'request for cancellation of NIT NO.SMC/XEN/577/2019 dated 13.11.2019 regarding mis-procurement & irregularities made in various works of Municipal Corporation Sukkur and violation of SPPRA Rules' it is informed that your complaint referred above has been decided by the CRC with remarks 'rejected' in accordance with Rule-31 of SPP Rules, 2010 (Sd/- Municipal Commissioner Sukkur Municipal Corporation)]⁵.

3. Accordingly, the appellant's case was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 22.01.2020 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 17.01.2020) to appear before the Committee on scheduled date, time, and venue. In response, the Administrative Officer of the procuring agency (vide letter No.SMC/XEN/64 dated 20.01.2020) requested the Authority to reschedule the hearing due to unavailability of the Municipal Commissioner, Sukkur Municipal Corporation, on the scheduled date.

¹ Detailed description/ nature of the goods and works can be accessed through instant procurement's NIT available on the PPMS website at ID # T01150-19-0002 [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender]

² 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.

³ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [https://ppms.pprasinhd.gov.pk/PPMS/]

⁴ Rule-2(1)(f) defines the bidder as a person or entity submitting a bid or who intends to submit bid and is able to substantially prove such intention

⁵ http://e.pprasinhd.gov.pk/crcdecision

Due to which, the Authority rescheduled the meeting for hearing of the case on 12.02.2020 at 10.00 a.m. and notices, in this regard, were re-issued to the parties concerned (vide this Authority's letters dated 23 & 30.01.2020) to appear before the Committee on scheduled date, time, and venue. In compliance, Mr. Suhail Ahmed Memon, Executive Engineer, Sukkur Municipal Corporation '*representative of the procuring agency*' and Mr. Kamran Shaikh, Proprietor, M/s Fatima & Co Works & Services '*the appellant*' appeared before the Committee's meeting⁶.

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 appellant to present the case/ version on the instant procurement before the committee.

Appellant's Version

5. Mr. Kamran Shaikh, Proprietor '*the appellant*' apprised the Committee of his intention to participate in the bidding process and in this regard he approached the procuring agency for issuance of bid documents, which were not issued by the Tender Clerk; subsequently, the appellant downloaded bid documents from the Authority's website in terms of Rule-24(2) of SPP Rules, 2010⁷, and approached the procuring agency on 24.12.2019 to submit bids – along with requisite documents including bid security and tender fee⁸ – that were not received by the procuring agency. The appellant claimed that the procurement committee's members were not present and there was not any tender box to drop the bids on the scheduled date, time and venue as mentioned in the NIT. As a result the procuring agency failed to ensure the procurement principles while conducting instant procurement, which can also be verified through video evidence captured on 24.12.2019 in reliance of The Qanun-e-Shahadat Order, 1984.

Procuring Agency's Version

6. Mr. Suhail Ahmed Memon, Executive Engineer '*representative of the procuring agency*' clarified that the bidding process was conducted in a transparent manner whereby 85 bidders participated against NIT's 60 works; however, the appellant neither attended nor submitted bids on the schedule date and venue for opening of bids.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative to present details/ minutes for opening of bids as well as bid opening sheet in terms of Rule-41(9) of SPP Rules, 2010⁹, read with Clause-7.5 – reproduced below – of the Authority's Procurement Regulations (Works)¹⁰;

Clause 7.5 – Procurement Regulations (Works)

Bid Opening (Rule-41): Bids shall be opened within one hour of the deadline for submission of bids. All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person at the time and place announced in the invitation to bid and the bid opening is not delayed on the plea of absence of bidders or their representatives, as their presence is optional. The public tender opening is an important step in the tendering process as opening of tenders publicly helps to demonstrate that the tendering process is transparent and increases bidders' confidence in the public procurement process. **Steps to be followed are stated as under:-**

- The tender box should be opened and all tenders removed and counted;
- First envelopes marked "Withdrawal" should be read out and the envelope containing the corresponding tender shall be returned without being opened. The withdrawal must be noted on the record of the tender opening;
- Next, envelopes marked "Modification" should be opened one at a time and the envelope containing

⁶ The representative of the procuring agency appeared before the Committee on 13.02.2020

⁷ 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

⁸ The Authority examined the documents – for ascertaining the maintainability – before placing the case for hearing by the RC

⁹ 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

¹⁰ <http://www.pprasindh.gov.pk/downloads/files/Guidelines2010-11NewOriginal280511.pdf>

the corresponding tender located and opened. Details of the modified tender should be read out and recorded, ensuring that the details relate to the modified, not the original tender. Both the original tender and modification should be stamped on key pages and signed or initialed by the chairperson of procurement committee and by all members of the procurement committee, if demanded.

- (iv) After counting the remaining tenders, each tender envelope should be identified by giving it a serial number divided by total number of tenders received. When 5 bids are received then bids will be identified by marking them in following manner; 1/5, 2/5, 3/5, 4/5, 5/5;
- (v) **Bid opening sheet (BOS) is prepared containing the information relating to bids announced at the opening;**
- (vi) Tenders should then be opened, one at a time, and the relevant details i.e. the name of the bidder, total amount of each bid, alternative bids discount amount/percentage, and amount of call deposit and name of bank should be read out aloud and recorded as a line item against each serial number in the bid opening sheet. Reading out prices should avoid any disputes regarding price changes at a later date;
- (vii) Officer/ official chairing procurement committee shall encircle the rates and total bid price and all the members of PC shall sign each and every page of financial proposal;

- ◆ The procuring agency's representative stated that they prepare bid evaluation reports as well as well minutes of the meeting, **which are still under preparation.**
- Syed Adil Gilani and Engineer Munir Ahmed Shaikh (Members of Review Committee) pointed out that the procuring agency was required to prepare bid opening sheet while opening of bids in compliance of the regulation reproduced hereinabove for ensuring fairness and transparency in terms of Rule-4 of SPP Rules, 2010¹¹, which are key parts of the procurement principles and needed to be ensured at each stage and absence of such documents in defense supports the appellant's contentions¹². Subsequently, the Chair asked the procuring agency's representative about the method of procurement used¹³ and compliance made with regard to the instant procurement's observations conveyed by the Authority through PPMS on 26.11.2019¹⁴;
 - ◆ The procuring agency's representative was unaware for any observation conveyed by the Authority through PPMS website and further confirmed that the procurement contracts have not been made yet.

Review Committee's Findings

7. After hearing the parties at length and close scrutiny of the procurement record, the Committee is of view that the bids were scheduled to be received and opened on 24.12.2019¹⁵; however, the procuring agency has failed to provide probable evidence – **bids opening sheet containing details of bidders' participation along with the quoted bids against each work** – in support of publicly opening of bids as required under Rule-41(9) of SPP Rules, 2010, read with Clause-7.5 of the Authority's Procurement Regulation (Works)¹⁶. Secondly, the procuring agency failed to rectify the NIT's infirmities as conveyed by the Authority through PPMS website¹⁷. Such observations/ infirmities were included, but not limited to, *constitution of the CRC in consonance with Rule-31(2); disclosing the method of procurement, minimum experience and incorporation of the integrity pact within the bid documents in terms of Rule-21(1)(g) & 46(1)(a)(i) & 89 of SPP Rules, 2010, respectively*, albeit, rectification of such infirmities and procedural requirements can be addressed through inviting afresh bids.

Review Committee Decision

8. In light of the findings/ reasons as mentioned under para-7, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed contract

¹¹ 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

¹² The Authority vide letters dated 17, 23 & 30.01.2020 advised the procuring agency to bring procurement record for defending the case, nevertheless, the procuring agency failed to present the same

¹³ See observation # 3 under NIT's details section [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]


¹⁴ See the observations under NIT's details section [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

¹⁵ As per schedule for submission and opening of bids mentioned in the NIT

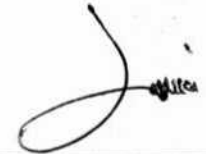
¹⁶ Ibid

¹⁷ Ibid

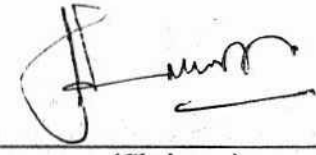
against the procurement works, therefore, the procurement proceedings for the instant works may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010¹⁸, and fresh tenders be floated in terms of Rule-26 of SPP Rules, 2010. **Compliance of this decision shall be submitted to this Authority within 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

¹⁸ 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.