



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-935/2019-20/2043

Karachi, dated the 05 March, 2020

To,

The Executive Engineer,
Public Health Engineering Division – I,
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 WSKB & Company v. Public Health Engineering Division – I Hyderabad] held on 26th February, 2020, for your information/ compliance 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, Public Health Engineering Department, Karachi.
2. The Chief Engineer, Public Health Engineering Department, 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/ Members Review Committee.
6. M/s WSKB & Company, Suite # B-1, 1st Floor, Court View Apartment, Court Road, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-935/2019-20

Karachi, dated the March, 2019

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

(Appeal)

M/s WSKB & Company

Versus

Public Health Engineering Division - I Hyderabad

(NIT ID # T00527-19-0006 dated 25.11.2019)

Facts and background

The appellant, M/s WSKB & Company, Government Contractor Karachi, lodged a complaint (vide letter No.WSKB/524 dated 15.01.2020) addressed to the Chief Engineer, Public Health Engineering Department Hyderabad/ Chairman Complaints Redressal Committee (CRC) and copy endorsed to this Authority against the NIT # TC/1749/2019 dated 19.11.2019 floated by Executive Engineer, Public Health Engineering Division-I, Hyderabad '*the procuring agency*' for procurement of three works '*rehabilitation of rural water supply scheme Jaindo Halipota Taluka Hyderabad (Rural) District Hyderabad and others*'¹ whereby the appellant raised concerns with regard to his disqualification on the pretext of non-submission of earnest money. In turn, the Authority (vide letter dated 17.01.2020) 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. In response, the procuring agency's CRC called its meeting to 22.01.2020 and then furnished its decision (vide letter No.GM/PHED/CRC/161/2020 dated 24.01.2020), which is reproduced hereunder³:

[CRC meeting was arranged in response to complaint against NIT No. TC/1749 dated 19.11.2019 for works of Public Health Engineering Division No.I, Hyderabad. The NIT was hoisted on SPPRA website as well as published in newspapers. Complainant M/s WSKB & Company, Government Contractor, approached Chief Engineer PHED Hyderabad who is Chairman CRC. The CRC meeting was called vide letter GM/PHED/CRC/121 dated 17.01.2020 scheduled on 22.01.2020 at 12.30 p.m. On query from Chair, Executive Engineer Public Health Engineering Division No.I, Hyderabad intimated that when technical proposal of aforementioned contractor was opened in the presence of Procurement Committee, it was found that 03 Nos. pay orders as tender fee were not found in the envelope so his technical proposal could not be entertained and the contractor or his representative was not present at the time of technical opening. On query from Chair, contractor admitted that we or our representative could not attend said meeting due to another NIT in Umerkot. Para No. 13 of NIT published in newspapers was read-out aloud as 'all the participating contractors are advised to

¹ Detailed description/ nature of the works can be accessed through instant procurement's NIT available on the PPMS website at ID # T00527-19-0006 [<https://ppms.pprasindh.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 <http://www.pprasindh.gov.pk/committee/34CRCPHEDHyd29012020.PDF>

send authority letter, if they nominate someone on behalf of them to participate in the tendering process accordingly.' On query from Chair, contractor informed that original pay orders were annexed with technical proposal and he has photocopies available of same and he showed the forum these copies. On query from chair, Executive Engineer Public Health Engineering Division No.I, Hyderabad denied the attachment of pay orders and showed forum technical proposal without pay orders. During meeting it was observed that District Accounts Officer Hyderabad did not attend meeting. After detailed deliberation it was concluded that further discussion of CRC under circumstances mentioned above will be wastage of time. Therefore, complaint of M/s WSKB & Company disposed of accordingly.]

3. Meanwhile, the appellant (vide letter No.WSKB/541 dated 22.01.2020) preferred an appeal, in the absence of review appeal fee⁴, stating that the CRC, while hearing the case on 22.01.2020, threatened the appellant's representative to withdraw their case otherwise face consequences. Resultantly, the appellant requested the Authority to review their case for award of procurement contract to them, appellant being the lowest evaluated bidder. In turn, the Authority (vide letter dated 24.01.2020) forwarded the appellant's matter to the procuring agency with an advice to update/ confirm status of the appellant client's bid security, latest by 30.01.2020, in terms of Rule-32(1) of SPP Rules, 2010⁵, **for ascertaining the maintainability of the case**; however, the procuring agency failed to respond within prescribed time. Simultaneously, the Authority advised the appellant to submit review appeal fee, which was submitted by the appellant (vide letter No.WSKB/547 dated 28.01.2020) to this Authority.

4. Accordingly, the appellant's case was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 13.02.2020 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 dated, time, and venue. In compliance, Mr. Junaid Soomro '*representative of the appellant*' appeared before the Review Committee; whereas, the representative of the procuring agency did not attend the meeting, due to which the Committee decided to provide an opportunity to the procuring agency to appear in next meeting, scheduled on 19.02.2020 & then on **26.02.2020**, for defending the position/ case and notices in this connection were again issued to the parties concerned (vide this Authority's letters dated 14 & 20.02.2020). In compliance, Mr. Shoukat Ali Memon, Executive Engineer, and Muhammad Tariq, Tender Clerk, Public Health Engineering Division – I Hyderabad '*representatives of the procuring agency*' and Mr. Junaid Soomro '*representative 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 the case/ version on the instant procurement before the committee.

Appellant's Version

6. Mr. Junaid Soomro '*representative of the appellant*' apprised the Committee of appellant's submission of bids⁶, along with bid security/ tender fee and other supported documents through mail/

⁴ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

⁵ Rule-32(1) provides that the 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.

⁶ Submitted/ quoted on the bid documents downloaded from the Authority's website

courier service (TCS)⁷, under instant procurement's three works that were received by the procuring agency on 11.12.2020 in terms of Rule-24(2) of SPP Rules, 2010⁸. Subsequently, the appellant (vide letter No.WSKB/444 dated 14.12.2019), followed by reminders (vide letters dated 24.12.2019 & 0.01.2020), requested the procuring agency to update the bid evaluation results. In response, the procuring agency (vide letter No.TC/05/2020 dated 08.01.2020) stated that (reproduced herewith) *'this office has already informed you vide letter No.TC/1913 dated 16.12.2019 that your technical & financial bid received through TCS to this office, but from the scrutiny of tender documents it reveals that 03 No.s pay orders for the works at Sr. # 1, 2 & 3 are not attached with the application. Therefore your application as per SPPRA Rules does not fulfill the requirement of bidding process and do not entertained in the said process. It is further informed you that the bidding process for aforementioned NIT has been completed and tender allotted to lowest evaluated bidder following all codal formalities.'*

7. The appellant's representative contended that they submitted original pay orders (tender fees) along with their bids that might have deliberately misplaced by the procuring agency in order to reject the appellant's bids otherwise the procuring agency had also an alternative option to verify the pay orders from the issuing bank.

Procuring Agency's Version

8. Mr. Shoukat Ali Memon, Executive Engineer, Public Health Engineering Division – I, Hyderabad '*representative of the procuring agency*' clarified that the appellant's bids for NIT's all works were received to the procuring agency through mail that did not contain the pay orders/ tender fees even for a single work; resultantly, the procuring agency rejected the appellant's bids. Moreover, the appellant's representative failed to attend the bid opening meeting for witnessing the bidding process undertaken by the procurement committee. The procuring agency in this regard also sent a letter to the appellant to fulfill the formalities (tender fee); however, the same letter went un-responded.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative to confirm the date for issuance of letter to the appellant;
 - ◆ The procuring agency's representative stated that they sent messages to the appellant on 24 & 25.12.2019 via whatsapp – an instantaneous mode of communication⁹.
- Syed Adil Gilani and Engr. Munir Ahmed Shaikh (Members of Review Committee) pointed-out that the bids under instant procurement, as per extended period¹⁰, were scheduled to be opened on 26.12.2019 then how the procuring agency came to know about the unavailability of tender fee pay orders on 24.12.2019;
 - ◆ The procuring agency's representative stated that the appellant submitted two envelopes – one containing an application containing list of documents and another containing financial proposal. The procuring agency opened envelope containing application only.
 - The appellant's representative claimed that they submitted two envelopes containing technical and financial proposals separately. *On a query (any action taken by the appellant after receiving the procuring agency's message) raised by*

⁷ TCS Tracking ID # 306028126075 (delivered to/ received by Mr. Raees on 11.12.2019)

⁸ 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

⁹ The messages were communicated to the appellant by Muhammad Tariq, Tender Clerk of the procuring agency and copies of these messages/ snapshots are available to the Authority for record purpose

¹⁰ See corrigendum issued vide the procuring agency's letter No.TC/1903/2019 dated 13.12.2019 for submission/ opening of bids on 26.12.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

the Committee, the appellant's representative responded that the procuring agency held such correspondence with their Chief Executive Officer (Mr. Waliullah Bhutto) who could further clarify to such query.

- Subsequently, the Chair of the Committee asked the procuring agency's representative to update the current status of instant bidding process;
 - ◆ **The procuring agency's representative confirmed that procurement contracts have not been awarded yet.** The bid evaluation reports have been prepared¹¹ and same are ready for posting on the Authority's website in terms of Rule-45 of SPP Rules, 2010¹².

Review Committee's Observations/ Findings

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

- **Appellant's Cases:** The standard operating procedure required to be followed by the procuring agency for opening of submitted tender(s) is expressly mentioned under Clause-7.1 of the Authority's Procurement Regulations (Works)¹³, which provides that the bids received by the procuring agency shall be kept unopened until the time for the public tender opening to promote fair competition that was not ensured under instant procurement as revealed via whatsapp messages communicated/ forwarded to the appellant by the procuring agency's Tender Clerk on 24 & 25.12.2019 i.e. before deadline for submission/ opening of bids that was 26.12.2019. The question arises here as to how the procuring agency or Tender Clerk was virtually ascertain, if it presumed the appellant's proposal was not opened, for non-submission of tender fee and then who authorized the Tender Clerk to make correspondence with the appellant as such responsibility, for opening/ evaluation/ clarification of bids, under the rules is of procurement committee in terms of Rule-8(2) of SPP Rules, 2010¹⁴, read with Clause-7.5(xi) of the Authority's Procurement Regulation (Works)¹⁵. Per contra, the referred clause read with Rule-41(4) of SPP Rules, 2010¹⁶, also clarifies that it is an optional, but not a compulsion factor, for the appellant or his representative to attend the bid opening meeting.
- **Procurement Observations:** The procuring agency failed to comply with the following requirements as required under the referred rules:
 - ◆ The procuring agency could not rectify the NIT's observations/ infirmities as conveyed by this Authority through PPMS website on 29.11.2019¹⁷. *These observations were*

¹¹ The procuring agency shared copies of minutes of the meeting and bidders' qualification report for the Authority's record

¹² Rule-45 provides that the procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract

¹³ <http://www.pprasindh.gov.pk/downloads/files/Guidelines2010-11NewOriginal280511.pdf>

¹⁴ Rule(8)(2) provides that [the procurement committee shall be responsible for] carrying out technical as well as financial evaluation of the bids

¹⁵ [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] **upon completion of tender opening, all members of the PC shall sign the bid opening sheet.**

¹⁶ Rule-41(4) provides that 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

¹⁷ See the observations under NIT's details section [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]




included posting of annual procurement plan on the Authority's website and use of standard bidding documents in terms of Rules-11, 21(3) & 21(1) of SPP Rules, 2010¹⁸;

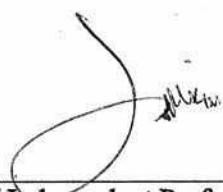
- ◆ The procuring agency's representative, during the case proceedings, submitted bidders' qualification/ technical evaluation reports to the Review Committee, which observed that the procuring agency adopted **scoring criteria** – for technical evaluation of bids – that was not mentioned or part of the bidding documents as required under Rule-42(1) read with Rule-21(A) of SPP Rules, 2010¹⁹.

Review Committee Decision

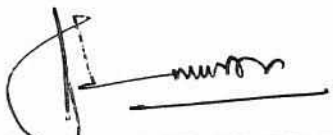
10. In view of the foregoing findings/ observations, as at para-9, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed contract against instant procurement works, therefore, the procurement proceedings may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010²⁰, 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
(Rtd.) Executive Engineer
Public Health Engineering Department
Government of Sindh



(Chairman)
Abdul Rahim Sheikh
Managing Director
Sindh Public Procurement Regulatory Authority

¹⁸ Rule-11 provides that all the procuring agencies shall devise a mechanism for planning in detail for all proposed procurements...the annual or longer rolling plan, as the case may be, thus prepared, shall be posted in advance on the Authority's website as well as on website of the procuring agency, if the procuring agency has its own website. Rule-21(3) & (1) provides that procuring agencies shall use standard bidding documents...shall include [the following information] letter of invitation for bid; data sheet containing information about the assignment; instruction for preparing bids; amount and manner of payment of bid security and performance guarantee; manner and place, date and time for submission of bidding documents; manner, place, date and time of opening of bids; a detailed and unambiguous evaluation criteria; terms and conditions of the contract agreements, as far as already known by the procuring agency...a copy of integrity pact to be signed by the parties etc.

¹⁹ Rules-42(1) & 21(A) provides that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. The procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. **The failure to provide a clear and unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement**

²⁰ 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.