



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2074/2020-21/400 & Karachi, dated the 16th March, 2021

To,

Executive Engineer,
Public Health Engineering Division,
Government of Sindh,
SHIKARPUR.

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/s Executive Engineer Public Health Engineering Division Shikarpur, held on 10.02.2021 for taking further necessary action in compliance of referred decision, under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The P.S to Secretary to Government of Sindh, Public Health Department.
2. The Superintendent Engineer, Public Health Engineering Department Sukkur.
3. Assistant director (I.T), SPPRA (with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010)
4. The Staff Officer to the Chairman / Members Review Committee.
5. The Appellants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-699/2019-20/

Karachi, dated the 25th February, 2021

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

(Appeal)

M/s WSKB & Company

VS

The Executive Engineer Public Health Engineering Division Shikarpur (Procuring Agency)

(NIT T00757-19-0003 dated 10.10.2019)

Facts and background

The appellant¹M/s WSKB & Company, lodged a complaint (vide letter dated 14.11.2019) addressed to the Chief Engineer Public Health Engineering, Sukkur, against the NIT T00757-19-0003 dated 10.10.2019 that was floated by the Executive Engineer, Public Health Engineering Division, Sukkur, "procuring agency". The appellant complained that the procuring agency has violated SPP Rules- issued corrigenda and misused authority- during the procurement process. The complaint also claimed that forgery has been committed by the procuring agency. The Authority forwarded the complaint of the complainant and advised to redress the grievances of the appellant in terms of Rule 31(3) & 5² of SPP Rules and directed to not award contract before CRC decision.

2. Subsequently, the appellant preferred an appeal of before the review committee of SPPRA and submitted review appeal fees³. He stated that CRC was headed by the Chief Engineer Public Health Engineering Sukkur and claimed that the CRC decision was not impartial. Government by the Authority or Managing Director it was done by offices which were against the Rules/procedure. The Authority rejected the application of appeal due to the time bar.

3. Meanwhile, the firm approached to the Honorable court of Sindh, Karachi and filed Constitutional Petition-C.P D-2138 of 2020-.The Honorable High Court of Sindh had been pleased to pass the order in the C.P D-2138 of 2020 on 26.1.2020.The Operative part is reproduced as under:

As a result of above discussion, the rejection letter dated 12.03.2020 is set aside with direction to the Appellate Authority (SPPRA) to decide the appeal of the petitioner within ten (10) days after providing ample opportunity of hearing to the petitioner and the representative of the Procuring Agency and the respondent No. 5 and pass speaking orders, Petition is disposed of accordingly along with pending application

¹M/s WSKB & Company Karachi.

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

³This Authority's Office Order No. Dir(A&FVSPPRN18-1910325 dated 26.07.2019 [<https://fpms.pprasindh.gov.pk/PPMS/>])

4. Accordingly, the appellant's case was taken up by the review committee⁴ for hearing in its meeting scheduled on 10.02.2021 at 11.00 a.m. and notices, in this regard, were already issued to the parties concerned as mentioned above. The meeting was attended by the Chairman and the members of the Review Committee. Bashir Ahmed Shaikh, Special Secretary Public Health Engineering & Sanaulah Memon attended the meeting being the representatives of the procuring agency whereas Abdul Fatah Chandio was present being the appellant of the matter. Mr Iqbal Ahmed Shaikh (Responded No. 05) also attended the meeting as per the directions of the honorable high court of Sindh.

REVIEW COMMITTEE PROCEEDINGS

5. The meeting was started with the recitation of the Holy Quran. The Chairperson of the Review Committee continued 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.

The appellant's version

1. The appellant submitted that the Executive Engineer, Public Health Engineering division Shikarpur, called technical/ financial bids on 25.09.2019 for the work of "REGABILITATION AND IMPROVEMENT OF URBAN DRINAGE SCHEME SHIKARPUR CITY (NEW AND REMENING WORK) (RE-REVISED) for the estimated cost of Rs.552.70 million and time for completion shown was as 12-months, wherein, as per condition-5, PEC Registration Certificate of C-2 category with having field of specialization code as CE-09, CE-10, EF-04, EF-05, EF-11, ME-03, and ME-06.

2. In response to the advertisement, the appellant applied for issuance of tender vide letter No. WSKB/349 dt.30.09.2019.

3. The appellant further submitted that NIT called on 25.09.2019, was cancelled by Executive Engineer, Public Health Engineering Division, Shikarpur vide office order No. TC/G-148/1235/2019 dated. 30.09.2019 with the remarks that "Tender process could not be completed due to technical mistake.

4. It was informed by the appellant that after taking lapse of 13-days, the Executive Engineer, re-invited same NIT on 08-10-2019 vide his office letter No.TC/G-148/129/2019 dated. 08-10-2019 with same condition.

5. The appellant further submitted that the executive engineer issued 1st corrigendum vide his office letter No.TC/G-158/132/2019 dated 16.10.2019 as in original NIT, the procuring agency previously levied condition No.8 (e) that contractor will provide Bank Statement, conforming cash availability as 25% of estimated cost and by issuing this corrigendum Executive Engineer reduced cash availability from 25% to 10% and with whom orders he relaxed 15% cash availability?, however NIT amount, pertains with the competency of Chief Engineer.

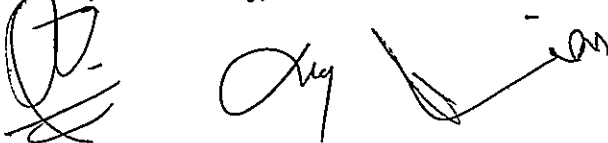
6. The appellant also argued that the Executive Engineer, again issued 2nd corrigendum and date of receiving / opening was extended i.e., receiving on 19-11-2019 up to 2.00pm vide his office letter No.TC/G-148/1383/2019 dated.31.10.2019 with the remarks that up to 31.10.2019 no response from code required only E-09, CE-10, EE-04, and ME_06 and accordingly with drawn condition of having specialized PEC code EW-05, EE-11 and ME_03 with whom orders. However, NIT amount pertains with the competency of Chief Engineer.

7. The complainant also stated that he lodged protest against the procuring agency's false remarks given in corrigendum no.2, that dates extended due to un-response from contractors vide our letter No.

⁴On receipt of appeal, along with all requisite Information and documents, the Chairperson shall convene a meeting of the Review Committee within seven working days. It shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee as and when called and produce documents, If required.

The Review Committee shall hear the parties and announces Its decision within ten working days Of submission of appeal.

However, In case of delay, reasons thereof shall be recorded In writing.



WSKB/387 dated.31-10-2019 and his given remarks denied and the same letter was also addressed to the SPPRA as well.

8. The complainant also informed that the Executive Engineer, Public Health Engineering, Division Shikarpur, again issued 3rd corrigendum vide No.TC/G-148/1459/2019 dated 19-11-2019 and extended the date of issuance of tender up to 11.12.2019 and date of opening up to 12.12.2019, but no timing was mentioned.

9. The appellant also argued that, again Executive Engineer, Public Health Engineering Division, Shikarpur extended the date of opening up to 27.01.2020 vide bids 4th -corrigendum letter No.TC/g-148/66/2019 dated. 15-01-2020 with the remarks given as "Due to absent of chairman and Member of Procurement Committee". But question is about issuing late corrigendum i.e from 12.12.2019 to 15.01.2020 the Executive Engineer was on secret & hidden mission of managing the tender and finally date extended on 15-01-2020.

10. The appellant alleged that again Executive Engineer, failed to manage the tender and extended 5th time the date of opening on 14-02-2020 @ 12.00 noon vide his letter No TC/G-148/173/2021 dated. 11.02.2020, but again from 27.01.2020 the Executive Engineer remained out of touch / screen / under cover. In this connection refer our letter No.WSKB/547 dated. 13.02.2020.

11. Furthermore the appellant stated that after opening of tender and the firm being aggrieved submitted complaint to SPPRA regarding not allowing the representative of the firm during opening process of tender by Executive Engineer vide our letter No. WSKB/575 dated. 14-02-2020 and besides the complaint submitted that their financial bid envelope has been found opened and re-packed and requested for investigation and enquiry.

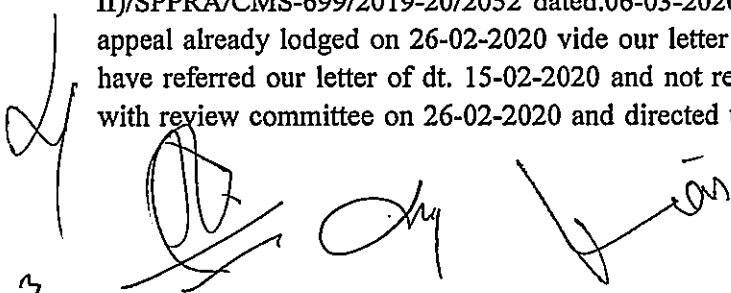
12. The appellant informed that on 15-02-2020, the firm submitted complaint to the chairman CRC/ Chief Engineer, PHE, Department Sukkur vide our letter No.WSKB/577 dated 15-02-2020.

13. The appellant further submitted that the Chief Engineer, Public Health Engineering Department, Sukkur/Chairman CRC, convened a CRC meeting on 19-02-2020 vide his letter No.GM/PHED/411/2020 dated. 17-02-2020 and furthers referred their letter No.539 dated.22.02.2020 in response to Authority office letter No. AD – II)/ SPPRA / CMS -699/2019-20/1861 dated.21-02-2020 .The appellant also claimed that in letter the firm alleged that chairman CRC is the party to fraud , therefore in principle the chief Engineer should not have chaired the CRC meeting & must have quitted from the Chairman ship being controversial , but he preferred to remain Chairman CRC to accomplish the task of fraud/forgery.

14. The appellant also informed that the Chief Engineer / Chairman CRC submitted his controversial decision of CRC held on 19-02-2020 vide his letter No.GM/PHED/471/2020 dated. 25-02-2020.

15. The appellant also submitted that on 26-02-2020, the firm submitted Review appeal to Honorable Managing Director, SPPRA, karachi vides letter No.598 dated. 26-02-2020 along with fee of Rs.50,000/- vide P.O/No.14042060 dt.26-02-2020 prepared from Habib Metropolitan Bank Limited, Main Branch, Karachi and that on 27-02-2020 the firm again sent reminder to Honorable Managing Director, SPPRA Karachi vide our letter No.599 dated. 27-02-2020.

16. The appellant also claimed that SPPRA authorities issued to the appellant letter No. AD(L-II)/SPPRA/CMS-699/2019-20/2052 dated.06-03-2020, which was in contradiction to the firm's review appeal already lodged on 26-02-2020 vide our letter No.598 dated. 26-02-2020, as SEPPRA authorities have referred our letter of dt. 15-02-2020 and not referred our complaint review appeal already lodged with review committee on 26-02-2020 and directed us to lodge an appeal to Review Committee within



10-days from announcement of date of CRC decision conveyed on 25-02-2020 whereas Review Committee over looked our already submitted review appeal on 26-02-2020 along with fee of Rs.50,000/- vide Habib Metropolitan Bank Limited Main Branch, Karachi, P.O No.1402060 dated 26-02-2020.

17. The appellant also submitted that the firm again re-requested to Honorable Managing Director, SPPRA, karachi vide our letter No. WSKB/614 dated. 07-03-2020.it was also contended that the Executive Engineer, Public Health Engineering Division, Shikarpur, issued work order to M/S Muhammad Iqbal Shaikh, contractor vide his office letter No.TC/G-148/321/2020 dated. 09-03-2020 as approved by the Chief Engineer, Public Health Engineering Department, Sukkur vide his approval letter No.GM/PHED/Tender/537/2020 dated04-03-2020.

18. The appellant claimed that as such the procuring agency violated the SPPRA rules-31/32 and should have waited for the issuing of work orders till the announcement of final decision of the Review Committee, whereas Final decision was not even conveyed and did not consider the violation of rules by procuring agency committed.

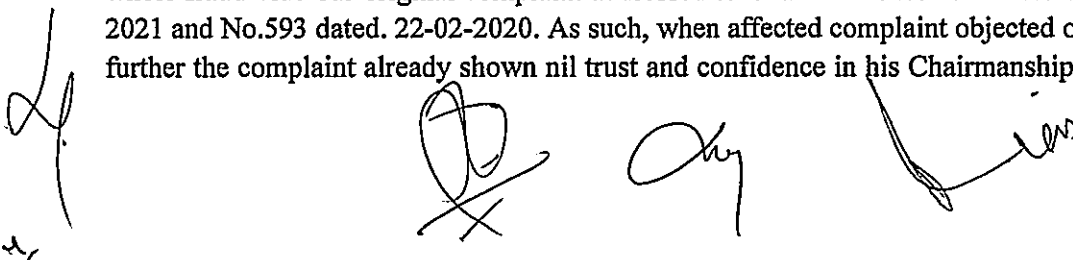
19. The firms submitted That surprisingly and un – expectedly SPPRA authorities dismissed the review appeal with the remarks given as “Time BAR” vide their letter no .AD (L-II)/SPRRA /CMS-699/2019-20/145 dated 13th March 2020, which actually we received through Honorable High Court of Sindh, Karachi, as original was not received to the firm.

20. The firm argued that, availing our fundamental and constitutional right, for justice against illegalities the appellant filed CP-No. D-2138/2020 in the Honorable High Court during Hearing on 26-01-2020, the appellant again has appeared to apprise his case for listening on merit and deciding on merit as the Executive Engineer, Mr. Sanaullah Memon and Chief Engineer Mr Shamasuddin Shaikh are involved in using unfair means, cheating, forgery and fraud to open our financial bids and maneuvering the tender in favor of M/S. Muhammad Iqbal Shaikh & Co, who very slightly, reduced their rate from they filled & quoted rate.

21. It was also apprised that since after opening of tender the firm lodged multiple complaints to all relevant forums regarding irregularity in Tendring process, but the Executive Engineer, with the connivance Chief Engineer Mr. Shamashuddin, managed to keep the firm out and shown as quoting lowest rate of M/s Muahmmad Iqbak Shaikh , which is un-imaginable , partial, fraudulent and dis honorable act because the difference is only of Rs.301430/- and it is man, made/hand fraud after opening of financial bid.

22. The firm also argued that over the original date of bid submission i.e 31-10-2019 and extended 5/6 times and finally bid opened on 14-02-2020 which is about 3-1/to 4- months' time period, now requested to examine the process of tendering and also examine the circumstances, reason and effect of repeatedly cancelation of NIT which was prepared on the basis of shifty and shaky documents as already admitted by the Executive Engineer on 30-09-2019 .That meant the procuring agency was taking time only to maneuver tender in favor M/S. Muhammad Iqbal Shaikh instead of having open competition and Executive Engineer and Chief Engineer (Mr. Sanaullah Memon and Mr. Shamasuddin Shaikh) lastly twisted in to whatever they want it.

23. In addition this, the firm submitted that the Government had notified vide Notification No. even dt.22nd November, 2019 as having Chief Engineering concern for chairmanship of CRC, whereas, as complainant pointed fingers on the credibility /role of Chief Engineer, Mr. Shamashuddin Shaikh, in whole fraud vide our original complaint addressed to Chairman CRC vide No. WSKB/577 dated.15-02-2021 and No.593 dated. 22-02-2020. As such, when affected complaint objected on his Chairmanship and further the complaint already shown nil trust and confidence in his Chairmanship, then, how CRC would



have observed the guidelines set by the SPPRA and how chairman will give complaint a justice on merit, therefore, honorable review committee is requested not to rely on the controversial decision of CRC as the rules of natural justice have not been protected at all by any forum.

24. It is therefore the firm requested that tendering process may kindly be declared as mis-procurement and officer involved in ill-gotten gain from managed tender be recommended for penalties as per department service rules because of their corrupt practices and contract awarded be get cancelled because the tender was awarded before announcement of final verdict pending with Honorable Review Committee of SPPRA. In addition, widen the scope of investigation and the case may also be referred for investigating through NAB on para -14 (1-7) of Minutes of CRC meeting to punish corrupt individuals / officials.

Procuring Agency's version

25. The procuring agency submitted that the tenders were called and the procuring agency was provided clear authorization and delegation of powers for procurement and the tender was initiated for the procurements after the approval of the competent authority.

26. The procuring agency admitted that NIT called on 25.09.2019, was cancelled by Executive Engineer, Public Health Engineering Division, Shikarpur vide office order No. TC/G-148/1235/2019 dated. 30.09.2019 with the remarks that "Tender process could not be completed due to technical mistake 'the same was published in the news papers and was hoisted on PPMS as well.

27. It was also admitted by the appellant that after taking interval of 13-days, the procuring agency re-invited same NIT on 8-10-2019. The appellant submitted that the re-invited NIT advertisement appeared in three widely circulated leading dailies of English, Urdu and Sindhi languages and the same was also hoisted on PPMS website,

28. The procuring agency submitted that the 1st corrigendum was issued that stated "In para no.8 (e) of technical proposed the cash availability may be read as 10% instead of 25%". the procuring agency submitted that it was also requested by the complainant to relax the condition of 25% cash availability in order to all participant to participate in the bidding.

29. The procuring submitted that 2nd corrigendum was issued and date of receiving / opening extended. The corrigendum stated;

Hence procedure will be repeated on next date viz: 19/11/2019 up to 01.00 PM & opened on 20/11/2019 upto 02.00 PM

Para No. 06 of above NIT, registration Certificate (valid up to June 2020) from Pakistan Engineering Council in category C2 and above with the field of specialization code CE-09, CE-10, EE-04 and ME-06

30. The Procuring agency also admitted that 3rd corrigendum was vide No.TC/G-148/1459/2019 dated 19-11-2019 and extended the date of issuance of tender up to 11.12.2019 and date of opening up to 12.12. 2019. The corrigendum stated"

The NIT called by this office vide No.TC/G-148/1291, dated: 08/10/2019 the amendment at Para 8 (e) has been made in aforesaid N.I.T as under: estimated cost may be deleted.

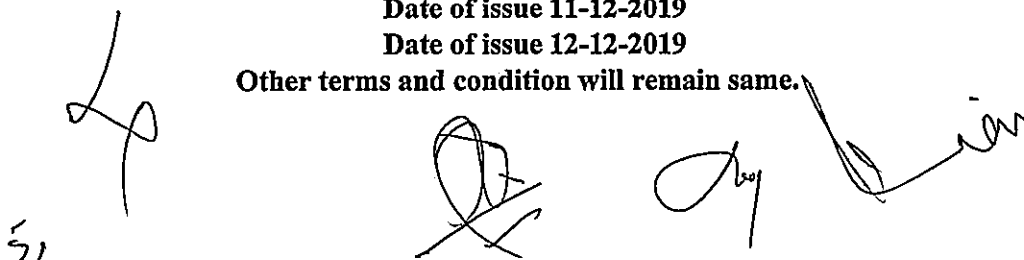
Also, the date of issue and opening is re-fixed as under:

Date of issue 11-12-2019

Date of issue 12-12-2019

Other terms and condition will remain same.

5)



31. The procuring agency submitted that as the corrigendum NO.3 clearly mentioned that only date of submission and opening was extended and the condition of 10% of cash was deleted. However, other terms and conditions remained same as these were mentioned earlier in the bidding documents and NIT including time.

32. The procuring agency submitted that Technical bids were opened publicly on 12.12. 2019 the same was witnessed by the all bidders and the committee decided to announce results after examining all the Technical bids as per Qualification/Eligibility criteria.

33. The procuring agency submitted that the Technical bids were already opened and date was fixed to open the financial bids on 15/01/2020 however, due to the absence of the Procurement Committee Chairman and members the date for the Financial opening was fixed on 27.1.2020. Therefore, 4th corrigendum was issued on 15.01. 2020. The fourth corrigendum stated that

Due to absent of Chairman and Member of Procurement Committee the N.I.T has been postponed.

The next date of the opening of Financial Bid have been fixed 27-01-2020, whereas other terms and condition will remain same.

34. The procuring agency also submitted that on 27.01.2020 the financial bid opening could not be held. Therefore, the date for the financial opening was refixed on 14.2.2020 and 5th corrigendum was issued.

The fifth corrigendum stated:

Due to absent of Chairman and Member of Procurement Committee the N.I.T has been postponed.

The next date of the opening of Financial Bid has been fixed 14-02-2020, whereas other terms and condition will same.

35. The procuring agency argued that the bid submission and bid opening was carried out in a transparent manner as per rules. The bids were opened within one hour of the deadline for submission of bids. The procuring agency submitted that all bids were opened publicly in the presence of all the bidders, or their representatives at the time and place announced in the invitation to bid.

36. The procuring agency further submitted that the procurement committee read aloud the name of the bidder and total amount of each bid. All bidders signed an attendance sheet which may be perused by the record and the same is available at PPMS website. The official chairing of the procurement committee encircled the rates and all the members of procurement committee signed each and every page of financial proposal of bidders. The procuring agency submitted that the procurement committee issued the minutes of the opening of the tenders and the same are available at PPMS website. The procuring agency submitted the appellant was present at the time of bid opening and did not raise any objections at the time of financial bid opening.

37. The procuring agency also submitted that appellant submitted an application to the Chief Engineer, Public Health Engineering Department, Sukkur/Chairman CRC to convene a CRC meeting. The meeting of CRC was held on 19-02-2020 and the appellant was heard at length and CRC issued the minutes and the complaint was dismissed.

The CRC decision is as under

The Chairman Redressal Committee asked from Chairman Procurement Committee regarding traces of tempering of Financial Bid Envelope were seen before opening of the Bid. Where he informed that neither had I sensed nor the representative of M/S WSKB raised any

objection of the tempering of reopening & repacking of Financial Bid Envelope.

However, Mr. Sanaullah Memon, Executive Engineer /Member of Procurement Committed confirmed the meeting with Mr. Waliullah Bhutto, as stated by Mr. Waliullah.

CONCLUSION.

The complaint relied on the tactics of blaming and failed to prove authentically the tempering his Financial Bid before opening. The Representative Mr. Suleman Bhutto also remained silent and did not raise objection at the time of opening. Hence, his complaints has no weight and is declared Null & Void.

38. The procuring agency submitted that the decision of CRC was issued on 25.2.2020 and the same was communicate to the bidder and also to SPPRA.

39. The procuring agency submitted that after the announcement of CRC decision, contract was signed with the lowest bidder on 09.3. 2020.The appellant submitted that contract was signed with the approval competent Authority.

40. The procuring agency vehemently denied any offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence for wrongful gain in the instant procurement process.

Findings of the Review Committee

From the perusal of record available, statements submitted by the appellant, procuring agency and Iqbal Ahmed Shaikh (**Respondent No 5**) the Review Committee finds seven major points of contention among the parties.

41. Firstly, the appellant has challenged the Authority of the procuring agency for making changes in the terms and conditions whereas, the procuring agency submits that it has done changes in accordance with the rules to motivate competition and encourage participation of bidders.

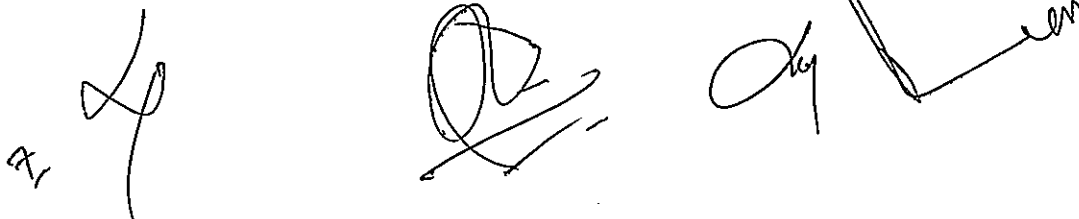
42. Secondly, the bidder has also contended and questioned the issuance of the corrigenda and extension of bid submission date. The appellant submits that it's against the SPP Rules whereas, the procuring agency claims otherwise.

43. Thirdly, the bidder conceives the issuance of the corrigenda as mala fides intention of the procuring agency. However, the procuring agency views the issuance of corrigenda as bona fides and in good faith without any discrimination.

44. Fourthly, the appellant has argued that the procuring agency has not complied with rules in terms of bid validity period. The procuring agency claims that complete process of the procurement was completed in 90 days period. For any unforeseen delay, the procuring claims to have gotten the approval of the competent authority,

45. Fifthly, the appellant has also challenged the signing of contract by the procuring agency, on contrary to that the procuring agency submits that the contract was signed in accordance with the rules.

46. Sixthly, the appellant has contended that the instant procurement may be declared as mis-procurement because the appellant believes that the procuring agency has not complied with the SPP Rules. The procuring agency believes otherwise.

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47. Seventhly, the procuring agency conceives that the procuring has manipulated the financial proposal of the appellant whereas; the procuring agency believes that the process of the procurement was completed in a transparent manner.

Observations of the Review Committee

i. The Authority of the procuring agency for making changes in the terms and conditions

48. The appellant has challenged the Authority of the procuring agency for making changes in the bidding documents. The bidder submitted that the procuring agency was required to show the competency of making such changes in the bidding documents and issuing corrigendum. The Committee is of the view that the preparation of Notice inviting Tender and preparation of bidding documents is the function of the procurement committee of the respective procuring agency. The functions of Procurement Committee are well defined in SPP Rules 2010 (amended up to date) and the same are well defined in the Regulation of Works.

49. Rule 8 of SPP Rules

Functions and Responsibilities of Procurement Committee(s)
- Procurement committee(s) shall be responsible for; (1) Preparing bidding documents; (2) Carrying out technical as well as financial evaluation of the bids; (3) Preparing evaluation report as provided in Rule 45; (4) Making recommendations for the award of contract to the competent authority; and (5) Perform any other function ancillary and incidental to the above.

50. The functions of Procurement Committee can also be observed at the Regulation of works issued by SPPRA. The Regulation 3.2 clearly mentions the functions of the procurement Committee.

3.2 Functions of Procurement Committee. The Procurement Committee shall perform following functions: (i) Select the most appropriate method of procurement from one of the procurement methods specified in the rules considering the nature of procurement. Approval of procurement method shall be obtained from the Departmental Procurement Committee/Head of Department/Project director/ or Officer to whom powers are delegated;

(ii) Preparing prequalification/bidding documents;

(iv) Preparing invitation of bids/pre-qualification notice;

(v) Short listing of contractors/firms responding to the pre-qualification notice, where applicable, in accordance with the criteria set forth in the notice or in the bidding document;

(vi) evaluation of bids and quotations including technical qualification and financial proposals if any, according to the selection method and evaluation criteria, mentioned in the notice inviting bids notice for pre-qualification or bidding document;

(vii) finalization and recommendation of successful bidder;

(viii) perform any other function ancillary and incidental to the above, for the example it may; a. cancels the bidding process at any time prior to the acceptance of a bid or proposal; (Rule 25) b. upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such

grounds; (Rule 25) c. recommend to the competent authority for inviting afresh tenders in case an infirmity has surfaced in the bidding documents. (Rule 26)

51. The Committee is of the view that the complete process of procurement revolves around the functions of the procurement committee. The procurement committee is fully authorized to prepare bidding documents, prepare NIT, open the bids, make technical & financial evaluation of bids, recommend to the competent Authority and even the procurement committee may cancel the bids. Hence, the Procurement Committee is fully authorized to make changes in the terms and conditions regarding 25% cash in accordance with the functions assigned to the procurement Committee under rules.

52. Furthermore, from the analysis of the Regulation 3.2, one important point can be understood regarding the need for approval of the Competent Authority. The Regulation 3.2(i) is important;

(i) Select the most appropriate method of procurement from one of the procurement methods specified in the rules considering the nature of procurement Approval of procurement method shall be obtained from the Departmental Procurement Committee/Head of Department/Project director/ or Officer to whom powers are delegated.

53. The Rule mentioned above makes clear that the mandatory approval is required for the adoption of method of the procurement. The rule has required the approval of competent Authority just for the adoption of the method of the procurement whereas, all other functions are at the disposal of the Procurement Committee which may suggest the changes in accordance with the rules, needs, objectives, circumstances and conditions accordingly.

54. Interestingly, the procuring agency deleted the condition of 25% cash on the request of the appellant. The appellant submitted reservations vide letter Ref No WSKB/353 dated 23.9.2019 wherein the appellant submitted that the clause of 25% cash availability is inserted to support favorite contractor. The operative part is reproduced as under

“Kindly asked the quarter concerned that no any clause regarding availability of cash is presented in SPPRA rules, whereas the Public Health Engineering Divisions are qualifying contractors on the basis of cash availability is important than SPPRA authorities are requested to kindly prepare caluse and rules for the same. “

55. The reservation of the bidder was satisfied with the issuance of corrigendum NO.TC/G-148 /1459 of 2019 Shikarpur dated 19.11.2019.

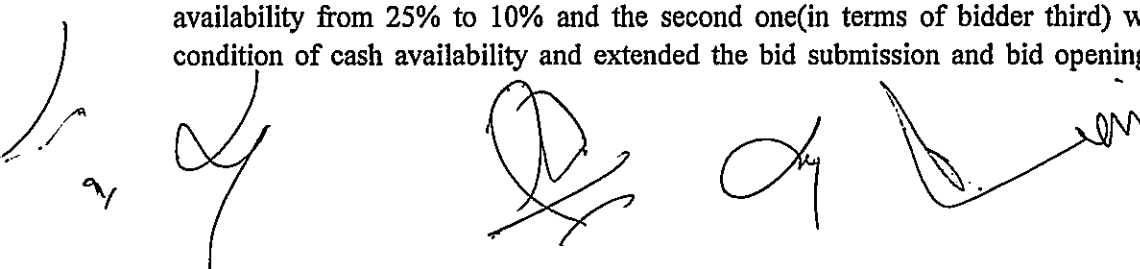
The NIT called by this office vide NO.TC/G-148 /1291 of 2019 dated 8.10.2019 the amendment at Para8 (e) has been made in aforementioned NIT as under.

The confirming cash availability 25% and 10% of the estimated cost may be deleted.

When the query of the bidder was satisfied with the issuance of the corrigendum, the bidder started to question the Authority of the Procurement Committee and Procuring agency. The intention of the bidder seems to be confusing in this regard.

ii. Extension of bid submission date and issuance of corrigenda

56. The bidder has also questioned the issuance of the corrigenda and extension of bid submission date. The committee observed that the procuring agency issued five corrigenda. Three corrigenda were issued before Technical Bid opening whereas the remaining were issued after technical bid opening before financial opening. Besides, first corrigendum was aimed at the relaxing the condition of cash availability from 25% to 10% and the second one(in terms of bidder third) was issued to delete the condition of cash availability and extended the bid submission and bid opening date from 11.12.2019



to 12.12.2019 because the procuring agency considered that the bid was unresponsive. The third corrigendum was issued to extend the date for the opening of financial bid opening due to the non-availability of Procurement Committee chairman and members. Similarly, the fourth corrigendum was issued to extend the date for the opening of financial bid opening due to the non-availability of Procurement Committee chairman and members. The committee is of the view that the procuring agency is allowed to give such time for the preparation of bids especially it will be determined in accordance with the magnitude, size, largeness, complexity, intricacy and nature of work. The Regulation of works discuss the matter of response time in detail.

(Rule 18) The time allowed for the preparation and submission of bids (including proposals for prequalification) shall be determined with due consideration of the particular nature of the project, its magnitude and complexity of the contract as explained below:- (a) procuring agency shall ensure that bidding documents are available to the interested bidders from the first day of publication of Notice Inviting Tender in the newspapers or hoisting on the website, as the case may be; (b) response period is determined/calculated from the date of first publication in newspaper or hoisting on the authority's website as the case may be (keeping in view the cost of bid) up to last date of issuing documents. Response period/time in case of National Competitive Bidding shall not be less than fifteen calendar days, but in case of International Competitive Bidding shall not be less than 45 days. (c) in case of large works or complex items, sufficient period be allowed which is generally between 60-120 days to enable the interested bidders to conduct investigations before submitting their bids, and, in such cases, the procuring agency could convene pre-bid conferences and arrange site visits also.

57. Similarly, the manner of the extension of bids is also clearly mentioned in the SPP Rules 2010(amended up to date)

22. Extension of Time Period for Submission of Bids - The procuring agency may extend the deadline for submission of bids only, if one or all of the following conditions exist;

(1) Fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the bidders un-opened;

(2) If the procuring agency is convinced that such extraordinary circumstances have arisen owing to law-and-order situation or a natural calamity that the deadline should be extended; Provided that the advertisement of such extension in time shall be made in a manner similar to the original advertisement

58. The committee is of the view that the procuring agency is allowed to give a response time of 60-120 days in larger works in order to increase competition, motivate participation and give sufficient time to the bidders to prepare the bids accordingly. In case of unresponsive bids, the procuring agency may extend the time which was earlier less than required later on. Nevertheless, the procuring agency is required to follow the manner as described in Rule 22 of SPP Rules 2010. The same was done by the procuring agency. Hence, the corrigenda issued for the extension of time is as per rules.

59. The corrigenda 3 and 4 which extended the financial bid opening due to the absence of the committee members and Chairman need deliberation and explanation. The appellant submits that the procuring agency issued corrigenda that were aimed at mala fide intention.

iii. Mala fides or bona fides Intention in issuing corrigenda

60. Regarding the appellant allegation that the issuance of the corrigenda was aimed at mala fides, the committee was of the view that Mala fides means lacking of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. *The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to*

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have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

61. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colorable exercise of power, it cannot be allowed to stand."

For any allegations of mala-fides need proof of high degree and that an administrative action is presumed to be bona fide unless the contrary is satisfactorily established.

62. It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". There is every presumption in favor of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility"

63. Hence the appellant has made allegation that the corrigenda were issued mala fide. Therefore, mere allegation of mala fide is not sufficient the appellant is required to prove the allegation which he was not successful to prove accordingly.

iv. The issue of bid validity

64. The issue of Bid validity was also discussed and debated. It was submitted that the procuring agency also did not take into consideration that the bid validity period had been expired at the time of signing of contract. The Committee is of the view that firstly the SPP Rules may referred for the issue of bid validity.

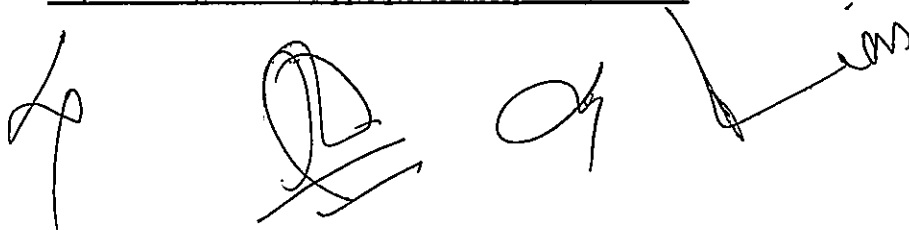
Bid Validity:

- a. **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 and 120 days in case of International Competitive Bidding;**

1(A). [The bid validity period shall start from the date of opening of technical or financial bids, whichever is earlier;]

- (2) Extension of bid validity may be allowed subject to approval by the competent authority of the procuring agency, and with reasons to be recorded in writing;**

Provided that if validity period has to be extended due to some slackness on the part of procuring agency, the competent authority shall fix responsibility and take appropriate disciplinary action;



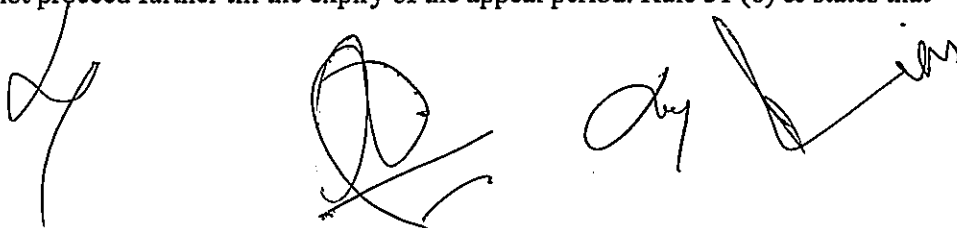
- (3) After obtaining such approval, the procuring agency, shall request in writing all bidders to extend the bid validity period. Such a request shall be made before the date of expiry of the original bid validity period;
- (4) Such an extension shall not be for more than of the original period of bid validity;
- (5) In case the procuring agency fails to finalize the bid evaluation within the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated;
- (6) Whenever an extension of bid validity period is requested, a bidder shall have the right to refuse to grant such an extension and withdraw his bid and bid security shall be returned forthwith;
- (7) Bidders who;
1. agree to extension of the bid validity period shall also extend validity of the bid security for the agreed extended period of the bid validity;
 2. agree to the procuring agency's request for extension of bid validity period shall neither be requested nor permitted to change the price or other conditions of their bids.

65. The contexture and setting of Rule 38 may be stated thus. A reading of rule 38 above makes it clear that a procuring agency shall evaluate the bid to a bid validity period. It is admitted that the validity period in the instant case was ninety days. By virtue of sub-rule (3) of rule 38, the procuring agency shall ordinarily be under an obligation to process and evaluate the bid within the stipulated bid validity period that is ninety days in the instant case. However, under exceptional circumstances and for reasons to be recorded in writing, if an extension is considered necessary, all those who have submitted their bids shall be asked to extend their respective bid validity period. Such extension shall not be for more than the period equal to the period of the original bid validity. From the tenor and the context of sub-rule (3) of rule 38, the terms of the said rule seem to be obligatory and mandatory in nature and must be complied with. This is the very essence of the procurement procedure and the good faith which must permeate the entire procedure. In this regard, it may be stated that the technical bids were submitted on 14.12.2019 and the evaluation report was made on February 29, 2020 i.e., after half & two months. The contract was admittedly awarded on 09.03.2020 i.e., within almost three months of the tender for the bids. Clearly, the mandate of rule 38 has been complied with and there has been no contravention of Rule 38. Hence, the matter of bid validity can't be questioned in the instant procurement process because the instant contract has been signed within 90 days of technical opening of the tender.

v. The contention of Signing of contract

66. The complainant also claimed that the procuring agency was bound to not sign the contract before the final adjudication by the Review Committee however the procuring agency has awarded the contract without resolving the matter of the complainant. In addition to that the procuring agency was well aware of the fact that the matter was pending before the Review Committee and the review committee had not decided the matter as yet and procuring agency was required to not proceed further until the complaint is resolved. Having been so the procuring agency continued the process and signed the contract in violation of SPP Rules and the SPPRA regulations for works.

67. The Committee observed that CRC decided the matter on 25.2.2020 and the same came into the knowledge of the bidder. The bidder applied for the Review Meeting on 26.2.2020 whereas, the procuring agency signed contract on 6.3.2020. The Committee is of the view that the procuring agency was bound to not proceed further till the expiry of the appeal period. Rule 31 (6) & states that



6. The Procuring Agency shall award the contract after the decision of the complaint redressal committee;

68. The procuring agency awarded the contract after the decision of the complaint redressal committee and there was no speaking direction from the Review Committee regarding the restraining of the procurement process. Therefore, the procuring agency was allowed to proceed the process of procurement.

vi. Plea for the Declaration of Mis-procurement

69. The complainant has sought to declare the instant as mis-procurement. The appellant has taken reliance on SPP Rules 2010. The appellant submitted that the procuring agency has violated the rules of SPP rules. The appellant sought to demonstrate from the record that the Contract was awarded as a result of mis-procurement, the procuring agency submitted that the award of the Contract was in due harmoniousness with the law and relied upon the same narrative and documentation as described in the procuring agency's version.

The Definition of Mis-procurement:

"Mis-procurement" means public procurement in contravention of any provision of this Act, any rule, regulation, order or instruction made there under or any other law in respect of, or relating to, public procurement;

Mis-procurement has been defined in Section 2(i) of the Sindh Public Procurement Regulatory Authority Act 2009 to mean public procurement in contravention of any provision of the said act, any rules, regulations, orders or instructions made there under or any other law in respect of, or relating to, public procurement.

The Declaration and consequences of Mis-procurement are described in Rule 32A of SPP Rules 2010 (amended up to date)

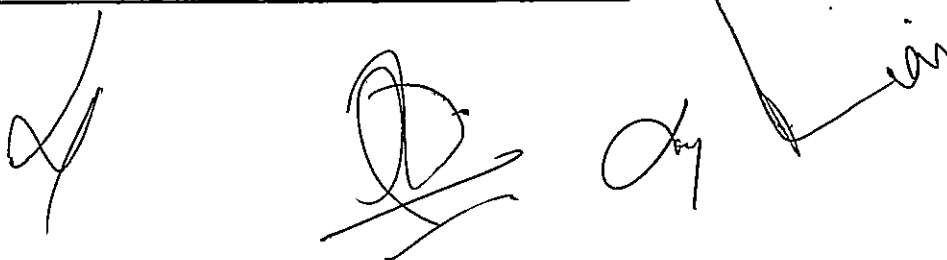
32(A). Declaration of Mis-Procurement and Its Consequences

(1) Notwithstanding anything contained in Rule-32 (7) (g):-

(a) the Head of the Department on his own initiation or on recommendation of the Complaint Redressal Committee of the Department may declare the case to be of mis-procurement, if any material violation of provisions of the Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement, has been established.

(b) The Authority may take notice of any material violation of provisions of the Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement and declare the case to be of mis-procurement if such violation has been established.

(2) On declaration of mis-procurement; the head of the procuring agency, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis-procurement and may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials.'



70. The committee is of the view that for any procurement may be declared as mis-procurement any material violation of provisions of the Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement, needs to be established in the procurement process. Therefore, the committee does not find any substantial grounds and documentary evidence that may establish the material violation of the rules in the instant procurement.

71. Furthermore, the declaration of mis-procurement will lead to adverse consequences for the procuring agency officials such as initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis-procurement also referring the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials. Besides, it will harm the reputation of the contractor who was declared as successful in the instant procurement. Therefore, suggesting any adverse action requires deliberation and established realities which are lacking in the instant procurement process. Hence, the plea of the bidder to declare the instant procurement cannot be accepted which is without solid and reasonable grounds.

vii. Forgery in the financial proposal.

72. The bidder submitted the procuring agency violated the confidentiality of the financial proposal of the bidder. From the statement of the bidder, two contentions have been observed.

The bidder was not allowed to participate

The Envelope containing financial proposal of the bidder was opened and after noting the financial figure it was re-fixed.

73. The first contention may be easily resolved. It is evident from the statement of the bidder that financial opening of the bids was held and there is no contention on the whether it was held or no. The contention is regarding the restraining of the bidder to participate in the meeting. The committee observes that the procuring agency had issued a corrigendum to announce the Financial bid opening. Besides, the meeting minutes and the attendance sheet of bidders are documentary evidence for the fair and transparent opening of the bids. Hence, the perusal of record and the statement of executive engineer make clear that the financial bid opening was held in a transparent way and as per rules and committee does not find any evidence that may prove the violation of rules was committed by the procuring agency.

74. Coming to the second question of the bidder that the bidder's financial proposal was manipulated. The committee observes that the bidder's statement is self-contradictory. at one hand he claimed that he was not allowed to participate in the Financial bid opening other hand the appellants claims that he noticed that his financial envelope was opened and repacked. Therefore, there is no any evidence that they may establish the violation of Rules by the procuring agency.

75. Regarding the argument of the bidder that there is only difference of 3 lac (300,000) rupees in financial proposal. Therefore, the appellant believes that his proposal was manipulated and managed. The committee observes that there is also slight cost difference of the proposal submitted by the third bidder. Besides, it's common in procurement process that the bidders quote very slight difference in financial proposals due to competition. Hence, the assumption of slight difference in cost cannot establish the forgery in Financial bid opening.

Review Committee Decision

76. Given the proceedings findings/observations, and after due deliberation, the review committee, In the exercise of statutory powers conferred upon it under Rule 32(7)(a) ibid read with Sub-Section (1) Section-2 of SPP act 2009 declares the instant review appeal dismissed and applications thereof are also dismissed.

I agree with note of dissent of Member Mr. Manzoor Ahmed Memon, as envelop without Seal can not be entered by PRA;

I agree with the dissent note of Member Mr. Manzoor Ahmed Memon.

Received for signature 16/3/24 on 12/3/2024

which confirms that the financial copy of complaint without Seal of contractor Syed Adil Gilani confirms the allegation

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

(Member)
Engr. Munir Ahmed Shaikh
Independent Professional

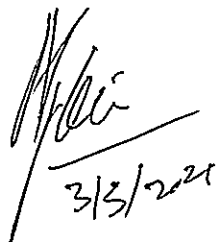
My dissent note Para (i) to (vi)


(Member)
Manzoor Ahmed Memon
Member SPPRA Board

(Chairman)
Riaz Hussain Soomro
Managing Director
Sindh Public Procurement Regulatory Authority

The findings made on behalf of Review Committee SPPRA, (Para 41 onwards) are not as per discussion and deliberation made in the meeting. The office tried its best to manipulate, remixed and support the PA where it is possible. I disagree with findings and decision and put my dissent note as under

- i. CRC considered the application/complaint of 15.02.2020 in its meeting held on 19.2.2020 not accepted the appeal and decision made on 25.2. 2020. He made an appeal to RC of SPPRA, on 26.2.2020 and reminder on 27.2.2020. SPPRA office rejected the appeal being "time barred" on 06.03,2020 without any prior proper approval of CA i.e MD/RC of SPPRA which was against the SPPRA rule/procedure. This was communicated on 13.3.2020 but never reached to the appellant. He received that through H. Court. The appeal can only be considered with the approval of RC. In this case, matter was not even brought in the knowledge of RC. The appeal was neither time barred (decision of CRC 25.2.2020, appeal made on 26.2.2020 reminder on 27.2.2020 and rejected on (6.3.2020) not with the approval of CA/RC. The HHC also considered the petition and ordered/advised SPPRA to consider the appeal. This was the consensus decision of three members except MD,
- ii. Huge delay and Five/Six changes in dates repeated changes in bid terms & conditions also appears mala-fide and against fair play, neat and clean proceedings and transparency,
- iii. The Procuring Agency was in proper knowledge that the matter is in Honorable High Court as well as an appeal with the Review Committee of SPPRA even the work orders were issued which is with mala-fide intention and against the Rules/Procedures.
- iv. To verify the claim and forgery in Financial bidding, all the three members were also opinion that the Envelopes of "Financial Bids" may be called to check but neither checked nor allowed. Later on after about 15 days, Envelope were called. There were four envelopes out of three were properly sealed (with transparent tape and properly stamped of bidder/Contractor) whereas the only envelope of appellant was without proper seal and not stamped anywhere. All the four envelopes were without any sign/authentication of PA which is also against the rules/procedure.
- v. In view of the above, the appeal can't be "dismissed" the process of this work be hold and matter to referred to ACE for proper & in-depth enquiry of entire matter to proceed further.
- vi. The observation, proceedings/findings by office on behalf of RC are unnecessary and uncalled appears to support to PA specially para 71.


3/3/2021


3/3/2021
Muzon Ali, Head,
RC, SPPRA, Bawal.