



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2090/2020-21/4027

Karachi, dated the 19<sup>th</sup> March, 2021

To,

The Executive Engineer,  
Highway Division  
Dadu.

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 Al-Madina, Ali Akber Construction & Masood Ahmed Kalhoro) V/s Executive Engineer Highway Division Dadu, held on 03.02.2021, for taking further necessary action as per rules, under intimation to this Authority, at the earliest.

  
ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, Works & Services Department Karachi.
2. The Superintendent Engineer, Work & Service Circle Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh Karachi.
4. 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)
5. The Staff Officer to the Chairman / Members Review Committee SPPRA.
6. The Appellants.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY  
AUTHORITY



No.AD (L-II) SPPRA/CMS- /2020-21

Karachi, dated the, March, 2021

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

**REVIEW APPEAL**

Between:

*M/s. Al Madina & Company, M/s Ali Akbar Construction & M/s Masood Ahmed Kalhoro*

VS

*Executive Engineer, Highways (Division), Dadu*

30.05.2020

**NIT ID Number T00537-19-0001 Dated: 19-09-2020**

**Facts and background**

The appellants/s. Al Madina & Company, M/s Ali Akbar Construction & M/s Masood Ahmed Kalhoro lodged a complaint to the Superintendent Engineer, Highways Division Dadu (copy endorsed to this Authority and others for necessary action) against NIT No. T00537-19-0001 Dated: 19-09-2020 floated by the Executive Engineer, Highway Division Dadu 'the procuring agency' for procurement of four various works.

2. The appellant therein complained that the procuring agency extended the bid submission and bid opening date and opened bids without informing the appellant and did not follow the transparency in the opening of bids.
3. Subsequently, the appellants preferred an appeal, along with the supporting documents and review appeal fee, before this Authority whereby the appellant stated that the CRC failed to decide the grievances within the stipulated time; hence, the appellant requested to place the case before the Review Committee in terms of Rule-31(5)<sup>1</sup> read with Rule 32(5) *ibid*<sup>2</sup>.
4. Accordingly, the appellants' case was taken up by the Review Committee for hearing in its meeting scheduled on 03.02.2021 at 11.00 a.m. and in this regard, the Authority (vide letter dated 27.01.2021) issued notices to the parties concerned to appear in person or depute

<sup>1</sup> The committee shall announce its decision within seven days. The decision shall be intimated to the bidder and the Authority within three working days by procuring agency. In case of failure of the committee to decide the complaint, the Procuring Agency shall not award the contract;

<sup>2</sup> The bidder shall submit [following documents] to the Review Committee: - (a) a letter stating his wish to appeal to the Review Committee and the nature of the complaint; (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents; (c) copy of the decision of procuring agency/ redressal committee, if any.

authorized representative, well conversant with the procurement in question, along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time and venue to present and/ or defend the case in terms of Rules-32(6), (8) & (10) *ibid*<sup>3</sup>.

5. In compliance, Mr. Abdul Aleem Memon, Executive Engineer, Highway Division Dadu '*the procuring agency's representative*', and appellants also appeared before the Review Committee.

### **REVIEW COMMITTEE'S PROCEEDINGS**

6. The Chairperson of the Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/version over the instant procurement before the committee.

#### **The appellant's Version**

7. The appellants submitted that they were government registered contractors also registered with Pakistan Engineering Council and have taken government contractors since long with reasonable history of assignment completion.
8. The appellants further submitted that the *Chairman Procurement Committee 1 – Executive Engineer Highways Division Dadu and Members 2- Engineer Education Works Division Dadu 3- Assistant Engineer Highways Sub-Division Johi* uploaded NIT (ID T00537-19-0001 No. N.I.T No TC G-55/XEN/DADU/15/OF/2020 Dated 21.05.2020) for inviting offers/bids for different works and fixed last date of issuing tenders documents on 09-06-2020 up to 12:00 Noon and dropping 10-06-2020 at 12:00 P.M, and opening process was also 10.06.2020 at 02:00 pm and 2<sup>nd</sup> attempt was fixed re-issued up to 26-06-2020 and opening process were fixed 29-06-2020 02:00pm.
9. The appellants also submitted that they visited office of the XEN highways divisions Dadu dated 08-06-2020 and submitted applications along with tender fee. Tender Clerk submitted their applications and received tender fee in cash and told them to come on next date 29-06-2020. The appellants submitted that the extension of bid opening was neither posted on the board nor on PPMS.
10. ~~Then~~ the appellants claimed they visited the office of the XEN Highways Division Dadu at next date on 29.06.2020 up to 10:00 am and they met with clerk to receive tender documents but the tender clerk said that due to incomplete Procurement Committee the

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<sup>4</sup> On receipt of appeal, along with all requisite information and documents, the Chairperson shall convene 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 and when called and produce documents, if required. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

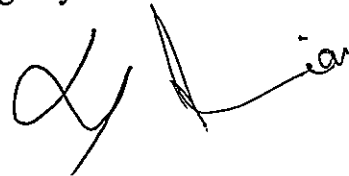


dropping and opening process would initiate on another date. Notices for postponement and cancellation of dropping process were not pasted on notice board. It was only verbally instruction by tender clerk.

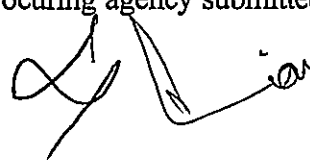
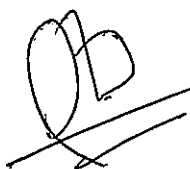
11. The appellants further submitted that they requested XEN to issue corrigendum for next date and also told him that last time he had not issued corrigendum on notice board and on SPPRA website and they also requested to issue the corrigendum for the next date by informing all the contractors. However, he refused to issue corrigendum at notice board and SPPRA website which is also violation of SPPRA rules
12. The appellant further claimed that the procuring agency uploaded bid evaluation report on SPPRA website after a lapse of Six Months and showed opening process on 16-07-2020. The appellants further submitted that all the works have been awarded on full rate to their favorite contactors as the NIT was of Rs.1023 Million and it is Rs.300 Million loss of government.
13. The appellants also requested that the tendering process in question shall be cancelled and the same may be re-invited in accordance with the rules and procedures of Government.
14. They requested to direct to the Chairman Procurement Committee and Members to follow SPPRA Rules, else they would lodge complaint at Review committee and other higher authorities/forums

#### Procuring agency 's Version

15. The procuring agency submitted that the bids were called and advertised accordingly. The bids were advertised by timely notifications on the Authority's website and in print media in the manner and format prescribed in SPP rules. The procuring agency further submitted that the advertisement in the newspapers appeared in three widely circulated leading dailies of English, Urdu and Sindhi languages.
16. The procuring agency further submitted that as the bid was unresponsive, the time for the submission of bids was extended till 16.7.2020 and the extension of time in bid submission and bid opening was publicized as per rules.
17. The procuring agency further submitted that Extension of bid validity was done with the approval of the competent authority of the procuring agency and the bidders were well aware of the bid validity extension.



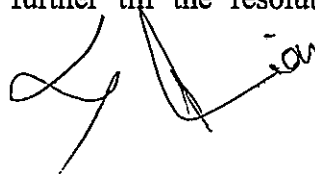
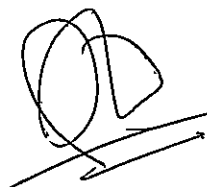
18. Mr. Abdul Aleem Memon, Executive Engineer, High Division Dadu '*the procuring agency's representative*', submitted that the procuring agency bid opening was carried out in a transparent manner as per rules. The bids were opened within time. The procuring agency submitted that all bids were opened publicly in the presence of all the bidders, or their representatives at the time and place announced in the letters.
19. 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 would be perused by the record and the same was available at PPMS website. The procuring agency submitted that the procurement committee issued the minutes of the opening of the tenders and the same were available at PPMS website.
20. The procuring agency submitted that all bids were evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. **The Procuring** agency further submitted that the agency announced the results of bid evaluation in the form of a report citing reasons for acceptance or rejection of bids. The report was hoisted on website of the Authority and same intimated to all the bidders prior to the award of contract.
21. The procuring agency also admitted that the complaints were received at the office of the Superintendent Engineer regarding the NIT. However, he did not convene the meeting of CRC.
22. The procuring agency submitted that after the announcement bid evaluation report, contract was signed by the issuance of work orders with the lowest bidder. The Executive Engineer submitted that contract was signed with the approval of competent Authority.
23. Mr. Manzoor Ahmed Memon, the member of Review Committee, asked the representative of procuring agency whether extension of bid opening via issuance of corrigendum was hoisted on PPMS website or not? The representative of the procuring agency submitted that the corrigendum was published in the news papers and the same was hoisted on PPMS website on 29.12.2020 after lapse of about five months.
24. Mr., Munir Ahmed Shaikh, member of the Review Committee asked the procuring agency that whether the extension in bid validity period was communicated to the bidder in a proper manner as described under rules.? The representative of procuring agency submitted that the bid validity extension was in the knowledge of all bidders.



25. Syed Adil Gilani, member of the Review Committee, asked the procuring agency if the assent of bidders, in writing, was sought in the extension of bid validity period. The representative of the procuring agency remained silent and did not answer accordingly.
26. Syed Adil Gilani also asked the procuring agency whether all the financial proposals were signed by the procuring agency or not. The representative of the procuring agency submitted that the financial proposals of the lowest bidders were signed and admitted that the remaining financial proposals were not signed by the Procurement Committee.
27. The procuring agency admitted that the complaints were received at the office of the Superintendent Engineer. He also admitted that CRC meeting was not convened and CRC did not decide the matter.
28. The procuring agency also admitted that the work orders were issued with-out CRC decision and admitted that the Review Appeal filed by the complainant before the issuance of work orders.

#### Findings of the Review Committee

29. From the perusal of record available, statements submitted by the appellant and procuring agency, the Review Committee finds five major points of contention among the parties.
30. Firstly, the appellant contended that the procuring agency extended the date for submission and opening of bids but did not adopt the proper procedure and mechanism described under rules whereas the procuring agency denies such statement and holds that the extension in time for the submission of bids was done in accordance with the rules and procedures.
31. Secondly, the bidder has also contended and questioned that the bid validity period had expired and the procuring agency did not extend the bid validity period as per rules. Contrarily, the procuring agency held that the bid validity period was extended in accordance with the rules.
32. Thirdly, the bidder also contended that the CRC was required by law to decide the matter of complaint within seven days but the procuring agency neither decided the complaint nor restrained the procuring agency from proceeding further till the resolution of complaint.



33. Fourthly, the appellant has also challenged the signing of contract by the procuring agency, on contrary to that the procuring agency submitted that the contract was signed in accordance with the rules.

34. Fifthly, the appellant also contended that the procuring agency had failed to complete the procurement process in a transparent manner as required under rules whereas the procuring agency held the contrary.

#### **Observations of the Review Committee**

35. The procuring agency extended the deadline for submission and opening of bids but did not follow the due process of extension of bid opening and bid submission which is laid down in rules. The SPP Rule 22 clearly mentions the conditions and manner of extension of time for the submission of bids.

**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**

36. The Procuring agency did not provide any sound justification as for what conditions such time for submission and opening of bids was extended. Furthermore, the procuring agency did not advertise such extension in time in a manner similar to the original advertisement. The procuring agency was also intimated by the Authority to hoist the advertisements on PPMS website. However, the procuring agency did not pay attention to the intimation of the Authority. Therefore, it is evident from the facts that the procuring agency has clearly violated rule 22 of SPP Rules 2010 (amended up-to- date).

37. Furthermore, the Review Committee observes that it is the duty of the procuring agency to ensure that the Sindh Public Procurement Regulatory Authority Act, 2009 read with Sindh Public Procurement Rules, 2010, are adhered to strictly to exhibit transparency. Hence, it was necessary upon the procuring agency to maintain the transparency in the complete process of bidding. However, the procuring agency failed to



carry out the process in a transparent manner by not disclosing the extension of bid submission and bid opening date.

39. It may be noted that in section 5 of the Sindh Public Procurement Regulatory Authority Act, 2009, the functions and the powers of the Authority have been defined, according to which the Authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector, as well as in collaboration with the private sector. Therefore, the words „transparency“ and accountability are of high importance and cast a duty upon the Authority to ensure openness of the transaction without withholding any information.

40. The committee also observed that not only SPPRA act 2009 but also SPP Rules 2010 also clearly define that the complete process of the procurement shall be carried out in a transparent manner. Rule 4 of SPP Rules states the principles of the procurement;

**Principles of Procurements - While procuring goods, works or 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.**

41. The committee also observed that the procuring agency did not follow the” **Open Competitive Bidding**” in the procurement of works. The SPP Rules 2010 defines the “Open Competitive Bidding”

**Open Competitive Bidding" means a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Biddings;**

42. The procuring neither followed transparency nor adopted proper procedure. The extension of the bids was not done in a proper manner under specified procedures. The procuring agency violated the rules and failed to conduct an open competitive Bidding. The procuring agency also did take into consideration that the bid validity period that had been expired at the time of signing of contract.

#### **Issue of Bid Validity:**

43. From perusal of record, statements of complainants, statement of procuring agency and by the scrutiny of documents available, it is established that the procuring agency did not follow the rules, guild lines and instruction in the extension of bid validity period.





The SPP Rules clearly and categorically describe the bid validity period and manner of extension of bid validity period.

**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;**

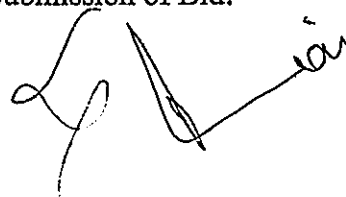
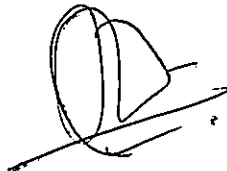
**(7) Bidders who;**

**(a) 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;**

**(b) 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.**

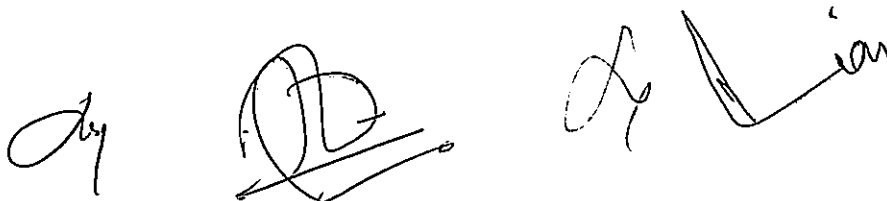
44. The Standard bidding documents uploaded by the Procuring agency also have described the bid Validity period and the conditions of the extension of the same.

IB.14 Validity of Bids, Format, Signing and Submission of Bid:



**14.1 Bids shall remain valid for the period stipulated in the Bidding Data after the date of bid opening. 14.2 In exceptional circumstances, Procuring Agency may request the bidders to extend the period of validity for an additional period but not exceeding 1/3 of the original period. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with IB.13 in all respects (SPP Rule 38).**

45. The context 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 one third period of the original bid validity as described in the Standard Bidding documents i.e., total 120 days.** 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.
46. In this regard, it may be stated that the bids were submitted on 16.7.2020 and the evaluation report was made on 13.12.2020. The contract was admittedly awarded on 07.01.2021 almost after 170 days of the opening of bids whereas the procuring agency was required to complete the process within 120 days as described in the bidding documents of the procuring agency. Clearly, the mandate of rule 38 has not been complied with and has been contravened.
47. Furthermore, the procuring agency was required under the rules to request the contractors and get the assent of the contractors before the expiry of bid validity period. However, the procuring agency failed to get such assent from the contractor as required under the rules.
48. Mr. Munir Ahmed Shaikh noted that SPP Rules are of mandatory application of its terms and any noncompliance needs to be visited with severity. We may begin the discussion with the general observation that the SPPRA Rules are to be taken as



mandatory and requiring strict compliance in order to ensure transparency and the implementation of the underlying objective of these Rules.

49. The complainant also contended against the signing of contract and issuing of work orders by the procuring agency without decision of CRC and during appeal period. The committee of the view that the rule 31 describes the way of signing the contract if the complaint has been lodged.

(3) **The Procuring Agency shall award the contract after the decision of the complaint redressal committee;**

(4) **Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;**

**Provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract, [until the expiry of appeal period or the final adjudication by the Review Committee.]**

50. The sub rule 7 of 31 describes the **condition for the signing of contract in case of lodging of complaint. It is necessary that condition of CRC decision must be fulfilled before the signing of Contract.** Hence, it was mandatory upon the procuring agency to not sign the contract until the final adjudication by SPPRA review committee. However, the **procuring agency signed the contract without CRC decision and final adjudication by SPPRA** which is clear violation of SPP rule 32(8).

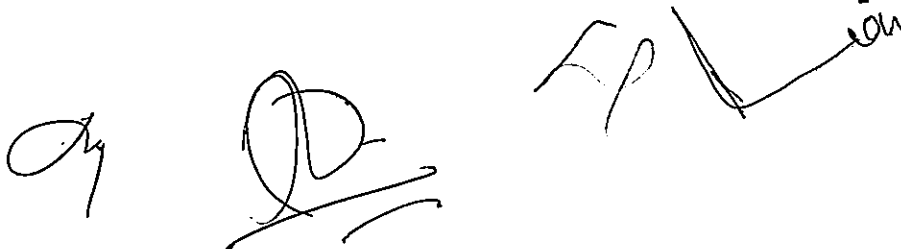
51. Another contention between the parties relates to CRC meeting. The bidder contended that the CRC was required to decide the matter within seven days and was bound to communicate the decision within 3 working days. Rule 31 describes the working of CRC and other matters relating to therein:

**Mechanism for Redressal of Grievances:**

**[The complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32,]2 [if the aggrieved bidder files the review appeal within ten (10) days of such transfer:]3**

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

**Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;**

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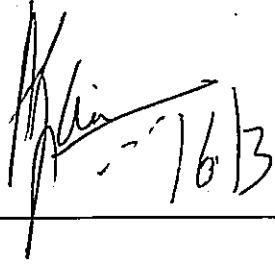
Provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract, until the expiry of appeal period or the final adjudication by the Review Committee.]

52. The Rule makes mandatory upon the CRC to announce the decision within 7 days. Contrarily, the CRC meeting was not convened by the CRC without sound justification of non-convening of CRC.

**Decision of the Review Committee**

53. Given the proceedings, findings/observations and after due deliberation, the review committee, in the exercise of statutory powers conferred upon it under Rule 37(7)(g) *ibid* read with Sub-Section (1) Section-2 of SPP act 2009 takes the following decision:

- i. Declares the instant Procurement as **Mis-procurement**.
- ii. The contractor and procuring agency have incurred loss to the exchequer by violating the rules and therefore according to the commitments of integrity pact 10 times of procurement amount shall be recovered by the Department.
- iii. The matter is referred to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials in terms of-Rule 32A (2) *ibid*.

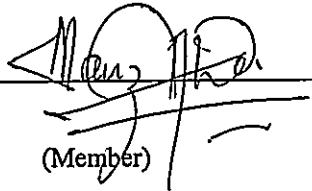


(Member)

Syed Adil Gilani

Private Member SPPRA Board

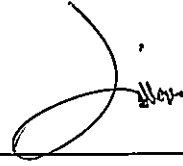
Representative Transparency International



(Member)

Manzoor Ahmed Memon

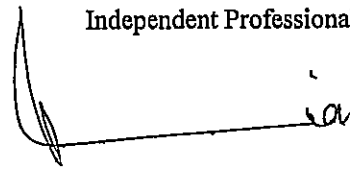
Member SPPRA Board



(Member)

Engr. Munir Ahmed Shaikh

Independent Professional



(Chairman)

Riaz Hussain Soomro

Managing Director

Sindh Public Procurement Regulatory Authority