GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD (L-II)/SPPRA/CMS-2676/2021-22/ 0522 Karachi, dated the 31st December, 2021

To,

The Secretary,
Irrigation & Power Department,
Government of Sindh,
KARACHI.

Subject: **DECESION OF THE 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 Kamran Ali Jalbani V/s Executive Engineer, Irrigation East Division Khairpur)** held on 14 &23.12.2021, for your information and further necessary action, under intimation to this Authority, at the earliest.

ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The Superintending Engineer, Irrigation Khairpur Circle Sukkur.
2. The Executive Engineer, Irrigation East Division Khairpur.
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/Complainants.

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

No.AD (L-II) SPPRA/CMS-2676/2020-21 Karachi, dated the 30th December, 2021

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

M/s Kamran Ali Jalbani

Vs

Executive Engineer East Division Irrigation & Power Department Khairpur

PPMS NIT NO. T00896-20-0002

Decision of the Review Committee held on 23.12.2021

Date(s) of meeting(s)		14.12.2021 & 23.12.2021	
Appellant		M/s Kamran Ali Jalbani	
Procuring Agency		Executive Engineer East Division Irrigation & Power Department Khairpur	
Appeal received on		06.07.2021	
Bid Opening date		25.06.2021	
Bid Evaluation Report		09.07.2021	
Contract signed		Not posted as yet.	
Sr.	**Appellant's Version**	**Procuring Agency**	**Remarks/Rules**
1.	The appellant claimed that he had sent his bid via mail TCS courier Service and the same was received at the office of the Procuring agency, but the procuring agency had not opened the bids at scheduled time & venue because the Procurement Committee was not present at the time of bid opening.	The procuring agency informed that the bids were opened at scheduled time & venue in the presence of all bidders but appellant had not participated in the bid opening meeting. The procuring agency also informed that the bidder had been black listed by the Executive Engineer, East division Khairpur due to nonpayment of Excess	The bidder submitted the receipt report which is evident that the bid was received by the procuring agency on 22.6.2021 prior to the opening of bids. The review committee noted that the black listing of the bidder was set aside by the review committee vide this decision No. AD(L-II)/SPPRA/(CMS-

		amount that the appellant had received illegally from the office of the Executive Engineer, East Division Khairpur. The procuring agency contended that the black listed cannot be allowed to participate in the bidding process; hence the bid of the appellant had not been opened by the procuring agency.	1365/2020-21/4080 Dated 01st April 2021. As per SPP Rule 32(11) the decision of the Review Committee is binding and final and the procuring agency is under legal obligations to comply with the decision of the review committee.
2.	The appellant submitted that the procuring agency had not opened bids on scheduled time but Bid Evaluation Report had been uploaded on PPMS website on 05.08.2021 the bidder complained that BER was fake, dubious and managed	The procuring agency informed that the Bid Evaluation Report had been uploaded on PPMS website by the procuring agency after the proper evaluation of bids. The Procuring Agency clarified that 37 bidders had participated in the bid opening process, the minutes of the bid opening meeting, and attendance sheet singed by the bidders are documentary evidences that the bid opening was held on 22.06.2021 in a transparent manner.	
3.	The appellant also informed that he had approached CRC for the Redressal of Grievances but the CRC failed to decide the matter within time.	The procuring agency submitted that the Complaint was addressed to the Superintendent Engineer Khairpur Irrigation Circle Sukkur; however the appellant had withdrawn his complaint on 26.07.2021.	The Complaint redressal Committee (CRC) was required to resolve the complaint of the bidder within seven days (07) and was required to intimate its decision within three days (03)

			but in the instant matter the CRC could not resolve the complaint within stipulated time as per Rules.
4.	The appellant denied the withdrawal of the complaint by him, he contended that had he withdrawn his bid, he would not have approached the Review Committee and the Honour'able Court for the redressal of grievances.	The procuring agency argued that they had not information regarding the filing of the Review Appeal by the bidder till the receipt of the Court Notice, wherein they came to know that the appellant had filed the Review Appeal before the Review Committee. The procuring agency clarified that neither had the bidder endorsed the copy of the Review Appeal nor had the SPPRA communicated the filing of the Review Appeal by Appellant.	The Review Committee noted that the appellant had approached the Review Committee within time.
5	The Appellant submitted that he had withdrawn the bid security because the Review Committee was kept in abeyance due to non availability of one of the members of Review Committee.	The procuring agency contended that the bidder firstly had withdrawn his complaint and later on he had withdrawn the bid security. The procuring agency argued that the Review Application of the bidder is not maintainable under SPP Rules because the bidder had withdrawn the bid security.	
6	The appellant complained that the procuring agency had issued work	The procuring agency clarified that work orders	The Review Committee noted that the

	orders whereas the Review Appeal of the appellant was pending before the Review Committee. The appellant claimed that such signing of contract by the procuring agency was against the SPP Rules & Regulations.	were issued to the successful bidders who fulfilled the requirement, furthermore, the appellant had not only withdrawn his complaint but also had withdrawn his bid security, therefore there was no question of the pending of the Review Appeal of the Appellant. The procuring agency claimed that there was no legal obligation upon the procuring agency to stop the procurement process and not to award the work.	procuring agency was required to issue the work orders after the announcement of the decision of the CRC, otherwise the procuring agency was required not to sign the contract till the expiry of the appeal period or after the final adjudication of the Review Committee.
7		Replying to a question, regarding the non compliance of the observations of the Authority that are communicated on PPMS Website, the procuring agency clarified that the procurement process was completed in accordance with the Rules and the regulations.	The Review Committee observed that the procuring agency had not complied with the observations that were communicated on PPMS website.
		Status of the procurement	
		Responding to a question regarding award of work, the procuring agency informed that the procurement contract had been signed to the successful bidders. as	

		yet. '	

Findings of the Review Committee;

1. The Review Committee observed that the procuring agency did not open the bid of the bidder illegally which is violation of SPP Rules 41 and 4.

2. The Committee also observed that the CRC constituted by the procuring agency did not comprise of Independent Professional, as required under Rule-31 .PA was required to re-notify the CRC comprising Independent Professional from relevant field, prior to opening of bid but the procuring agency failed to rectify the infirmity which is violation of Rule 31(2) of SPP Rules.

3. The procuring agency contended that the bidder was blacklisted therefore his bid was not opened. The Committee observed that the blacklisting of the bidder was set aside by the Review Committee. Hence, the procuring agency was required to entertain the bid of the bidder. Furthermore, if the procuring agency had any other sufficient cause to blacklist the bidder, the procuring was required to initiate the blacklisting process afresh. However, continuing the blacklisting, that had been already set aside by the Review Committee, is against the Rules and Regulation because the decision of Review Committee is final and binding upon the procuring agency in terms of Rule 32(11).

4. The Review Committee observed that the SPPRA had communicated many infirmities, which were posted on PPMS website, to the procuring agency for rectification. However, the procuring agency failed to rectify the infirmities.

5. The Review Committee also observed that the procuring agency awarded the work knowing that the Complaint Redressal Committee failed to decide the complaint and the Review Appeal of the appellant was pending for the final adjudication by the Review Committee. The Signing of contract without CRC decision and during the pendency of Appeal is against the SPP Rule 31(7).

Decision of the Review Committee:

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7) (g), the Review Committee:

1. Declares the instant **procurement of the complete NIT** as Mis-Procurement.
2. Decide to refer the matter to the Competent Authority i.e. Secretary Irrigation & Power Department Karachi for initiation of disciplinary action against the official(s) of the procuring agency responsible for Mis-procurement.
3. The Department shall recover any loss or damage incurred by it on account of its corrupt business practices and pay compensation to Government of Sindh (GoS) in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by Contractor as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form, from (GoS) due to Mis-procurement under integrity pact.

Member
(Manzoor Ahmed Memon)
Member SPPRA Board

Member
(Syed Adil Gilani)
Member Transparency International

Member
(G. Mohi-Uddin Asim)
Representative of P & D Board ,P& D Department Karachi

Member
(Munir Ahmed Shaikh)
Independent Professional

Chairman
(Abdul Haleem Shaikh)
Managing Director
Sindh Public Procurement Regulatory Authority