



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3392/2021-22/1320.

Karachi, dated 22nd June, 2022

TO,

The Superintending Engineer,
District Municipal Corporation, District Central,
Karachi.

Subject: DECISION 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 namely **M/s Haji Syed Ameer & Brothers v/s District Municipal Corporation, District Central** held on 09.06.2022, for information & taking necessary action.

(ABDUL SATTAR SOOMRO)
ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for necessary action to:

1. The Secretary to the Government of Sindh, Local Government Department, Karachi.
2. The Municipal Commissioner, District Municipal Corporation District Central, Karachi.
3. The PS to Chairman / Members of the Review Committee.
4. Assistant Director I.T. SPPRA (**with advice to post the decision on authority website in terms of Rule-32(11) of SPP Rules, 2010**).
5. The Appellant.



**GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY**



No.AD (L-II) SPPRA/CMS-3192/2021-22/1320

Karachi, dated the, 15th June, 2022

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

Decision of the Review Committee held on 09.06.2022

Appellant	M/s Haji Syed Ameer & Brothers	
Procuring Agency	DMC Central Karachi (Local Government Department)	
PPMS ID #	T00699-21-0021	
Reference No.	SE.DMC(C)/366/2021	
Appeal Received in Authority Dated	18.4.2022	
Dated of Posting Notice Inviting Tender	10-01-2022	
Date of Opening of Bids Opening Technical	26.01.2022	
Date of Opening of Bids Financial		
Date of Posting Bid Evaluation Report	15.02.2022 (cancelled) 20.4.2022 (modified BER after CRC decision)	
Date of Posting Contract Documents	Not posted up-to 05.06.2022	
SPPRA Observations communicated on	12.01.2022	
Estimated Cost of NIT Total	135 Million	
Total works in NIT	1 Work	
Appellant Related work	1 Work	
Issue involved	With drawl of awarded contract after letter of award, Signing of contract and after payment of performance security	
Contract Signed with M/s Haji Syed Ameer & Brothers	Contract Signed (22.02.2022)	
Stamp Duty paid	Rs.470150/-	
Performance Security Submitted	Rs.6,750,000/-	
CRC Decision	08 th March 2022 (Communicated with the appellant on 11.04.2022 with with drawl letter)	
Withdrawal of Contract agreement	11.04.2022	
Cost offered by M/s Haji Syed Ameer & Brothers Rs. 134766420/-	Cost offered by M/s Insaf & Brothers Rs. 121500001/-	Comparison of Cost M/s Insaf & Brothers submitted less cost Rs. 13,266,419/-(thirteen million two hundred & Sixty six thousand four hundred & nineteen only) as compare to M/s Haji Syed Ameer Ali & Brothers
The Appellant's Version	The Procuring Agency's Version	
The Appellant submitted that the Procuring Agency had awarded the work to the appellant on the recommendation of the Procurement Committee which evaluated the bids in detail as per the SPP Rules.	The Procuring Agency submitted that the Consultant had recommended the award of contract for M/s Insaf & Brothers being the lowest submitted bid with minor deviations. However, the then Superintendent Engineer awarded the contract to M/s Haji Syed Ameer Ali & Brothers in contravention with the suggestions of the Consultant. The representative of the Procuring	

	<p>Agency contended that the contract was awarded to M/s Haji Syed Ameer Ali & Brothers on higher rates by the then Superintendent Engineer DMC Central Karachi.</p> <p>Later on a complaint dated 17.2.2022 was received by the CRC and after reviewing the complaint and on the recommendation of Consultant, the <u>CRC revised the decision of Procurement Committee and suggested to award the contract to M/s Insaf & Brothers.</u></p> <p>Thereafter, the contract awarded to M/s Haji Syed Ameer Ali & Brothers on higher rates by the then Superintendent Engineer DMC Central Karachi was withdrawn vide letter dated 11.04.2022 and contract was awarded to M/s Insaf & Brothers being the lowest submitted bid.</p>
The Appellant submitted that M/s Insaf & Brothers was disqualified by the procurement committee because the company had failed to submit mandatory documents.	The Procuring Agency submitted that the CRC reviewed the documents and comments of the Consultant and decided that non submission of documents by M/s Insaf & Brothers was minor deviation and that was condoned to get the lowest submitted bid.
The Appellant complained that the CRC was required to announce the decision within 7 days but the CRC decided the matter after 19 days but the same was communicated with the appellant on 11.04.2022.	The Procuring Agency's representative submitted that meeting was called on 25.2.2022 but the matter was referred to Consultant after that the decision was taken on 8.3.2022. The Procuring Agency said that the contract was with-drawn on 11.04.2022.
The Appellant submitted that the CRC was not constituted as per the SPP Rules and the same biased and decided against the SPP Rules.	The Procuring Agency could not provide any satisfactory response in this regard.
The Appellant submitted that the Procuring Agency had withdrawn the Contract award after the signing of the contract that was illegal and against the SPP Rules & Regulations thereof.	The Procuring Agency's representative reiterated that the contract was awarded by then Superintendent Engineer illegally and letter had been written to the Competent Authority for taking action against the then Superintendent Engineer. Therefore, illegally awarded contract was withdrawn by the successor Superintendent Engineer on the recommendation of the CRC
The Appellant complained that the Procuring Agency caused loss to the Appellant and breached the procurement contract.	The Procuring Agency's representative informed that M/s Insaf & Brothers had submitted lowest bid and that was giving advantage of about more than 10 Million therefore the bid of M/s Insaf & Brothers had been accepted.

Observation of the Review Committee:-

1. Illegal Composition of Complaint Redressal Committee (CRC).

- As a matter fact, the SPP Rules provide detailed mechanism for the timely, speedy and efficient Redressal of Grievances to protect the rights of the bidders in a transparent manner. The SPP Rules have established a two-tier independent redressal mechanism with binding authority to direct remedial measures within well-defined time and with well-defined authority and functions. This two-tier Redressal mechanism includes the establishment of a Complaint Redressal Committee under Rule 31 of the SPP Rules with the aim of investigating and resolving complaints by timely accessing any procuring agency's functions, data and documents. Besides that, a second tier of complaint Redressal includes the Review Committee of


SPPRA under Rule 32 of the SPP Rules, in case the CRC fails to arrive at decision within seven days or the bidder is not satisfied with the decision of CRC, taken within seven days, as the case may be.

2. The Composition of Complaint Redressal Committee established under Rule 31 has been provided under Rule 32(2). The Rule 32(2) is reproduced as under:-

31(2) The committee shall be headed by head of the procuring agency or an official of the procuring agency, at least one rank senior to the head of the procurement committee and shall include the following;

- (a) **District Accounts Officer, or his representative, in case of the local governments or provincial line departments at district level, or a representative of the Accountant General, Sindh in case of Government departments at the provincial level;**
- (b) **An independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency.**

3. As provided in Rule 31(2), the Compliant Redressal Committee shall include an Independent Professional and District Accounts Officer, or his representative or a representative of the Accountant General as the case may be. However, in the instant matter, the Complaint Redressal Committee neither included Independent Professional nor District Accounts Officer, or his representative or a representative of the Accountant General. Hence, the Complaint Redressal Committee was formed in clear violation of the SPP Rules. The Notification hoisted by the Procuring Agency on Authority's website is pasted as under:-

**OFFICE OF THE ADMINISTRATOR SECRETARIAT
DMC (CENTRAL) KARACHI**

NO: PS/ADMTR/DMC/(C)/ 019 /2021 Dated: 08/09/2021


To, **The Secretary,
Local Government Department,
Government of Sindh,
Karachi.**

Subject: **CONSTITUTION OF COMPLAINT REDRESSAL COMMITTEE OF DISTRICT MUNICIPAL CORPORATION (CENTRAL).**

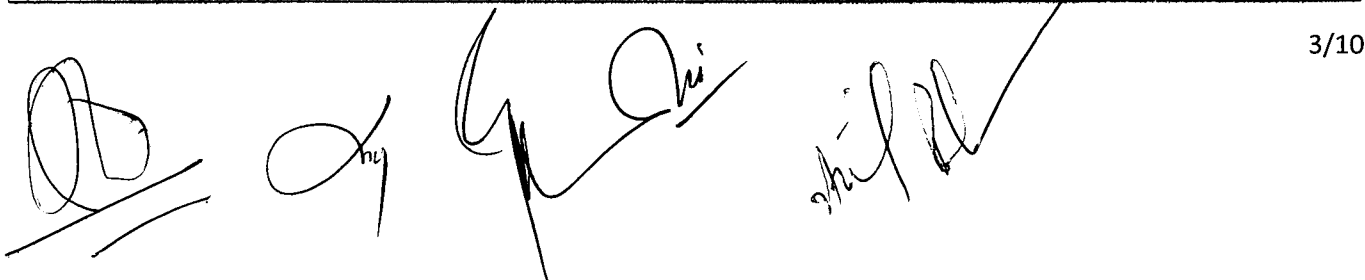
In compliance to Rules-31(1), SPPRA-2010, (Amended-2019), a Complaint Redressal Committee of District Municipal Corporation (Central) Karachi for the year 2021-22 is hereby constituted comprising of the following:

1. **Mr. Khalid Riaz Siddiqui, (BPS-19)
Municipal Commissioner,
DMC (Central) Karachi Chairman**
2. **Mr. Akbar Hussain (Council Officer, BPS-18)
Director Sports Culture & Recreation,
DMC (Central) Karachi Member**
3. **Mr. Syed Safdar Ali (Council Officer, BPS-17)
Assistant Executive Engineer, New Karachi Zone,
DMC (Central) Karachi Member**

**To act as guide line provided in Clause 31 of SPPRA Rules-2010 (Amended-2019)
if any complaint received from any aggrieved bidder.**


**(Dr. Syed Muhammad Ali Zaidi)
ADMINISTRATOR,
DMC (Central) Karachi**

Copy to:
The Municipal Commissioner, DMC (C) Karachi.
The Managing Director SPPRA, Sindh Karachi.
The Chairman/ Members of above mentioned Committee (CRC) DMC (C) Karachi.
The In-charge/ In-charge Engineer, DMC (C) Karachi.
The Section Officer (V), Local Government Department Karachi.
The SEN (B&T/M&E) All Zones DMC (C) Karachi.



4. It may be noted that Chairman and members of the Complaint Redressal Committee all belong to the DMC Central, Karachi in a blatant violation of the SPP Rules and in contravention with the basic principle of fairness and justice that "No one should be judge in one's own cases"
5. Needless to mention here that the SPPRA had already communicated that the composition of CRC was against the SPP Rules vide comments dated 12-01-2022 .The observations/comments of to the extent of CRC are reproduced as under:

CRC does not comprise DAO or representative of AG Sindh, as required under Rule-31. PA is required to re-notify the CRC comprising DAO or representative of AG Sindh as member, prior to opening of bids

6. However, the Procuring agency continued the same CRC in contravention with the SPP Rules. The above discussion makes clear that the composition of CRC was against the SPP Rules, and CRC continued its working illegally despite being informed by the Authority that the composition of the CRC was against the Rules.

2. Illegal Decision of the Complaint Redressal Committee after the lapse of Seven days Time in terms of Rule 31(5)

7. The Review Committee also observed that the decision of Complaint Redressal Committee was illegal and without legal authority, as the decision was taken after the lapse of time limit of nineteen days (19).For convenience and easiness, the Rule 31(5) is reproduced as under:

31 (5) [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

8. Besides illegal composition of CRC, the Complaint Redressal Committee had no legal authority to decide the complaint of M/s Insaf & Brothers after seven days of the receipt of the complaint. After the lapse of seven days, the complaint had stand transferred to the Review Committee and the authority of the Complaint Redressal Committee had ceased. M/s Insaf & Brothers was required to approach the Review Committee within 10 days of the transfer of the Review Appeal. However, M/s Insaf & Brothers had never applied to the Review Committee within legal time of ten days. Hence there was no legal worth of the complaint of the bidder after the expiry of appeal period. Interestingly, the Complaint Redressal Committee announced its decision on the complaint of M/s Insaf & Brothers on 08.03.2022 after the lapse of 19 days which was illegal and without legal Authority.

9. Efficiency, being the basic principle of the public procurement, as defined in Rule 4, requires completion of procurement process within a reasonable and predictable time frame as described under the SPP Rules. In its present shape, the SPP Rules do stipulate timelines for different stages of procurement process including the time frame for the resolution of complaint by complaint Redressal Committee within Seven days. In contradiction to

such efficient working, the illegally composed CRC announced the decision after 19th days of complaint submission.

3. Decision beyond the Authority of Complaint Redressal Committee:-

10. The Review Committee also observed that the CRC acted beyond its authority and suggested to award the contract to M/s Insaf & Brothers in apparent contravention with the SPP Rules. The SPP Rule 31(4) provides the authority and powers of the CRC. The Rule 31(4) is reproduced as under

(4) **The complaint redressal committee upon receiving a complaint from an aggrieved bidder may, if satisfied.**

(a) **prohibit the procurement committee from acting or deciding in a manner, inconsistent with these rules and regulations;**

(b) **annul in whole or in part, any unauthorized act or decision of the procurement committee; and**

Provided while re-issuing tenders, the procuring agency may change the specifications and other contents of bidding documents, as deemed appropriate.

(b) **[recommend to the Head of Department that the case be declared a mis-procurement if material violation of Act, Rules Regulations, Orders, Instructions or any other law relating to public procurement, has been established; and.]'**

(c) **reverse any decision of the procurement committee or substitute its own decision for such a decision;**

Provided that the complaint redressal committee shall not make any decision to award the contract.

11. The Proviso of Rule 31(4) bars that the complaint redressal committee shall not make any decision to award the contract but in the instant matter the CRC suggested to award the contract which was beyond the authority of the CRC. For making the matte clear the juxtaposition is given for the rule and decision of the CRC.

Proviso of Rule 31(4)	Decision of the CRC
Provided that the complaint redressal committee shall not make any decision to award the contract.	Foregoing, Pursuant to SPPRA Rule 31(4) (c), the CRC is reversed the decision of the procurement Committee <u>and suggests the Procurement Agency to award the contract package CLICK/DMC Central/Phase-I/Package-A to M/s Insaf & Brothers whose Bid is also the lowest on the terms and conditions stipulated in the Bidding documents and proceed as per law.</u>

12. The juxtaposition provided above leaves no doubt to understand that the CRC suggestion to award the contract was beyond its authority and could not be protected under the SPP Rules.

13. Furthermore, CRC cannot reverse the decision of the Procurement Contract. In case the contract has been awarded and procurement has been concluded, the CRC can declare the procurement to be case of Mis-Procurement but cannot cancel the contract agreement even the Review Committee cannot order to cancel the procurement contract as per the SPP Rules and Regulations, when the contract is concluded.

4. The Disqualification of M/s Insaf & Brothers due to non-fulfillment of Mandatory Requirement was not minor deviation

14. The Review Committee observed that **M/s Insaf & Brothers** was disqualified due to non-fulfillment Mandatory Requirement of NIT and bidding documents. Bid Evaluation Report issued by the Procuring Agency mentioned that **M/s Insaf & Brothers had been disqualified due to non-submission of mandatory documents.** The operative Para of the minutes of the Procurement Committee are reproduced as under:

The Procurement Committee has found that M/S Insaf & Brothers has Major Deviations in Mandatory and Eligibility Criteria and Mark their Bids as Non-Responsive whereas M/S Haji Syed Ameer & Brothers has fulfilled all of the Mandatory and Eligibility Criteria.

The operative documents are pasted as under:

S. NO	Company Name	Plant & Equipment													Remarks
		Motor Grader 140 HP 4 Nos	Vibratory Roller 10-12 Ton 4 Nos	Pneumatic Roller 18-23 Ton 4 Nos	Dump Truck 18 Ton 12 Nos	Alpha Power 145 HP (3-6m wide) 4 Nos	Concrete Batching Plant 30 Cum 2 Nos	Concrete Transport Mixer 6 Cum 8 Nos	Concrete Pump 4 Nos	Crane 25 Ton 2 Nos	Excavator 105 HP 6Nos	Welding Plant 2 Nos	Generator SKVA 2 Nos	Cable Pulling/Laying Winch 2 Nos	

6	M/s Insaf & Brothers	Provided	Documentation not provided	Documentation not provided	6 Provided	2 Provided	1 Provided	1 Provided	2 Provided	Provided	4 Provided	Documentation not provided	Provided	Documentation not provided	Documentation not provided	Fail
7	M/s Muhammad Hanif Rajput	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Documentation not provided	Fail

S. NO	Company Name	Key Personal Qualification & Experience										Remarks				
		Project Manager (A) BE (Civil) with 20 years' experience (10 years relevant experience)	Planning Engineer (B) BE (Civil) with 10 years' experience	Contract Engineer (C) BE (Civil) with 15 years' experience	Structural Engineer (Culverts & Bridges) (D) BE (Civil) with 15 years' experience with 10 years relevant	Material Engineer (E) Msc (Geology) with 15 years' experience	Electrical Engineer (F) BE (Elec/Mech) with 10 years' experience	Environmental Expert (G) BE (Civil) with 10 years' experience	Social Development Specialist (H) Msc (Social Science) with 10 years' experience	Road Engineer (I) BE (Civil) with 15 years' experience with 10 years relevant	Health & Safety Experts (J) Minimum Qualification as Bachelor's in Civil/Environmental Provided but without NEBOSH or IOSH Certifications, Projects not mentioned					
6	M/s Insaf & Brothers	Provided	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided	Provided	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Provided, Projects not mentioned	Fail

15. However, later on when the Complaint Redressal Committee reviewed and discussed the matter among them and decided that the deviations made by **M/s Insaf & Brothers** were minor deviations and tried to save Rs.10 Million.

16. The Review Committee observed that the CRC did not pay head to the fact that the deviations called by the CRC as minor were the Mandatory requirements that were to be met as per terms and conditions of the bidding documents. The relevant pages of NIT and bidding documents are pasted below for convenience and easy understanding:

Sr #	Description	
3	3. Qualification Criteria:	
3.1	Eligibility: Valid Registration with Pakistan Engineering Council in relevant category and discipline	Category C-4 and above, Discipline CE-01, CE-10, and EE-06 Must meet
3.2	Registered with FBR for Income Tax	Must meet
3.3	Registered with Sindh Revenue Board for Sales Tax	Must meet
3.4	List of litigation (if any) their nature and status / outcomes;	Must meet
3.5	Affidavit that firm has never been blacklisted;	Must Meet
4.1	4. Qualification: Similar assignments with cost (two projects of Roads, each of minimum value PKR 110 Million), under-taken over in the past five (05) years;	Must meet
4.2	Annual Average Turnover Construction for last 3 years	Rs.400 Million Must meet
4.3	Details of key staff	Must Meet
4.4	Details of Plant & Equipment	Must meet

d) Must have following key staff

Position	Qualification & Experience
Project Manager	BE (Civil) with 20 years' experience (10 years relevant experience)
Planning Engineer	BE (Civil) with 10 years' experience
Contracts Engineer	BE (Civil) with 15 years' experience
Structures Engineer (Bridges & Culvers)	BE (Civil) with 15 years' experience with 10 years relevant experience of culverts and bridges.
Road Engineer	BE (Civil) with 15 years' experience with 10 years relevant experience of roads
Material Engineer	Msc (Geology) with 15 years' experience
Electrical Engineer	BE (Elec), with 10 years' experience
Environmental Expert	BE (Civil), with 10 years' experience
Social Issues Expert	Msc (Social Science) with 10 years' experience
Health & Safety Expert	Minimum Qualification as Bachelor's in Civil/Environmental Engineering or Environmental Sciences in addition, OHS personnel must be having qualification NEBOSH IGC and / or IOSH Certification, ISO 45001; Must be familiar with Tool Box Talk, Safety induction process, Accident's investigations and reporting; At least 5-7 years post qualification experience.

17. Non-submission of Staff documents have been construed by the CRC as minor deviation, whereas the CRC could not appreciate the language of the NIT and bidding documents which speak " **Must meet** " **Must have following key staff** " Besides, **Human Resource is considered important component of checking the eligibility and capability of any bidder.** Hence, Non-conforming of any Mandatory Qualification can-not be equated with Minor Deviations.

5. M/s Insaf & Brother did not deny its disqualification in CRC application

18. The Review Committee also observed that the M/s Insaf & Brothers did not deny her disqualification in its letter **NO.ICL/AA/22/011 dated 17th February 2022.** M/s Insaf & Brothers had grievances regarding non-informing its disqualification and M/s Insaf & Brothers had requested to provide the detailed Bid Evaluation Report of Consultant and make a time to answer all the questions regarding them. The operative Para of the letter **NO.ICL/AA/22/011 dated 17th February 2022 is reproduced as under:**

So provide us the detailed Bid Evaluation Report of Consultant and make a time to answer all the questions regarding them.

19. The prayer of M/s Insaf & Brothers shows that he wanted to get the Bid Evaluation Report of Consultant but he never denied the disqualification done vide the Bid Evaluation Report issued by the Procurement Committee. However, the CRC decided itself that the disqualification was minor deviation.

20. Furthermore, the Complainant had M/s Insaf & Brothers raised the question that he was not informed about his disqualification before the issuance of the BER on SPPRA website. The operative Para of the complaint is reproduced as under:

Contractor have a right to ask regarding disqualification and for this client firstly informed the contractor regarding qualification and provide some time frame regarding the Technical Evaluation Report but in this case client uploaded the report directly on SPPRA without any information to the contractor ,which against the rules.

21. The Review Committee observed that the appellant's plea to get the reasons of disqualification before the issuance of the BER was based on misinterpretation of the SPP Rules and Regulations. The Bid Evaluation process is a confidential process which is kept secret from all bidders till the announcement of Bid Evaluation Report. The Rule 53 of the SPP Rules is reproduced as under:

53. Confidentiality - The procuring agency shall keep all information regarding the bid evaluation confidential until the time of announcement of evaluation report in accordance with the requirements of Rule 45

22. Furthermore, it is clarified that the disqualification is informed before the opening Financial Bids in case of Single Stage Two Envelope Procedure wherein the bids are evaluated in two stages first at the Technical Stage and the second one at the Financial stage. Therefore, in the case of Single Stage Two Envelope Procedure if any person is disqualified technically he is informed. In the instant matter the bids were called on **Single Stage Single Envelope Procedure** wherein bid comprises one single envelope containing the financial proposal only and the Information regarding Company/Firm/Bidder's provided with financial bid is not treated as Technical Proposal. The same has been stated under the Regulation 7.9.1 of the SPP Regulation of works:

7.9.1 Single Stage – **One Envelope Procedure. (a) Each bid shall comprise one single envelope containing the financial proposal only** and company profile containing proof of relevant experience, annual turn-over of last three years, and registration with PEC or other authorities wherever applicable and information regarding litigation with government agencies, affidavit of not being black listed. **Information regarding Company/Firm/Bidder's provided with financial bid will not be treated as Technical Proposal.**

23. Therefore, the Bid Evaluation Report was to be prepared and announced once. Bid Evaluation, Being the confidential process, was to remain secret from all bidders. Therefore, the question of the complainant that he was not informed about his disqualification before the issuance of the BER on SPPRA website was not as per the SPP Rules and Regulations.

6. Termination of Contract with following the Proceedings for Termination of Contract.

24. The Review Committee observed that the Procuring Agency had awarded the contract to signed the contract agreement with M/s Haji Syed Ameer Ali & Brothers on 22.2 2022. M/s Haji Syed Ameer Ali & Brothers paid the stamp duty and submitted performance security as required under the terms and conditions of contract. The contract agreement had come into force on 22.2 2022 in terms of Rule 55 of the SPP Rules which is reproduced as under:



55. Entry into Force of the Procurement Contract:-

26. A procurement contract shall come into force when the procuring agency signs a contract, the date on which the signatures of both the procuring agency and the successful bidder are affixed to the written contract. Such affixing of signatures shall take place within the time prescribed in the bidding documents.

27. Provided that where coming into force of a contract is contingent upon fulfillment of a certain condition(s), the contract shall take effect from the date whereon such fulfillment takes place.

28. Once contract is concluded, the Procuring agency is entitled to terminate the contract at any time as per terms and conditions of the contract but the Procuring Agency is required to follow the proper procedure for terminating the concluded contract. The same had been described under the SPP Regulation of Works which are reproduced as under:

11.2 .5 Terminating a Contract:

Procuring agency is entitled to terminate the contract at any time as per terms and conditions of contract. Termination of contracts always results in cost and time over run therefore it should be avoided. However, sometimes it may be necessary to terminate a contract:

(i) to avoid or minimize further loss to the procuring agency or poor performance by the contractor;

(ii) where contract performance has become impossible; or

(iii) where a contractor is no longer qualified or has engaged in corrupt practices.

11.2.6 Proceedings for Termination:

(i) identify the need to terminate the contract;

(ii) to confirm the conditions of contract relating to termination;

(iv) identify the grounds for termination which will be used and ensure that the procuring agency has sufficient justification for using the selected grounds.

(iv) estimate the amount of money, if any, which will be due to the contractor following termination.

(v) prepare a formal notice, terminating the contract stating therein grounds for termination;

(vi) issue the termination notice and ensure that it is received in the prescribed period by the contractor;.

(vii) take any follow-up action, including making of any payments due to the contractor under the contract;

(ix) a copy of the notice terminating the contract shall be kept on the procurement file. Any other correspondence or documentation relating to the termination shall also be kept in the procurement file.

No further action is required following termination of a contract. Any new procurement proceedings, in place of the terminated contract, should be treated as a completely separate procurement.

If the contractor terminated the contract because of failure by the procuring agency, then cause of the failure along with procedures or policies that need improvement is to be determined to ensure that this does not happen again.

29. In the instant matter the Procuring Agency did not follow the proper Proceedings for the Termination of the Procurement Contract as described under Regulation 11.2 .5 & 11.2.6 of the SPP Regulations and withdrew the Contract by sending a withdrawal letter on 11.04.2022. Such withdrawal was against the SPP Regulations.

07. Withdrawal of Procurement Contract before the issuance of modified BER.

30. The Review Committee observed that the Procurement Committee had recommended the M/s Insaf & Brothers on 20.4.2022 but surprisingly the Contract was withdrawn by the working Superintendent Engineer, DMC (Central) on 11.04.2022, well Nine days before the recommendation of procurement Committee. Such withdrawal of the Procurement Contract before the issuance of modified BER shows the grave negligence on the part of the Superintendent Engineer, DMC (Central) Karachi.

08. Cancellation of Contract caused loss to M/s Haji Syed Ameer Ali & Brothers.

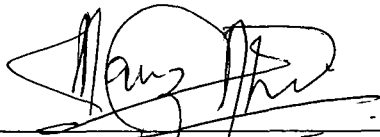
31. The Review Committee observed that the cancellation of the contract caused pecuniary losses the appellants. The brief of loss caused is as below:

Details of loss	Amount
Preparation of Bids including cost on the preparation of Bid Security	Not-specified reasonable amount to be confirmed by the bidder
Payment of Stamp Duty	470,150 Rs. Four Hundred Seventy Thousand and one hundred fifty
cost on the preparation of Performance Guarantee	Not specified reasonable amount to be confirmed by the bidder
Payment of Review Appeal fees	50,000 Rs. Fifty Thousand

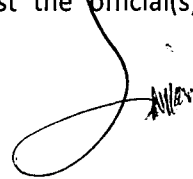
Decision of the Review Committee:

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

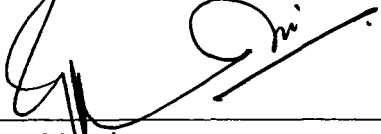
1. Declares the composition and decision of CRC illegal and subsequent withdrawal of contract, change in BER and signing of contract with **M/s Insaf & Brothers against the SPP Rules.**
2. Declares the instant **procurement as Mis-Procurement.**
3. Declares that the procuring agency is in breach of its obligations under the Act, Rules and Regulations and orders the payment of compensation by the officer(s) responsible for mis-procurement for loss occurred to and borne by the bidder on preparation of bids in terms of Rule 32(7)(e) of the SPP Rules 2010 (amended up-to-date) as mentioned in Para-31.
4. Decides to refer the matter to the Competent Authority i.e. Secretary Local Government & Town Planning Department, Karachi for initiation of disciplinary action against the official(s) of the procuring agency responsible for Mis-procurement.



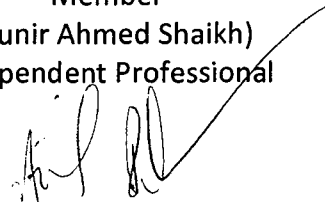
Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



Member
(G. Muhiuddin Asim)
Representative of P & D Board ,P&
Development Department Karachi



Chairman
(Atif Rehman)
Managing Director
(Sindh Public Procurement Regulatory Authority)