



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3359-60/2021-22/062

Karachi, dated 04<sup>th</sup> August, 2022

TO,

- The Accountant General,  
Government of Sindh,  
Karachi.
- The Secretary,  
Finance Department,  
Government of Sindh,  
Karachi.
- The Secretary,  
Works & Services Department,  
Government of Sindh,  
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 Badar Engineering Works and M/s Pakistan Civil & Electric Works v/s Executive Engineer, Building Division-III, Karachi held on 28.07.2022, for information & necessary action.

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

A copy is forwarded for necessary action to:

1. <sup>The</sup> Chief Engineer (Building), Works & Services Department, Karachi.
2. The Executive Engineer, Provincial Building Division-III, 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.

M. Amir  
M. Amir

Ok  
4-9-22



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3359-60/2021-22

Karachi, dated, 29<sup>th</sup> July, 2022

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

Decision of the Review Committee held on 27.07.2022

Appellant	M/s Badar Engineering Works M/s Pakistan Civil & Electric Works
Procuring Agency	The Executive Engineer, Provincial Building Division-III Karachi
PPMS ID #	T00604-21-0009
Reference No.	No. TC/G-55/PBD-III/2021-22/671 13.05.2022
Appeal Received in Authority Dated	29.06.2022
Complaint of the Appellant Addressed to <i>Chief Engineer, (Buildings) Hyderabad.</i>	Dated: 20.June 2022
Dated of Posting Notice Inviting Tender	25-05-2022 1=18.06.2022
Date of Opening of Bids	10.06.2022
Date of Posting Bid Evaluation Report	18.06.2022
Date of Signing of Contract	23.06.2022
SPPRA Observations communicated on	21.06.2022
Estimated Cost of NIT Total	Offer Rate
Total works in NIT	1 Work
Appellant Related work	1 Work
Issue involved	Disqualification Non-acceptance of Bid awarding, contract to a blacklisted bidder
CRC Decision	28.06.2022

1. The Appellant submitted that on 10.06.2022 the Executive Engineer PBD Div –III declared all the participated firm in the said tender as technically disqualified and opened the financial bid of a single bidder, M/s Pakistan civil & Electric work on 17-06-2022 (Non-working day) without waiting for 3 days which is against the SPPRA Rules and the same was also confirmed by CRC committee minutes of the meeting Para # 1.
2. The Appellant also contended that in violation of the terms and conditions of NIT, the procuring agency qualified M/s Pakistan Civil & Electric Works even though an FIR already had been filed against the company and the owner. It was also apprised that the M/s Pakistan Civil & Electric Works Firm had been involved in Departmental rift, abandoned or

unnecessary delay in completion of any work in the Government and substantial record had been presented to the procuring agency to act accordingly.

3. The Appellant also submitted that the chairman CRC vide his letter # VE(B)/ MEETING NOTE/T(II)/154 dated:22.06.2022 called a CRC meeting on 24.06.2022, but despite of issuance of directives from the chairman CRC, the Executive Engineer PBD Div-III, issued the work order of said tender to the firm M/s Pakistan civil & electric work on 23-6-2022 which is the clear violation of SPPRA Rules #31&45 which had also affirmed in CRC MOM Para# 10.
4. The Appellant also submitted that the Executive Engineer PBD Div-III processed the bill of said project in favor of said firm i.e. M/s Pakistan civil & electric works on 15-6-2022 vide AG token # 296342 prior to the opening of the bid and award of contract without any importance to SPPRA Rules and regulation which was also confirmed in CRC Minutes of Meeting (MOM).

The appellant also pleaded that the Executive Engineer PBD Div-III without having repaired financial soundness & work experience of the firm M/s Pakistan civil & electric works , qualified the firm with full marks which was also confirmed in the CRC MOM Para # 07 that the procuring agency wrongly qualified M/s Pakistan civil & Electric.

5. The appellant further submitted that as the VRC in its decision declared our firm " Technically disqualified " hence his financial proposal was to be opened as recommended by the CRC and prayed that the Review Committee might be pleased to terminate that malafidely awarded contract of the firm M/s Pakistan civil & electric works as the tender already had been declared as Mis procurement by the CRC and requested to take serious action as per SPPRA rule # 89 "integrity pact" by imposition of stated amount of penalty as well as disciplinary action against the Executive Engineer PBD Div-III.
6. Regarding the complaint of bidder individually instead of making complaint jointly by JV, the appellant submitted that Under the JV arrangement his firm only one entity being the leading contractor was responsible to the Government for execution of the entire assignment, therefore they maintained their independent legal position. The Appellant also submitted that if so required he would submit the authorization from other JV Partner.
7. Regarding the submission of Bill for release of funds in the favor of M/s Pakistan Civil & Electric Works, the procuring agency submitted that the bill was submitted on 24.6.2022 but 15.5.2022 date was mistakenly affixed by the treasury office. The Procuring Agency further clarified that the submission of bill on 15.6.2022 was an unintentional mistake of treasury office at the time of receiving and the same was rectified.

**The Appellant M/S Pakistan Civil & Electric Works:-**

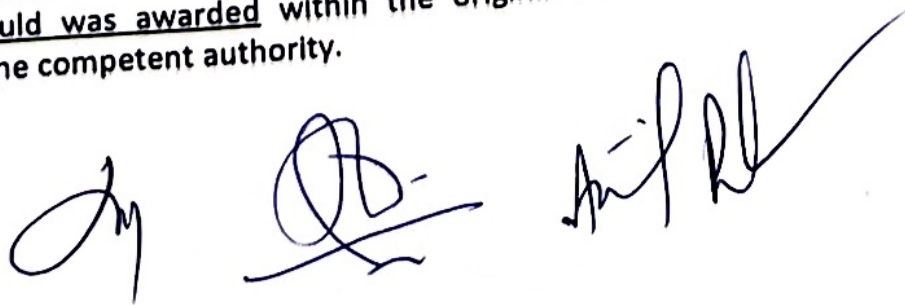
8. The Appellant (II) M/s Pakistan Civil & Electric Works submitted that the decision of CRC was based on errors and Chairman CRC partially decided the complaint ignoring the facts and realities of the matter.
9. The Appellant (II) submitted that he was never blacklisted by any procuring agency and he apprehended that the false claims and blames of the appellant M/s Badar Engineering Services were based on false accusation aiming at the derailing the legally concluded procurement contract.



10. The Appellant (II) also submitted that his Firm was not involved in any Departmental rift, abandoned or unnecessary delay in completion of any work in the Government and as well as in private organization.
11. It was also submitted that List of Litigation (if any) their nature and status / outcomes was submitted to the office of the procuring agency and no information was kept secret from the procuring agency.

**The Procuring Agency's Version:-**

12. The Executive Engineer Provincial Building Division-III Karachi raised an objection to the maintainability of appeal on the ground that since M/s Badar Engineering is one of the two members of the Joint venture and since the other members of the venture are not parties to the said review appeal, the same is liable to be dismissed.
13. The Procuring agency also submitted that the appellant could not get required score and hence was disqualified and submitted that tender issuance application was provided by firm M/s Badar Engineering Works (alone – not as a JV) so tender documents were also issued to the firm (not in JV) but tender was submitted as a joint venture firm "BADAR Engineering Works % Noor Muhammad & Sons JV. Therefore, the same objection had been underlined by the Procurement committee at the time of technical proposal opening but for the sake of transparency the procuring agency had considered the bid submitted as a JV firm.
14. It was also contested by the procuring agency that M/s Badar Engineering works & Noor Muhammad & sons JV submitted 04 No. of works in General experience of Rs. 400 M and above, marks awarded accordingly i.e. 16 out 20 marks (4 marks for each work) but failed to submit project of similar nature / magnitude of 400M or above cost. Thus failed in the section (B) experience of the firm part received 16 out of 40 marks (40% marks).
15. The Procuring Agency also submitted that M/s Badar Engineering works & Noor Muhammad & sons JV failed to submit letter from bank showing average credit balance in last 6 months, thus received no marks. Thus failed in the section (E) financial soundness of the firm part received 10 out of 20 marks (50% marks) .
16. The Procuring Agency clarified that as the (6) out of (7) bidders were technically disqualified due to their failure to prove their relevant experience detailed working by the procurement committee had been uploaded in form of BER. Further submitted that the causation of granting work to M/s Pakistan civil & electric was purely based on merit and markings/score.
17. Regarding the award of the contract after the decision of the complaint redressal committee, the procuring agency submitted that M/s Pakistan Civil & Electric works with the most Advantageous bid was awarded the procurement contract, within the original period of bid validity on 23.6.2022 and after the award of contract they came to know about the complaint of the M/s Badar Engineering Services.
18. The procuring agency also submitted that before awarding the contract, approval of the Competent Authority was sought as mentioned in Rule-14 of the SPP Rules. The bid of the successful bidder was submitted with required documents for approval. The procurement contract should was awarded within the original bid validity period after getting the approval of the competent authority.



## Observations of the Review Committee:-

### 1. The Chairman CRC transgressed the Authority

1. The Review Committee observed that the Chairman CRC transgressed the Authority vested in him by the SPP Rules. Firstly, the Chairman CRC took the decision individually in the absence of other members of the committee. Secondly, the Chairman CRC took the decision outside authorized powers of CRC. The Authority of CRC has been clearly mentioned in the SPP Rule 31(4) which are as follow
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.
2. The Rule states that the CRC can 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. However the neither CRC nor chairman CRC can declare the case as Mis-procurement.
3. In the instant matter the Chairman CRC could not ensure to take decisions within authorized powers of CRC and himself declared the case as Mis-procurement. The decision of Chairman CRC is reproduced as under:

After deliberation with the Procuring Agency and the aggrieved bidder the Chairman of the Committee on the flaws mentioned in the Procurement Process, declares the instant Procurement as Mis-Procurement, although the Complaint Redressal Committee Meeting was held in absence of the notified members i.e. Mr. Tarique Hussain of M/s the Architect Karachi and the Representative of Accountant General Sindh liable to disciplinary action at Works & Services Department level. The Aggrieved bidders are still at liberty to avail Appeal to Review Committee as per SPPRA Rule 32. s
4. The Review Committee was of the view that When the law contemplates a procedure, the same has to be done in the manner therefor and within limits prescribed. The Authority exercised beyond the vested powers cannot be provided. Hence, the decision taken by the Chairman CRC was transgression of authority entrusted by the SPP Rules under the Rule 31(4) and the declaration of Mis-procurement was an error and not correct as per Rules.



The Appellant M/s Badar Engineering Services was rightly disqualified

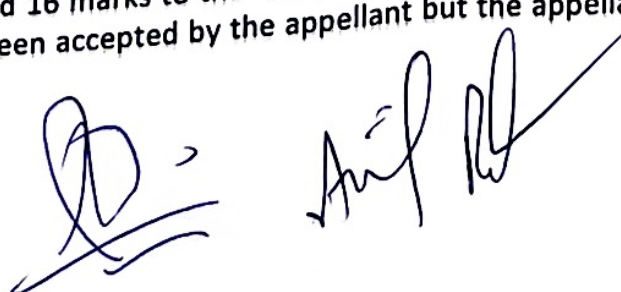
5. The Review Committee observed that the appellant was rightly disqualified because the appellant failed to get required score in the section (B) experience of the firm part. The Appellant received 16 out of 40 marks (40% marks) whereas the appellant was to get 70% marks out of 40 marks to qualify. In order to understand the matter clearly it would be appropriate to reproduce the evaluation criteria for experience

**(B) Experience of the Firm / Company - 40 Marks**

(i) General Project of Rs.400 million or above cost with Government in hand/completed in last 5 years (4 Marks for each project and attach copy of documentary evidence with date of start, date of completion, project pictures and cost of project / reasons of delay if any for each project mentioned). **20 Marks**

(ii) Project of similar nature/magnitude of Rs. 400 million or above cost Government in hand/completed in last 5 years (10 Marks for each project and attach with date of start, date of completion, project pictures and cost of project/reasons of delay if any for each project mentioned). **20 Marks**

6. As per the evaluation criteria every bidder was required to demonstrate 5 General Project of Rs.400 million or above cost with Government in hand/completed in last 5 years to get 20 Marks or the 4 marks would be awarded for each General Project submitted. Similarly, every bidder was required to submit 2 ( two ) Projects of similar nature/magnitude of Rs. 400 million or above cost with Government in hand/completed in last 5 years. The Appellant submitted the list of four projects and interestingly the same projects were shown in the list of General Projects and Projects of similar nature/magnitude.
7. The Procuring agency considered the four projects as General Projects and awarded 4 score to each project and the appellant got 16 score. However, when the bid was evaluated for Projects of similar nature/magnitude, it was noticed that no new documents or data was attached but the appellant had demonstrated the same projects that were shown in General Projects. Therefore, finding that the appellant had duplicated the projects, the procurement committee did not award the score (because score was already awarded in General Projects).
8. The Appellant contended that the procuring agency should have construed the 4 projects in a way that 2 projects would have been counted as the projects of Similar nature and 20 score would have been awarded and 2 projects would have been considered as General Projects so 8 score would have been awarded reaching the bidder at the score of 28.
9. The Review Committee observed that the Appellant mentioned the same data twice in order to fulfill the requirement. The Committee observed that the appellant duplicated the data. Duplicated data can mislead the procuring agency in the evaluation of bids. Therefore, the provision of duplicated data was to be considered as misleading, inaccurate and incomplete and perhaps it was the sufficient cause to disqualify the bidder. However, the Procuring Agency awarded 16 marks to the bidder for such duplicated data such awarding of 16 score would have been accepted by the appellant but the appellant kept pleading for



getting score according to his desires was error and not acceptable. Hence, the bidder would not be allowed to draw conclusion according to his desires and submit and get evaluated the bids according to his wishes.

### **Non-Availability of Average Credit Balance of the firm**

10. The Appellant also contended that the procuring agency has not given score for "Average Credit Balance of the firm" whereas the Appellant complained that he submitted the required bank letter mentioning average credit balance of the firm in last 6 months. In order to understand the matter clearly it would be appropriate to reproduce the evaluation criteria for "Average Credit Balance of the firm"

#### **Average Credit Balance of the firm:**

**(10 Marks)**

(Attach bank letter mentioning average credit balance of the firm in last 6 months)

i. From 50 to 60 Million	2.5 Marks
ii. From 60 to 70 Million	5.0 Marks
iii. From 70 to 80 Million	7.5 Marks
iv. Above 80 Million	10 Marks

11. Credit balance is the amount of money that a client of a financial institution has in his or her account, in securities. A Credit line is a flexible loan option offered by financial institutions to individuals and corporate entities.
12. Apparently it seems that an amount Credit balance and a Credit line are same and interchangeable terms. However, the close study of the two terms shows difference between the two. There can be many differences between the two but the fundamental difference between Credit balance and A Credit line is form where the money is pulled. Credit balance is the amount of money that can be taken from the banking account of any individual, company or any department whatsoever the case may on the other hand a person with credit line facility does not owe the money in his/her account but the amount required is pulled and drawn from the credit line.
13. In the instant matter the appellant was allowed a credit line facility by Summit Bank up-to 600 million and certificate dated 8<sup>th</sup> January 2022 was issued to the Appellant for the same. The operative Para of the certificate is reproduced as under:

**The customer is of high net worth and may be worthy of credit line facility up-to Rs. 600.000 million as per documents provided and other performances.**

14. The Appellant was required to attach bank letter mentioning average credit balance of the firm in last 6 months but the appellant attached a certificate dated 8<sup>th</sup> January 2022 for credit line facility up-to Rs. 600.000 million which would not acceptable for bank letter mentioning average credit balance of the firm in last 6 months. Therefore, there was no any error in the evaluation of bid of the Appellant.



The Appellant M/s Badar Engineering Services objected the issuance of BER on a holiday on 17.6.2022. The Review Committee observed that the issuance and uploading of BER on a holiday does not make out any error under the SPP Rules. Furthermore, the appellant also contended that BER was issued on the very next day of the financial opening of bids. The Committee observed that the procurement process needs be carried out timely so the SPP Rules does not require any wait for issuance of BER after the financial opening of bids.

16. The Appellant M/s Badar Engineering Services objected that the procuring agency did not follow the Rule 45 which stipulates for the **Announcement of Evaluation Reports** at least three (3) working days prior to the award of contract.

17. The Review Committee observed that the procuring agency uploaded the Bid Evaluation Report on **18.6.2022**. The relevant portion of uploaded details is given as below;

## BID EVALUATION REPORT

(1 OF 1)

NIT ID	BER ID	BER TITLE	Procuring Agency	Posted On	City
<u>T00604-21-0009</u>	BE00604-21-0009-1	Construction of Multi Storied Flats Phase II at sindh Governor house Karachi (48-NOS)	Provincial Building Division-III Karachi 51-Works and Services Department	18-06-2022	Karachi

18. The Procuring agency uploaded BER on 18.6.2022 and was required to wait three working days to award the contract. The same was done by the procuring agency as the procurement contract was awarded on 23.6.2022, well waiting three working days from 20.6.2022 to 22.6.2022. For understanding the three working days, the Calendar for the month of June is affixed as under:

<b>June 2022</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>
<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>		



## The Issue of Signing of Contract with the blacklisted bidder

19. The Appeal and Complaint of the appellant are on the record. The Appellant claimed that the procuring agency awarded the contract to M/S Pakistan Civil & Electric Works who was blacklisted and Firm is involved in Departmental rift, abandoned or unnecessary delay in completion of any work in the Government. During the meeting, the appellant was asked to substantiate his claim and complaint with documentary evidences. The Appellant could not place any documentary evidence on record that may prove that M/S Pakistan Civil & Electric Works was blacklisted and Firm was involved in Departmental rift, abandoned or unnecessary delay in completion of any work in the Government.

## Signing of Contract without Decision of CRC

20. 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.

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

7. 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.]

21. 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. It was mandatory upon the procuring agency to not sign the contract until the decision of CRC. However, the procuring agency signed the contract which is violation of SPP rule 31(8).

## Submission of Bill in favor Pakistan Civil and Electric Works on 15.6.2022

22. The Review Committee observed that the Appellant claimed that the procuring agency illegally and malafidely submitted the bill in favor Pakistan Civil and Electric Works on 15.6.2022 well before the issuance of BER. On the other hand, the procuring agency submitted that bill was submitted for advance payment after the award of contract on 24.6.2022 but the date was mistakenly affixed as 15.6.2022. Both the parties have submitted the record in favor of their claim and counterclaim.

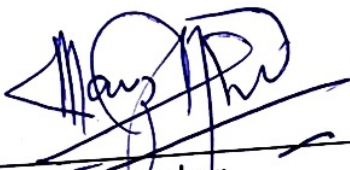
23. The Review Committee observed that appropriate procedures for the release of funds for the development budget are in place and observed that Finance Department monitors the mechanism for Treasuries and Accounts. Furthermore, A Principal Accounting Officer remains responsible for overall planning, management, execution, performance and accounting with reference to his department. Therefore, it would be appropriate and decided that the matter of submission of bill before the award of contract shall be looked into and investigated by the Finance Department (GOS) and the Accountant General Sindh, Karachi as per rules/policy in vogue.




**Decision of the Review Committee:**

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

1. Sets aside the decision of CRC for the reasons recorded supra in the observations of the Review Committee".
2. Rejects the appeal as the appellant was rightly disqualified by the procurement committee for the reasons recorded supra in the observations of the Review Committee.
3. Furthermore, the procuring agency's decision in making any contract during the pendency of complaint and appeal as per the SPP Rules are against the fairness, transparent and SPP Rules procedures and also the matter of submission of bill in A.G office for making payment in favour of Pakistan Civil and Electric works prior to the award OF Contract for which proper action be initiated by Administrative Department against Procuring Agency".
4. Moreover, the Matter of submission of bill in favor of Pakistan Civil & Electric Works prior to the award of contract is referred to the Finance Secretary, Government of Sindh with recommendation to investigate the matter and resolve the controversy as per Rules/Policy in vogue.

  
Member  
(Manzoor Ahmed Memon)  
Member SPPRA Board

  
Member  
(Munir Ahmed Shaikh)  
Independent Professional

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