



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1101/2019-20/0166


Karachi, dated the 22<sup>th</sup> July, 2020

To,

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

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 Sufi Enterprises and Anors v Municipal Committee Badin*) held on 07<sup>th</sup> July, 2020, for taking further necessary action, under intimation to this Authority, at the earliest.

  
22/07/2020  
ASSISTANT DIRECTOR (LEGAL-II)

*A copy along with enclosures/ decision is forwarded for information to:*

1. The Deputy Commissioner Badin.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Director Local Government, Hyderabad Division.
4. The Administrator Municipal Committee Badin.
5. The Chief Municipal Officer, Municipal Committee Badin.
6. The Assistant Director (I.T), SPPRA [with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010].
7. The Staff Officer to the Chairman/ Members Review Committee.
8. The appellants M/s Sufi Enterprises; M/s Asif Raza Contractor; and Aziz Ullah Panhyar.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1101/2019-20/0166

Karachi, dated the 2<sup>nd</sup> July, 2020

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

(APPEALS)

*M/s Sufi Enterprises and Anors*  
Versus  
*Municipal Committee Badin*

(NIT ID # T01506-19-0003 DATED 03.02.2020)

**FACTS AND BACKGROUND**

The appellants<sup>1</sup>, M/s Sufi Enterprises, M/s Asif Raza Contractor, and M/s Aziz Ullah Panhyar, Government Contractors Hyderabad/ Khairpur Mirs, lodged individual complaints (vide letters dated 21 & 23.02.2020 and 01.03.2020, respectively) addressed to the Complaints Redressal Committee (CRC)<sup>2</sup> and copy endorsed to this Authority – for taking necessary action – against the NIT No.MC/BDN/234/2020 dated 03.02.2020 floated by the Administrator, Municipal Committee Badin ‘the procuring agency’ for procurement of seven (7) works related to the ‘*construction of surface drain and brick pavement, etc.*’<sup>3</sup> whereby the appellants raised averments by claiming that they downloaded bid documents from the Authority’s website and submitted their bids through courier service (M&P) on 18.02.2020 that were received by the procuring agency on 19.02.2020 in terms of Rule-24(2) of SPP Rules, 2010<sup>4</sup>. The appellants further claimed that when their representatives approached the procuring agency on 20.02.2020 at 11.30 a.m.<sup>5</sup> to witness the opening of bids, the Chairman of Procurement Committee (PC)<sup>6</sup> refused to receive and open their bids submitted through the mail; hence, the appellants requested the CRC to direct the PC for accepting and opening the bids publicly as per governed procurement rules<sup>7</sup>.

2. Subsequently, the appellants (vide letters dated 02 & 09.03.2020, respectively) preferred to individual appeals, along with supporting documents and review appeal fee<sup>8</sup>, stating that the CRC had failed to decide the matter – complaints as referred above – within the stipulated period; hence, the appellants requested the Authority to place their matters/ cases before the Review Committee in terms of Rule-31(5) read with Rule-32(5) of SPP Rules, 2010<sup>9</sup>.

- <sup>1</sup> Appellant # I: Sufi Enterprises; Appellant # II: M/s Asif Raza Contractor; and Appellant # III: M/s Aziz Ullah Panhyar
- <sup>2</sup> Constituted under the chairmanship of Administrator Municipal Committee Bain as per order No.MC/BDN/181/2020 dated 27.01.2020 issued by the Municipal Committee Badin
- <sup>3</sup> Detailed description/ nature of procurement can be accessed via instant procurement’s NIT available on the PPMS website at ID # T01506-19-0003 dated 03.02.2020 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]
- <sup>4</sup> Rule-24(2) provides that the bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority’s website along with tender fee if any by mail or by hand.
- <sup>5</sup> The deadline for submission and opening of bids as per NIT was 20.02.2020 at 01.00 p.m.
- <sup>6</sup> Constituted under the chairmanship of Chief Municipal Officer, Municipal Committee Badin as per notification No.SO-III(LG)/14-9/2016 dated 05.08.2019 issued by the Local Government Department, Government of Sindh
- <sup>7</sup> The appellants submitted their complaints to the CRC through courier service – M&P IDs # 322000195730, 322000195729, and 122001231033 – that were checked/ tracked via the website, from where it was revealed that the appellants’ complaints were received by Mr. Anwar on 24.02.2020 and 02.03.2020 at 11.11 a.m. [<http://mulphilog.com/tracking-detail.php>]
- <sup>8</sup> Authority’s Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]
- <sup>9</sup> Rules-31(5) & 32(5) provide that the complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in under rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer. 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

3. Accordingly, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 18.03.2020 at 11.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letters dated 06 & 13.03.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rules-32(6), (8) & (10) of SPP Rules, 2010<sup>10</sup>. However, the said meeting was later on postponed by this Authority (vide letter of even number dated 17.03.2020) in pursuance of the Services General Administration & Coordination Department's Order issued vide letter NO.SOI(SGA&CD)-6/29/2019 (SMC) dated 14.03.2020<sup>11</sup>.

4. Thereafter, the instant matters/ appeals were rescheduled for hearing by the Review Committee on 23.06.2020 at 12.00 p.m., and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 09.06.2020) to appear and present/ defend the cases. In compliance, Mr. Safiullah, Proprietor M/s Sufi Enterprises, Mr. Asif Raza, Proprietor M/s Asif Raza Contractor, and M/s Aziz Ullah, Proprietor M/s Aziz Ullah Panhyar '*the appellants' representatives*' appeared before the Review Committee; whereas, the representative of the procuring agency did not attend the meeting<sup>12</sup>, due to which the Committee decided to provide another opportunity to the procuring agency to appear in next meeting that was later on scheduled on 07.07.2020, for defending the cases and notices in this connection were again issued to the parties concerned vide this Authority's letter dated 25.06.2020. In compliance, the appellants' representatives appeared before the Committee, whereas, the procuring agency's representative once again failed to appear without any intimation. Therefore, the Committee members unanimously decided to continue the proceedings for deciding the cases/ appeal after considering available procurement record and relevant facts with supporting evidence as per law<sup>13</sup>.

### REVIEW COMMITTEE PROCEEDINGS

5. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellants to present the cases/ versions, one by one, over the instant procurement issues/ grievances.

#### APPELLANTS' VERSION

6. Mr. Saifullah Panhyar '*the appellant # I*' apprised the Committee of his intention to participate under instant procurement NIT's work listed at Sr. # 5 '*Construction of CC Street from Jabbar Chandio Shop to Filter Plant Bagh Mohallah M.C. Badin (Estimated Cost = PKR 1.97 M)*' and in this regard, the appellant downloaded the bid document from the Authority's website and then submitted the bid along with supporting documents – including tender fee and bid security – through the mail (M&P) on 18.02.2020 that was received by the procuring agency on 19.02.2020<sup>14</sup> in terms of Rule-24(2) of SPP Rules, 2010<sup>15</sup>. The appellant contended that when he deputed his authorized representative, who arrived in the procuring agency's office on 20.02.2020 at 11.30 a.m., to submit another bid by hand against the NIT's work listed at Sr. # 6 '*Construction of CC Street & Repair of Drain Nala from Ali Muhammad Qazi to Khalil Qazi to P.A.F Road M.C Badin (Estimated Cost = PKR 1.24 M*' and to witness the opening of the bids, the Chief Officer of the procuring agency did

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complaint redressal committee of the Department and all supporting documents; (c) copy of the decision of procuring agency/ complaint redressal committee, if any.

<sup>10</sup> Rules-32(6), (8) & (10) provide that on receipt of appeal along with all requisite information and documents the Chairperson shall convene a meeting of the Review Committee within seven working days. It shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee as and when called and produce documents, if required. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

<sup>11</sup> It was directed therein that no employee shall visit the offices of Sindh Secretariat, Karachi, and also shall not leave headquarter in the wake of an outbreak of COVID-19.

<sup>12</sup> This Authority forwarded the meeting notice to via mail and Whatsapp that was also acknowledged by the procuring agency.

<sup>13</sup> It was mentioned therein in the Authority's letter for the head of the procuring agency to make ensure his (or representative) appearance before the Committee to contest/ defend the cases otherwise the cases would be decided on an ex-parte basis.

<sup>14</sup> M&P ID # 322000200005 that was checked/ tracked via the website, from where it was revealed that the appellant's bid was received by Mr. Babloo of the procuring agency on 19.02.2020 at 11.11 a.m. (<http://mulphilog.com/tracking-detail.php>)

<sup>15</sup> Ibid.

not receive the bid and also refused to open the bids submitted through mail on the pretext that bids quoted on the downloaded documents or sent through the mail would not be entertained. The appellant further contended that his representative presented a copy of the referred rule, which allows the bidders to submit their bids through mail on the bid documents downloaded from the Authority's website and in response to it, the Chief Officer threatened to assault his representative for award of the procurement contracts to favorable contractors in violation of the rules.

7. Mr. Asif Raza *'the appellant # II'* apprised the Committee of his intention to participate under instant procurement NIT's work listed at Sr. # 7 *'Construction of CC Street from Girls College Road to Saleh Boher House Mukhtiyar Khuwaja Muhallah Badin (Estimated Cost = PKR 1.38 M)'* and in this regard, the appellant downloaded the bid document from the Authority's website and then submitted the bid along with supporting documents – including tender fee and bid security – through the mail (M&P) on 18.02.2020 that was received by the procuring agency on 19.02.2020<sup>16</sup> in terms of Rule-24(2) of SPP Rules, 2010<sup>17</sup>. The appellant contended that when he deputed his authorized representative, who arrived in the procuring agency's office on 20.02.2020 at 11.30 a.m., to submit another bid by hand against the NIT's work listed at Sr. # 4 *'Construction of CC Street from Latif Umrani House to Sharif Umrani House & Main Khoski Road to Geeta Ram Paro M.C Badin (Estimated Cost = PKR 0.74 M'* and to witness the opening of the bids, the Chief Officer of the procuring agency did not receive the bids and also refused to open the bids submitted through mail on the pretext that bids quoted on the downloaded documents or sent through the mail would not be entertained. The appellant further contended that his representative presented a copy of the referred rule, which allows the bidders to submit their bids through mail on the bid documents downloaded from the Authority's website and in response to it, the Chief Officer threatened to assault his representative for award of procurement contracts to favorable contractors in violation of the rules.

8. Mr. Aziz Ullah *'the appellant # III'* apprised the Committee of his intention to participate under instant procurement NIT's work listed at Sr. # 2 *'Brick Pavement from Indus Hospital Road to Lakhano Mallah Village M.C Badinn (Estimated Cost = PKR 1.46 M)'* and in this regard, the appellant downloaded the bid document from the Authority's website and then approached the procuring agency on 20.02.2020 for submission of the bid along with supporting documents – including tender fee and bid security – in terms of Rule-24(2) of SPP Rules, 2010<sup>18</sup>. The appellant contended that the Chief Officer of the procuring agency did not receive the bid by stating that these works have already been awarded, therefore, contractors will not be allowed to participate further.

#### REVIEW COMMITTEE'S FINDINGS/ OBSERVATIONS

9. After hearing the parties at length, scrutinizing the procurement record in a chronological sequence, and discerning the applicable rules, the Review Committee observed that:

- The instant procurement's chronology of the significant events highlights that the procuring agency received two to three bids against each procurement work that were purportedly opened/ evaluated by the PC on 20.02.2020 and subsequently the procuring agency posted the bid evaluation reports<sup>19</sup> and contract documents<sup>20</sup> on the Authority's website on 28.02.2020 and 06.03.2020, respectively, in terms of Rules-45 & 50 read with Rule-10 of SPP Rules, 2010<sup>21</sup>. Summary of bids quoted by the lowest evaluated bidders (as mentioned

<sup>16</sup> M&P ID # 322000200006 was checked/ tracked via the website, from where it was revealed that the appellant's bid was received by Mr. Babloo of the procuring agency on 19.02.2020 at 11.11 a.m. [<http://mulphilog.com/tracking-detail.php>]

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Bid Evaluation Reports at ID # BE01506-19-0003-1 to 7 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

<sup>20</sup> Contract Documents at ID # C01506-19-0003-1 to 7 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

<sup>21</sup> Rules-45, 50 & 10 provide that procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on the website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract. Within fifteen (15) days of signing of contract, the procuring agency shall publish on the website of the Authority and on its own website, if such a website exists, the results of the bidding process, identifying the bid through

in the bid evaluation report) and approved by the procuring agency (as mentioned in the work orders) are under:

Work #	Estimated Cost	Lowest Evaluated Bidder	Lowest Evaluated Bid	Approved Bid
I	617,000.00	M/s Z & Z Construction	586,915.00	617,000.00
II	1,469,000.00	M/s S.S.R. Construction	1,397,671.00	1,469,000.00
III	1,581,000.00	M/s Z & Z Construction	1,504,032.00	1,581,000.00
IV	745,000.00	M/s Madni Construction	7,084,111.00	745,000.000
V	1,970,000.00	M/s Kashif Abbas Jaffri	1,872,732.00	1,970,000.00
VI	1,248,000.00	M/s Noor Mohd. Soomro	1,184,938.00	1,248,000.00
VII	1,380,000.00	M/s Sonu Builders	1,313,849.00	1,380,000.00

- The chronology with referred data reveals that the procuring agency did not incorporate/ mention the exact amount of the estimated cost of works as well as bids quoted by the bidders while posting the notice inviting tender/ bid evaluation reports on the Authority's website. Secondly, the bid evaluation reports/ work orders reveal that the lowest evaluated bidders quoted up to 70% above the scheduled rates then why these rates commensurate to the estimated cost of the works. *It is further observed that the procuring agency awarded the procurement contracts on 02.03.2020 i.e. on the next working day after posting the bid evaluation reports on the Authority's website in violation of Rule-45 of SPP Rules, 2010<sup>22</sup>, and subsequently posted the contract documents on the Authority's website in the absence of contract form/ agreement that is another violation of Rules-50 & 10 of SPP Rules, 2010<sup>23</sup>;*
- The appellants M/s Sufi Enterprises and M/s Asif Raza submitted their bids against NIT's works listed at Sr. # 5 & 7 through the mails received by the procuring agency on 19.01.2020 i.e. a day before the deadline for submission of bids, as per supporting/ available evidence duly verified via the courier service provider (M&P)<sup>24</sup>, then why did the procuring agency not accept/ open/ incorporate the details of the appellants' bids in the bid evaluation reports, which is the core objective of an open competitive bidding as defined under Clause-aa of Sub Rule-2(1) read with Rule-4 of SPP Rules, 2010<sup>25</sup> and Clause-2.2 of the Procurement Regulations (Works)<sup>26</sup>. The appellants in this regard also lodged complaints in a timely manner addressed to the statutory/ proper forum i.e. the CRC and such complaints were received by Mr. Anwar on 24.02.2020 and 02.03.2020, respectively, then why did the CRC not take any action with regard to these complaints as required under Rule-31(5) of SPP Rules, 2010<sup>27</sup>, and also why did the procuring agency award the procurement

procurement identifying number, if any, and the [following] information: (1) Contract Evaluation Form; (2) Form of Contract and Letter of Award; (3) Bill of Quantities or Schedule of Requirement. The procuring agency shall, immediately upon award of contract, make the evaluation report of the bid, and the contract agreement public through hoisting on the Authority's website as well as on procuring agency's website, if the procuring agency has such a website; provided where the procuring agency is convinced that disclosure of any information related to the award of a contract shall be against the public interest or may jeopardize national security, it can without only such information fro public disclosure, subject to the prior approval of the Chief Minister.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Clause-aa of Sub-rule 2(1) defines open competitive bidding as a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all the interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Bidding. Rule-4 provides that that 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.

<sup>26</sup> Clause-2.2 provides that the public procurement has a number of objectives which are enumerated herewith:- (a) economy and efficiency in the implementation of the project/scheme including the procurement of the works and related services thereof, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations; (b) provide equal opportunity and information to all eligible and interested bidders to compete in the procurement process; (c) ensure transparency and fairness in the process; (d) obtaining works and services of the appropriate quality; (e) avoid cost and time over run; and (f) best value for money.

<sup>27</sup> Ibid.

contracts while infracting the proviso of Rule-31(7) of SPP Rules, 2010<sup>28</sup>. An act by the procuring agency to restrain the bidders from participating and/ or to exclude the submitted bids in an arbitrary and capricious manner at any stage of the bidding process, as observed under instant procurement, is tantamount to anti-competitive practices leading to collusion among the contractors, which defeat the purpose and object of the governed procurement rules against which the procurement process was carried out. The Review Committee in this regard afforded ample opportunities to the procuring agency's representative who, without any intimation, failed to appear to defend the case/ supporting evidence, which eventually supports the appellants' claim and their supporting evidence.

### Review Committee Decision

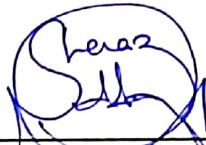
10. In view of the foregoing findings/ observations, as mentioned under para-9, and after due deliberation, the Review Committee unanimously declares the instant procurement as Mis-Procurement in light of Rule-32(7)(g) of SPP Rules, 2010<sup>29</sup> read with Clause (i) of Section-2 of SPP Act, 2009<sup>30</sup> and decides to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010<sup>31</sup>.



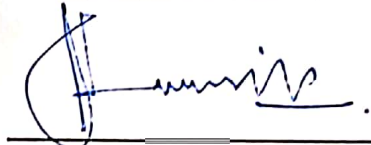
(Member)  
Syed Adil Gilani  
Private Member SPPRA Board  
Representative Transparency International



(Member/ Independent Professional)  
Engr. Munir Ahmed Shaikh  
(Rtd.) Executive Engineer  
Public Health Engineering Department  
Government of Sindh



(Member)  
Sheeraz Siddiqui  
Director (Audit)  
Nominee of Director General Audit Sindh



(Chairman)  
Abdul Rahim Sheikh  
Managing Director  
Sindh Public Procurement Regulatory Authority

<sup>28</sup> Proviso of Rule-31(7) provides that [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.

<sup>29</sup> Rule-32(7)(g) provides that [unless the Review Committee recommends dismissal of an appeal being frivolous, in which case the bidder may lose the bid security deposited with the procuring agency, the Review Committee may] declare the case to be one of mis-procurement if material violation of Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement, has been established.

<sup>30</sup> Clause (i) of Section-2 provides that the mis-procurement means public procurement in contravention of any provision of this Act, any rule, regulation, order or instruction made there under or any other law in respect of, or relating to, public procurement.

<sup>31</sup> Rule-32(A)(2) provides that on declaration of mis-procurement; the head of the procuring agency, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis-procurement and may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials.