



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1321/2019-20/0175

Karachi, dated the 23rd July, 2020

To,

The Secretary to Government of Sindh,
Works & Services 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 F.B. Enterprises and Anors v Provincial Highways Division Hyderabad*) held on 07th July, 2020, for your information and further necessary action, under intimation to this Authority, at the earliest.

23/07/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Chief Engineer (Highways), Hyderabad.
2. The Project Director, Project Implementation Unit, Hyderabad-Mirpurkhas Dual Carriageway Project, Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Executive Engineer, Provincial Highways Division, Hyderabad.
5. 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].
6. The Staff Officer to the Chairman/ Members Review Committee.
7. The appellants: M/s F.B. Enterprises; M/s Liaquat Ali Brothers Construction Company; M/s Ghulam Murtaza Enterprises; M/s S & Sons; M/s Rabbi Traders; M/s Hussain Enterprises; and M/s AMB & Co., Hyderabad/ Jamshoro.



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NO.AD(L-II)/SPPRA/CMS-1321/2019-20/0175

Karachi, dated the 23rd July, 2020

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

(APPEALS)

M/s F.B. Enterprises and Anors
Versus

Provincial Highways Division Hyderabad

(NIT ID # T00606-19-0014 DATED 21.05.2020)

FACTS AND BACKGROUND

The appellants¹ M/s F.B. Enterprises, M/s Liaquat Ali Brothers Construction Company, M/s Ghulam Murtaza Enterprises, M/s S & Sons, M/s Rabbi Traders, M/s Hussain Enterprises, and M/s AMB & Co. (Government Contractors Hyderabad/ Jamshoro) lodged individual complaints (vide letters dated 12, 13, 14, 15 & 17.06.2020, respectively) addressed to the Complaints Redressal Committee (CRC)² as well as this Authority against the NIT No.TC/G-55/1326/2020 dated 19.05.2020 floated by the Executive Engineer, Provincial Highways Division, Hyderabad 'the procuring agency' for procurement of seven (7) works related to the 'construction/ reconditioning/ widening/ repair of roads'³ whereby the appellants raised averments by claiming that they downloaded bid documents from the Authority's website and submitted their bids through mail⁴ on 05.06.2020 that were received by the procuring agency on 08.06.2020 in terms of Rule-24(2) of SPP Rules, 2010⁵. The appellants further claimed that when they approached the procuring agency on 08.06.2020⁶ to submit their bids by hand against another work(s) and to witness the opening of bids, they observed the Procurement Committee (PC)⁷ quorum incomplete as required under Rule-7(2) of SPP Rules, 2010⁸ and the bids' submission/ opening process did not take place without issuing any corrigendum by the procuring agency to extend the schedule for submission/ opening of the bids; hence, the appellants requested the CRC to issue directions for extending the bid process openly and transparently following the governed procurement rules in letter and spirit⁹. In turn, this Authority (vide letters dated 18.06.2020) also forwarded the appellants referred matters to the CRC with advice to redress the grievances and then furnish decisions to the appellants as well as this Authority within the stipulated period as specified under Rule-31(5) of SPP Rules, 2010¹⁰.

2. Subsequently, the appellants (vide letters dated 22, 23, 24 & 26.06.2020) preferred individual appeals, along with supporting documents and review appeal fee¹¹, by stating that the CRC had failed to

¹ Appellant # I: F.B. Enterprises; Appellant # II: M/s Liaquat Ali Brothers Construction Company; Appellant # III: M/s Ghulam Murtaza Enterprises; Appellant # IV: M/s S & Sons; Appellant # V: M/s Rabbi Traders; Appellant # VI: M/s Hussain Enterprises; and Appellant # VII: M/s AMB & Co.

² Constituted under the chairmanship of Project Manager, Project Implementation Unit, Hyderabad Mirpurkhas Dual Carriageway Project as per notification No.E&A(W&S)/3-9/2020 dated 30.01.2020 issued by Works & Services Department

³ Detailed description/ nature of procurement works can be accessed via instant procurement's NIT available on the PPMS website at ID # T00606-19-0014 dated 21.05.20 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

⁴ Appellants # II & IV submitted their bids to the procuring agency through the mail (TCS)

⁵ 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.

⁶ The deadline for submission and opening of bids as per NIT was 08.06.2020 at 12.00 p.m. and 01.00 p.m., respectively

⁷ Constituted under the chairmanship of Executive Engineer, Provincial Highways Division, Hyderabad as per notification No.E&A(W&S)/3-9/91-2013 dated 02.03.2019 issued by the Works & Services Department

⁸ Rule-7(2) provides that the procurement committee comprising three members: all members shall form quorum.

⁹ http://www.pprasindh.gov.pk/SPPACT15MARCH2019.pdf

¹⁰ Rule-31(5) provides 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.

¹¹ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [https://ppms.pprasindh.gov.pk/PPMS/]

decide the matter – complaints as referred above – within the stipulated period; hence, the appellants requested the Authority to place their cases before the Review Committee in terms of Rule-31(5) read with Rule-32(5) of SPP Rules, 2010¹².

3. Accordingly, the appellants' cases after initial scrutiny/ thorough examination were taken up by the Review Committee for hearing in its meeting scheduled on 07.07.2020 at 01.00 p.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letters dated 24 & 25.06.2020 and 03.07.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rules-32(6), (8) & (10) of SPP Rules, 2010¹³. In compliance, the meeting was attended by the following (representatives of the procuring agency and appellants):

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Mr. Ghulam Shabir, Project Manager	Hyderabad-Mirpurkhas Dual Carriageway Project
II.	Mr. Fazal Mohd., Executive Engineer	Provincial Highways Division Hyderabad
Appellants		
I.	Mr. Farooq Ali, Proprietor	M/s F.B. Enterprises
II.	Mr. Liaquat Ali Rajpar, Proprietor	M/s Liaquat Ali Brothers Construction Company
III.	Mr. Ghulam Murtaza Rind, Proprietor	M/s Ghulam Murtaza Enterprises
IV.	Mr. Naveed Shaikh, Proprietor	M/s S & Sons
V.	Mr. Adnan Bhatti, Proprietor	M/s Rabbi Traders
VI.	Mr. Nasrullah Abro, Proprietor	M/s Hussain Enterprises
VII.	Mr. Ali Ahmed Brohi, Proprietor	M/s AMB & Co.

REVIEW COMMITTEE PROCEEDINGS

4. 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

5. Mr. Farooq Ali '*the appellant # I*' apprised the Committee of his intention to participate under instant procurement NIT's works listed at Sr. # 4, 6, 7 '*reconditioning of road from Barchani to village Sathio via Juman Hingoro village (mile 0/0-4/3) 7.0 km (i/c construction portion); W/R of road from Bheda to Suhebja via Dargah Shah Abdul Rehman Meerani Connect National Highway at Punj Moro (i/c approach to villages) road mile 0/0-7/4; W/R of road from Sadiq Memon to Hafiz Sandhano road to Tando Allahyar Mirwah road at 28 Mall Mori i/c link road Darya Khan Mari mile 080-9/3 (15.08 km) having an estimated cost of PKR 175.95, 232.087 and 241.09 million, respectively*' and in this regard, the appellant downloaded the bid document from the Authority's website and then approached the procuring agency on 08.06.2020 at 11.30 a.m. to submit the bids along with supporting documents – including tender fee and bid security – in terms of Rule-24(2) of SPP Rules, 2010¹⁴. The appellant contended that the PC members, having primary responsibility to receive/ open the bids in terms of Rule-8 of SPP Rules, 2010¹⁵, were not present there in the procuring agency's office during the prescribed schedule for

¹² Rule-32(5) provides that the bidder shall submit [following documents] to the Review Committee:- (a) a letter stating his wish to appeal to the Review Committee and the nature of the complaint; (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents; (c) copy of the decision of procuring agency/ complaint redressal committee, if any.

¹³ 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.

¹⁴ Ibid.

¹⁵ Rule-8 provides that procurement committee shall be responsible for (1) preparing and/ or reviewing bidding documents; (2) carrying out technical as well as financial evaluation of the bids; (3) preparing evaluation report as provided in Rule 45; (4) making recommendations for the award of contract to the competent authority; and (5) perform any other function ancillary and incidental to the above.

submission/ opening of the bids and resultantly he queried, via cellphone, the similar position from the Executive Engineer who confirmed for the award of works to already decided specific firms. The appellant further contended that he submitted a bid as PKR 120.00 million against the similar work, as listed at Sr. # 4 of the instant procurement's NIT, in the previous tender where he (the appellant) was found as the lowest evaluated bidder but the procuring agency rather than awarding the contract re-invited the bids without canceling the previous work and this time the procurement committee has recommended for award of similar work to M/s Imtiaz Ali Memon at PKR 174.08 million.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative as to why the NIT's work as listed at Sr. # 4, previously invited vide NIT No.TC/G-55/660/2020 dated 25.02.2020, was canceled¹⁶?
 - ◆ The procuring agency's representative clarified that the bids against referred work were previously invited based on the advice tendered by the Planning & Development Department; however, later on, due to non-issuance of Administrative Approval for the referred development scheme the procuring agency canceled the procurement's work.
- Syed Adil Gilani pointed out as to how the procuring agency solicited bids when the Administrative Approval was not issued as required under Rule-14 of SPP Rules, 2010, read with Clauses-1.1, 2.21 & 6.1(i) of the Authority's Procurement Regulations (Works)¹⁷?
 - ◆ The procuring agency's representative clarified that the Planning & Development Department advised for initiating the tendering process to save the procurement cycle/ time period and subsequently due to the COVID-19 pandemic situation the Administrative Approval could not be issued; hence, the bidding process for such work(s) was canceled. Secondly, the appellant was not qualifying the criteria as set forth in the relevant bid document in terms of Rule-42(1) of SPP Rules, 2010¹⁸.
- Subsequently, Engineer Munir Ahmed Shaikh (Member of Review Committee) asked the appellant to confirm whether he participated under instant procurement's NIT's work # 4?
 - ◆ The appellant stated that he was present in the procuring agency's office on 08.06.2020 to submit the bids against three works including the work # 4; however, the procuring agency neither placed any tender box nor carried out the bidding process as required under the rules and his contentions can be verified from documents and video recording. *In turn, the procuring agency's representative refuted the appellant's allegations by stating that the appellant did not obtain the bid documents from the procuring agency's office and secondly the appellant could submit the bids by hand when the tender box was not placed there in the procuring agency's office.*

6. Mr. Javed 'the appellant # II' apprised the Committee of his intention to participate under instant procurement NIT's work listed at Sr. # 3 'reconditioning of road from Shaikh Bhirkio Faran Sugar Mill toward Phulkara mile 4/6-9/4 (7.64 km) having an estimated cost of PKR 131.91 million' and in this regard, the appellant approached the procuring agency on 08.06.2020 at 09.30 a.m. for issuance of the bid

¹⁶ See NIT ID # T00606-19-0012 dated 09.03.2020 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

¹⁷ Rule-14 provides that all procuring agencies shall provide clear authorization and delegation of powers for different categories of procurement and shall only initiate procurements once approval of the competent authorities concerned has been accorded. Clauses-1.1, 2.1 & 6.1(i) provide that Administrative Approval is a concurrence and formal acceptance of the Administrative Department concerned to the incurring of the proposed expenditure to execute specified works at a stated amount to meet the requirements of the Administrative Department. Procuring Agency/ Committee shall not invite bids for development works, unless [following] conditions are fulfilled:- (i) approval of PC-IPC-II from Competent Forum, (ii) issuance of Administrative Approval (A.A) for development schemes; (iii) Technical Sanction (TS) of a detailed estimate is obtained; (iv) funds are either released or anticipated to be released before award of contract. The Procuring Agency shall initiate the procurement process only after following codal formalities are observed:- (i) Administrative Approval (A.A) of the scheme is received. In case of urgency, in order to avoid delay in the bidding process the Anticipated Administrative Approval is issued by the Administrative Department on the orders of the competent forum; (ii) Technical Sanction (TS) of detailed estimate is obtained from competent authority; (iii) Funds are released or anticipated to be released before award of contract.

¹⁸ Rule-42(1) provides that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.

documents against the additional works in terms of Rule-20(1) of SPP Rules, 2010¹⁹, that were refused by the Tender Clerk by saying that the documents for issuance are not available at this stage and the appellant in this connection may contact the Executive Engineer. The appellant contended that he made contact with the concerned officer who advised him to meet in the evening at his residence located near Circuit House Hyderabad, which the appellant refused. The appellant alleged that the procuring agency issued bid documents to specific bidders for the award of contracts on favoritism basis while defeating the objective of open competitive bidding as reflected under Rules-15(1) of SPP Rules, 2010²⁰. The appellant further contended that the procuring agency, under instant procurement, failed to comply with the rules and procurement principles while refusing the bidders to submit/ open their bids publicly as specified under Rules-4, 24(1) & 41 of SPP Rules, 2010²¹, and the appellant conveyed all the concerns to the CRC through submitting a formal complaint via mail that went un-responded/ undecided; simultaneously the procuring agency canceled the impugned works rather than canceling the whole bidding process.

7. Mr. Ghulam Murtaza Rind *'the appellant # III'* apprised the Committee of his submission of the bid along with supporting documents against the NIT's work listed at Sr. # 5 *'W/R of road from Tando Allahyar Mirwah road to Chamber Mirwah road via Sachay Dino Panhwar Bakhtawar Farm i/c link road to Taj Mori mile 0/0-8/2 (13.27 km) having an estimated cost of PKR 207.20 million'* through the mail (TCS)²² that was received by the procuring agency on 08.06.2020 in terms of Rule-24(2) of SPP Rules, 2010²³. The appellant contended that he approached the procuring agency on 08.06.2020 to submit additional bids by hand against the NIT's works listed at Sr. # 3 & 7 *'reconditioning of road from Shaikh Bhirkio Faran Sugar Mill toward Phulkara mile 4/6-9/4 (7.64 km); and W/R of road from Sadiq Memon to Hafiz Sandhano road to Tando Allahyar Mirwah road at 28 Mall Mori i/c link road Darya Khan Mari mile 0/0-9/3 (15.08 km) having an estimated cost of PKR 131.91 and 241.09 million, respectively'* and to witness the opening of bids where the PC quorum was complete but the PC did not undertake the process for submission/ opening of the bids. The appellant alleged that the PC Chairman insisted him to submit blank tenders for the award of procurement contracts on favoritism basis, which the appellant totally denied. The appellant further contended that the procuring agency neither opened the bids submitted through the mail nor issued the corrigendum for extending the bid submission/ opening process and such responsibility/ failure for an absolute infraction of the rules falls on the entire procurement committee.

8. Mr. Naveed Shaikh *'the appellant # IV'* apprised the Committee of his intention to participate under instant procurement NIT's works listed at Sr. # 1, 2 & 3 *'construction of road from Bhit Shah Tando Adam road to Sher Khan Malookhani via Chhutto Malookani road mile 0/0-1/7 (3.00 km); construction of link road from Baqa Halepoto road to village Noor Nabi Halepoto mile 0/0-2/0 (3.20 km); and reconditioning of road from Shaikh Bhirkio Faran Sugar Mill toward Phulkara mile 4/6-9/4 (7.64 km) having an estimated cost of PKR 25.88, 34.32, and 131.91 million, respectively'* and in this regard,

¹⁹ Rule-20(1) provides that the procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the Notice Inviting Tender.

²⁰ Rule-15(1) provides that open competitive bidding shall be the principal method of procurement, save as otherwise provided. Clause-aa of 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 interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Bidding.

²¹ Rule-4 provides 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. Rule-24(1) provides that bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee. Rule-41 provides that (1) The date for opening of bids and the last date for the submission of bids shall be the same, as given in the bidding documents and in the Notice Inviting Tender; (2) Subject to provisions of Rule 18, in case, the two dates are different, the date and time, given in the bidding documents shall apply; (3) The bids shall be opened within one hour of the deadline for submission of bids; (4) All bids shall be announced publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid; (5) The procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been permitted, shall be read aloud and recorded when opened; (6) All bidders in attendance shall sign an attendance sheet; (7) All bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened; (8) The official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal; (9) The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

²² TCS ID # 2066417950 that was checked/ tracked via the website, from where it was revealed that the appellant's bid was received by Mr. Khuram of the procuring agency on 08.06.2020 at 12.01 p.m. (<https://www.tcspress.com/>)

²³ Ibid.

the appellant downloaded the bid document from the Authority's website and then approached the procuring agency on 08.06.2020 at 11.00 a.m. to submit the bids along with supporting documents – including tender fee and bid security – in terms of Rule-24(2) of SPP Rules, 2010²⁴. The appellant alleged that all the members of PC were found absent on the scheduled date and time as specified in the NIT and only Clerks and a Peon were present without any awareness related to the instant bidding procedure. The appellant further alleged that the PC Chairman continued the bidding process in a secrete manner without taking care of the procurement rules and principles mentioned therein and leading to an open and competitive bidding process.

9. Mr. Adnan Bhatti '*the appellant # V*' apprised the Committee of his submission of the bid along with supporting documents against the NIT's work listed at Sr. # 2 '*construction of link road from Baqa Halepoto road to village Noor Nabi Halepoto mile 0/0-2/0 (3.20 km) having an estimated cost of PKR 34.32 million*' through the mail (TCS) in terms of Rule-24(2) of SPP Rules, 2010²⁵. The appellant contended that he approached the procuring agency on 08.06.2020 for witnessing the opening of bids, where he found the PC members absent. The appellant alleged that the procuring agency allotted all these works to specific bidders on favoritism basis; therefore, the whole bidding process requires to be retendered in a fair and transparent manner in the interest of justice.

10. Mr. Nasrullah Abro '*the appellant # VI*' apprised the Committee of his intention to participate under instant procurement NIT's works listed at Sr. # 2 & 3 '*construction of link road from Baqa Halepoto road to village Noor Nabi Halepoto mile 0/0-2/0 (3.20 km); and reconditioning of road from Shaikh Bhirkio Faran Sugar Mill toward Phulkara mile 4/6-9/4 (7.64 km) having an estimated cost of PKR 34.32 and 131.91 million, respectively*' and in this regard, the appellant downloaded the bid document from the Authority's website and then approached the procuring agency on 08.06.2020 to submit the bids (30% below the estimated costs) along with supporting documents – including tender fee and bid security – in terms of Rule-24(2) of SPP Rules, 2010²⁶. The appellant expressed similar concerns by contending that he submitted the bids that were not opened due to the absence of the PC members/quorum. The appellant alleged that the Executive Engineer insisted on the award of contracts on full rates among the contractors and remaining contractors would be accommodated through pool money. The appellant further contended that he communicated his concerns to the CRC with a request to take action against the Executive Engineer on account of blatant violation of the rules and also issue directions to the procuring agency for cancellation of the bidding process in terms of Rule-25(3) & (4) of SPP Rules, 2010²⁷; however, the CRC failed to take any action against such matter.

11. Mr. Ali Ahmed Brohi '*the appellant # VII*' apprised the Committee of his intention to participate under instant procurement and in this regard, the appellant downloaded the bid documents from the Authority's website and approached the procuring agency on 08.06.2020 for submission of bids along with supporting documents – including tender fee and bid security – against the NIT's works listed at Sr. # 5, 6 & 7 '*W/R of road from Tando Allahyar Mirwah road to Chamber Mirwah road via Sachay Dino Panhwar Bakhtawar Farm i/c link road to Taj Mori mile 0/0-8/2 (13.27 km); W/R of road from Bheda to Suhebjia via Dargah Shah Abdul Rehman Meerani Connect National Highway at Punj Moro (i/c approach to villages) road mile 0/0-7/4; and W/R of road from Sadiq Memon to Hafiz Sandhano road to Tando Allahyar Mirwah road at 28 Mall Mori i/c link road Darya Khan Mari mile 0S0-9/3 (15.08 km) having an estimated cost of PKR 13.27, 232.087 and 241.09 million, respectively*' in terms of Rule-24(2) of SPP Rules, 2010²⁸. The appellant alleged that in response to the submission of his bids, the Executive Engineer expressed for the award of the works to specific bidders without following the formal tendering process. The appellant contended that the procuring agency, without incorporating the appellant's bids submitted as 15-20% below the estimated cost and also bypassing the procedure for opening the bids publicly, posted the bid evaluation reports on the Authority's website on 14, 15 & 19.06.2020 from where

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁷ Rules-25(3) & (4) provide that intimation of the cancellation of bidding process shall be immediately hoisted on the Authority's website and procuring agency's website followed by prompt return of bid security. The procuring agency, shall upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds.

²⁸ Ibid.

the appellant further observed that the procurement committee recommended to M/s Rustam Khan Chandio for an award of the NIT's work listed at Sr. # 6; however, such report was canceled on the next date of posting by replacing another report for recommending an award of the contract to M/s Ameer Ali Chandio, which reflects the procuring agency's intention to award the procurement contracts to cherished contractors despite canceling works through issuing a corrigendum²⁹.

PROCURING AGENCY'S VERSION

12. Mr. Ghulam Shabir Memon, Project Manager, Hyderabad-Mirpurkhas Dual Carriageway Project, Hyderabad, and Mr. Fazal Muhammad Mangi, Executive Engineer, Provincial Highways Division, Hyderabad '*representatives of the procuring agency*' contended that the PC received/ opened the bids publicly on the scheduled date that was 08.06.2020 where the appellants or their authorized representatives did not participate and thereafter the procuring agency posted the bid evaluation reports on the Authority's website on 14, 15 & 19.06.2020³⁰. Subsequently, the procuring agency posted a corrigendum³¹ on the Authority's website on 26.06.2020 whereby the NIT's works listed at Sr. # 2, 3, 5, 6 & 7, including the evaluation reports, were canceled due to technical reasons.

- Syed Adil Gilani asked the procuring agency's representative as to why only the specific works were canceled?
 - ◆ The procuring agency's representative stated that the Government released funds against only two out of seven works; hence, the five works against which the funds were not released were canceled in terms of Rule-25 of SPP Rules, 2010³², and no bidder approached the procuring agency with a request to know the grounds for cancellation.
- The Chair of the Committee asked the procuring agency's representative about the number of complaints against the active works and what is the current status of these active works?
 - ◆ The procuring agency's representative confirmed that all the complaints/ appeals pertain to the NIT's works that had been already canceled and the active works as listed at the NIT's Sr. # 1 & 4 were awarded on account of the same to M/s Al-Hassan Electric & Civil Works and M/s Imtiaz Ali Memon, respectively.
- Subsequently, Engineer Munir Ahmed Shaikh asked the procuring agency's representative as to what actions were taken by the CRC against the complaints lodged by the appellants?
 - ◆ The procuring agency's representative stated that the CRC (vide letter dated 18.06.2020) called its meeting on 19.06.2020 to decide the complainants/ appellants' grievances. Meanwhile, the complainants approached the Authority's Review Committee, due to which the CRC canceled its scheduled meeting. As per initial scrutiny of the CRC, the procuring agency placed the tender box and the appellants do not have any proof with regard to their intention to submit their bids.

REVIEW COMMITTEE'S FINDINGS/ OBSERVATIONS

13. After hearing the parties at length, scrutinizing the procurement record as well as complaints (summarized below), and discerning the applicable rules, the Review Committee concluded the crux of the appellants' cases, which revolve around multiple issues including (i) what are the pre-requisite conditions for the procuring agency to invite bids for development works; (ii) what if the bid documents are not issued by the procuring agency; (iii) did the bidders were present during the opening of the bids;

²⁹ Bid Evaluation Reports at ID # BE00606-19-0014-1 to 5 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

³⁰ Corrigendum for cancellation of NIT's five (5) works was issued/ posted by the procuring agency vide its letter No.TC/G-55/1573/2020 dated 22.06.2020 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

³¹ Ibid

³² Rule-25 provides that (1) A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal; (2) The procuring agency shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule (1); (3) Intimation of the cancellation of bidding process shall be immediately hoisted on the Authority's website and procuring agency's website followed by prompt return of bid security; (4) The procuring agency shall upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds.

(iv) when the procuring agency can cancel the bidding process; (v) can the procuring agency award the procurement contracts while pendency of a complaint/ appeal? (vi) did the procuring agency undertake the bidding process in accordance with the governed rules and regulations? These issues one by one have been minutely examined by taking into account the relevant procurement record and facts presented by the parties and concluded as follows:

SUMMARY							
Work #	I.	II.	III.	IV.	V.	VI.	I.
Bidders Participated #	03	--	--	03	--	03	03
Complaints Received #	01	04	05	01	02	02	03
BERs Posting Date	19.06.20	---	---	14.06.20	---	14.06.20 ³³	15.06.20
Complaints Date	12.06.20	---	---	14.06.20	---		
CDs Posting Date	---	N/A	N/A	---	N/A	N/A	N/A
Status	Awarded	Cancelled	Cancelled	Awarded	Cancelled	Cancelled	Cancelled

- **Pre-requisite Conditions:** The procurement rules govern that the procuring agency cannot invite the bids for development works unless certain conditions are fulfilled that includes: approval of PC-I/PC-II from Competent Forum; issuance of Administrative Approval for development schemes; issuance of Technical Sanction with a detailed estimate; and availability (releases or anticipated to be released) of the funds before awarding of the contract; in case of urgency, the procuring agency may initiate the procurement process in order to avoid delay in the bidding process subject to the issuance of the Anticipated Administrative Approval on the orders of the competent forum in terms of Rule-14 of SPP Rules, 2010, read with Clauses-1.1, 2.21 & 6.1(i) of the Authority's Procurement Regulations (Works)³⁴. *The objective behind following this requirement is to ensure the successful completion of the tendering process without incurring any wastage of time, cost, and effort by the procuring agency and/ or bidders on account of re-tendering that also discourages the bidders to participate in the bidding process again and again.*
- **Bidding Documents:** The procuring agency is responsible for issuance of the bid documents to all the interested bidders after charging/ collecting a fee following the procedures and requirements specified in the NIT in terms of Rule-20 of SPP Rules, 2010³⁵. The appellants leveled an allegation against the procuring agency for issuance of bid documents to the specific bidders for awarding the works to such bidders only. *The Committee is of view that such allegation for issuing bid documents to specific bidders does not stand and cannot be given any evidentiary value when an alternative option for the bidders is available to submit bids on the bidding documents downloaded from the Authority's website in terms of Rule-24(2) of SPP Rules, 2010³⁶, and the procuring agency has expressly allowed the bidders to do so under paragraph - 4 of the NIT³⁷.*
- **Bidders' Presence/ Bids Submission:** The central and common issue among all the cases (appellants) is that the bidding process did not take place publicly by the PC members/ quorum. The procuring agency's representative has claimed that the appellants were not present there for submission/ opening of the bids; per contra, the appellants claim to have video evidence for their presence in the procuring agency's office on the scheduled date and time and in support of it. *The Committee is of view that the video evidence cannot be considered as admissible in this case due to the multiple reasons:- (a) it was not part of the complaints and subsequently preferred appeals*

³³ BER of work # 6 was posted twice. First evaluation report shows the lowest evaluated bidder to M/s Rustam Khan Chandio and the second evaluation report shows the lowest evaluated bidder to M/s Ameer Ali Chandio.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁷ Contract documents and other terms and conditions can be seen and blank tenders can be issued or downloaded from the official website of SPPRA i.e. ppms.pprasinhd.gov.pk. The tenders fee amount to PKR 5000/- and the bid security at 5% as mentioned above against each work in the shape of call deposit only from any scheduled bank of Pakistan in favor of the Executive Engineer Provincial Highways Division Hyderabad on account of (name of the firm) should be attached with the bid/ tender, otherwise such tender will not be entertained.

before this forum in terms of Rule-32(5)(a) of SPP Rules, 2010³⁸; and (b) the video evidence were required to be submitted before the proceedings so that the other party (procuring agency) could be given its due right to defend and suggest their viewpoint, etc. The preferable evidence, in this case, could be the submission of bids through a reliable courier service and/ or seeking an acknowledgment for receipt of the bid(s) from the procuring agency in terms of in terms of Rule-24(2) of SPP Rules, 2010, and Clause-7.1(C)(f) of the Authority's Procurement Regulation (Works)³⁹ and/ or having signed the bidders' attendance sheet in terms of Rule-41(6) of SPP Rules, 2010⁴⁰. The Review Committee while examining the procurement's record (bid evaluation reports)⁴¹ observed that the procuring agency posted the bidders' attendance sheet that was signed by twenty-four (24) bidders including the appellants M/s AMB & Co.; M/s F.B. Enterprises; M/s Hussain Enterprises; and M/s Rabbi Traders etc. The question arises as to how these appellants who neither attended nor submitted the bids, as claimed by the procuring agency's representative, were allowed to sign the bidders' attendance sheet. This suffices to prove the appellants' contentions in support of their presence, as well as submission of bids to the procuring agency on the scheduled date for submission/ opening of the bids – reliance in this behalf was also placed on a judgment passed by the honorable High Court of Sindh, Karachi, reported as PLD 2019 Sindh 400⁴².

- **Bidding Process Cancellation:** The procuring agency, without incurring any liability towards the bidders, may cancel the bidding process at any time before the acceptance of a bid or proposal; however, such cancellation requires to be immediately posted on the Authority's website following prompt return of the bid security and in case, a bidder requests the procuring agency to know the reasons for such cancellation then the procuring agency is bound to communicate the same to the bidder in terms of Rule-25 of SPP Rules, 2010⁴³. *It is obvious in this case that the procuring agency cancelled five (5) out of seven (7) works but the complaints still exist against the two (2) works already awarded by the procuring agency.*
- **Procurement Contracts Award:** The procuring agency posted the bid evaluation reports (refer to the summary) against the awarded works (listed at Sr. # 1 & 4 of the NIT) on 14 & 19.06.2020, respectively, against which the appellant # I & IV lodged complaints in timely manner before the CRC on 12 & 14.06.2020 they *why did the procuring agency awarded procurement contracts while blatantly violating the Rule-31(6) read with proviso of Rule-31(7) of SPP Rules, 2010⁴⁴.*
- **Authority's Observations:** The procuring agency was required to furnish compliance or proceed accordingly to the NIT and BERs' observations as conveyed by this Authority through PPMS website on 22.05.2020, 30.06.2020 & 26.06.2020; however, the procuring agency did not pay any heed towards rectification of these observations/ infirmities on time and awarded the procurement contracts⁴⁵. Secondly, the procuring agency's representative confirmed before this forum for the award of contracts under NIT's works listed at Sr. # 1 & 4; however, the procuring agency so far has not posted the contract documents – contract evaluation report; form of contract and letter of award; and bill of quantities or schedule of requirement – on the Authority's website that were

³⁸ Rule-32(5)(a) provides that [the bidder shall submit following documents to the Review Committee] a letter stating his wish to appeal to the Review Committee and the nature of the complaint

³⁹ Clause-7.1(C)(f) provides that when a bidder submits a bid directly to the officer/official assigned by the procuring agency or when it is sent through either courier service or by post; the officer on request from the bidder shall issue an acknowledgment of receipt stating the date and time;

⁴⁰ Rule-41(6) provides that all bidders in attendance shall sign an attendance sheet.

⁴¹ Ibid.

⁴² Suit No. 1951 of 2018 (M/s Al-Noor v. Province of Sindh)

⁴³ Ibid.

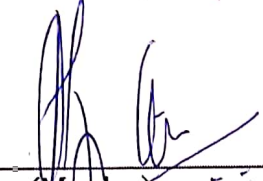
⁴⁴ Rule-31(6) & Proviso of Rule-31(7) provide that the procuring agency shall award the contract after the decision of the complaint redressal committee; provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract until expiry of appeal period or the final adjudication by the Review Committee.

⁴⁵ The NIT and BERs' observations can be accessed under the Authority's comments section (<https://ppms.spprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender/T00606-19-0014 & BE00606-19-0014-1 to 5>)

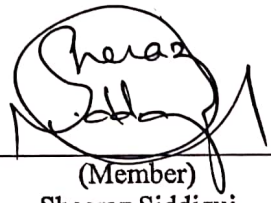
required to be posted within fifteen (15) of signing of contracts in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010⁴⁶.

Review Committee Decision


14. In view of the foregoing findings/ observations, as mentioned under para-13, 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, 2010⁴⁷ read with Section-2(i) of SPP Act, 2009⁴⁸ 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, 2010⁴⁹.



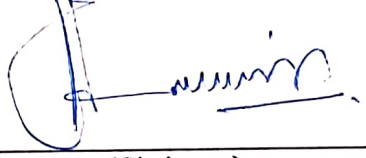
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



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



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



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

⁴⁶ Rule-50 & 10 provides that within fifteen (15) days of signing of contract, procuring agency shall publish on the website of the Authority and on its own website, if such website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and the [following information]: (1) Contract Evaluation Report; (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 withhold only such information from public disclosure, subject to the prior approval of the Chief Minister.

⁴⁷ 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.

⁴⁸ Section-2(i) provides that mis-procurement means public procurement in contravention of any provision of this Act, any rule, regulation, order or instruction made thereunder or any other law in respect of, or relating to, public procurement.

⁴⁹ Rule-32(A)(2) provides that & 10 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.