



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1906(83)/2019-20/1086

Karachi, dated the 09th October, 2020

To,

- The Chairman,
Enquiries & Anti-Corruption Establishment,
Government of Sindh,
Karachi.
- The Secretary to Government of Sindh,
Irrigation 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 Abdul Hafeez Kolachi and M/s Qalandar Bux Abro & Co. v. Barrage Division Sukkur*) held on 30th September 2020, for taking further necessary action, under intimation to this Authority, at the earliest.


09/10/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Director Design in Sindh, Irrigation Department, Hyderabad.
2. The Chief Engineer Sukkur Barrage, Left Bank Region, Sukkur.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Superintendent Engineer, Khairpur Irrigation Circle, Sukkur.
5. The Executive Engineer, Barrage Division Sukkur.
6. The Assistant Director (I.T), SPPRA [with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010].
7. The Staff Officer to the Chairman/ Members Review Committee.
8. M/s Qalandar Bux Abro & Co., Suit # 710, Mashriq Centre, St. 6/A, Block-14, Gulshan-e-Iqbal, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1609(83)/2019-20

Karachi, dated the

October 2020

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

REVIEW APPEALS

Between:

M/s Abdul Hafeez Kolachi and Anor

v.

Barrage Division Sukkur

NIT ID Number

To0048-20-0001 dated 11.08.2020

FACTS AND BACKGROUNDS

The appellants' M/s Abdul Hafeez Kolachi and M/s Qalandar Bux Abro & Co., Government Contractors Sukkur/ Karachi, lodged Individual complaints (vide letters dated 26.08.2020 & 16.09.2020, respectively) addressed to the Complaints Redressal Committee (CRC)² – copies endorsed to this Authority and others for necessary action – against the NIT No.TC/G-55/2551/2020 dated 06.08.2020 floated by the Executive Engineer Barrage Division Sukkur 'the procuring agency' for procurement of three (03) works related to the 'rehabilitation of employees residence quarters and reconstruction of regulator'³ as per SPP Rules, 2010.

2. The appellants therein claimed to have submitted the bids, along with supporting documents against the NIT's works, to the procuring agency within the scheduled date/ time for submission of the bids⁴ in terms of Rule-24(2) *ibid*⁵; however, the Procurement Committee (PC)⁶ neither opened the bids publicly nor incorporated the submitted/ quoted offers while announcing the bid evaluation reports via the Authority's website⁷. The appellants raised averments that the procuring agency managed the bidding process in a way to award the procurement contracts on a favoritism basis while circumventing the procurement principles. Consequently, the appellants prayed before the CRC for redressal of grievances and pass orders to cancel and re-Invite the bids in a transparent manner. In turn, this Authority (vide letters dated 01 & 18.09.2020) forwarded the appellants' matter to the CRC with advice to redress the grievances and furnish the decision to the appellants and the Authority within the stipulated period as prescribed under Rules-31(3) & (5) *ibid*⁸. Besides, the Authority restrained the

¹ Appellant # I: Abdul Hafeez Kolachi; and Appellant # II: M/s Qalandar Bux Abro & Co.

² Constituted under the chairmanship of Director Design in Sindh, Irrigation Department Hyderabad, vide notification No.SO(R&S)8-110/2012-13 dated 30.12.2019 Issued by the Irrigation Department

³ Detailed description/ nature of the procurement works can be accessed via Instant procurement's NIT available on the PPMS website at ID # To0048-20-0001 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁴ The deadline for submission/ opening of bids as per NIT was 26.08.2020 at 12.00 p.m. and 01.00 p.m., respectively

⁵ 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 Constituted under the chairmanship of Executive Engineer Barrage Division Sukkur vide notification No.WB-11/B.D/P.C/2020/4-W/2134 dated 10.06.2020 Issued by the Chief Engineer Sukkur Barrage Left Bank Region Sukkur

⁷ Bid Evaluation Reports at IDs # BE00048-20-0001-1 & 4 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

⁸ Any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint. 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.

procuring agency from Issuing the procurement contracts till the decision of the CRC or expiry of the review appeal period in terms of Rule-31(6) read with Proviso of Rule-31(7) *ibid*⁹.

3. Subsequently, the appellants (vide letters dated 09 & 24.09.2020) preferred appeals, along with the supporting documents and review appeal fee¹⁰, before this Authority, whereby the appellants stated that the CRC had failed to decide their matters within the stipulated time; hence, the appellants requested to place the cases before the Review Committee in terms of Rule-31(5) read with Rule-32(5) *ibid*¹¹. In turn, the Authority (vide letter dated 27.07.2020) forwarded an appeal (M/s Abdul Hafeez Kolachi) to the procuring agency with advice to update the bid security status, latest by 17.09.2020, for ascertaining the maintainability of the case in terms of Rule-32(1) *ibid*¹²; however, the procuring agency failed to respond within the specified time¹³.

4. Accordingly, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 30.11.2020 at 11.45 a.m. In this regard, the Authority (vide letters dated 21 & 29.09.2020) issued summons to the parties concerned to appear in person, or depute authorized representatives, well conversant with the procurement in question, along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time, and venue in terms of Rules-32(6), (8) & (10) *ibid*¹⁴. Simultaneously, the Authority restrained the procuring agency from issuing contracts until the final decision in terms of Rule-32 read together with the proviso of Rule-31(7) *ibid*.

5. In compliance, Mr. Junaid Hashim Talpur (Director Design in Sindh/ Chairman CRC), Mr. Sohail Hameed Baloch (Superintending Engineer Khairpur Irrigation Circle Sukkur) 'the procuring agency's representatives' and Mr. Rehmatullah Abro (Proprietor M/s Qalandar Bux Abro & Co.) 'the appellant # II' appeared before the Committee. Whereas, M/s Hafeez 'the appellant # I' did not attend the meeting by submitting a withdrawal letter, received to this Authority on 30.09.2020, which reads as follows:

"It is submitted that being an aggrieved bidder, I approached to your Authority under Rule-32 for redressal of grievances in NIT No.TC/G-55/2551 dated 06.08.2020 of procuring agency Executive Engineer Barrage Division Sukkur. It is to inform that the concerned Executive Engineer heard me in patience and my grievances have been redressed; therefore, I would like to withdraw from my allegations and want to file the aforesaid complaint/ appeal. Therefore, I earnestly request that the instant complaint/ appeal may please be filed, and I have nothing to say furthermore on this matter [Sd/- Abdul Hafeez Kolachi dated 28.09.2020]."

REVIEW COMMITTEE PROCEEDINGS

6. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/ version over the instant procurement issues/ grievances.

⁹ The procuring agency shall award the contract after the decision of the complaints redressal committee; provided that in case of failure of the complaints 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.

¹⁰ This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

¹¹ 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.

¹² A bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review Committee within ten (10) days of announcement of the decision provided that he has not withdrawn the bid security, if any, deposited by him.

¹³ The procuring agency vide letter dated 15.09.2020 (received to the Authority on 23.09.2020) confirmed/ stated that the appellant's matter has been placed before the CRC for hearing in its meeting scheduled on 17.09.2020.

¹⁴ 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.

APPELLANT'S VERSION

7. Mr. Rehmatullah Abro 'the appellant' apprised the Committee that his firm, being a qualified contractor and duly registered with the Pakistan Engineering Council (PEC) under category C-A/E¹⁵, submitted technical and financial proposals, along with requisite documents as per criteria available in bid documents, against the following works on 26.08.2020 at 11.30 a.m.:

Sr. #	Name of Work	Estimate d Cost	Appellant's Quoted Bid	
		PKR In Million	Call Deposit with CDR No. ¹⁶	Quoted Bid
I.	Rehabilitation of employees residence quarters including construction of compound wall of irrigation colonies in Irrigation Dept. (ADP-970)	198.890	7.500 (CDR # 00412237)	145.305
II.	Removal of encroachment from Irrigation Department's property and securing its possession including schemes of rehabilitation (ADP-1008)	150.00	5.750 (CDR # 00412238)	113.869
III.	Renovation/ reconstruction of regulator on distries and minors in Sindh (ADP-991)	39.853	1.500 (CDR # 00412239)	26.686

8. The appellant's representative submitted that they were allowed to drop the sealed bids, as encapsulated above, which were opened (technical proposals) by the PC on the scheduled date and time (26.08.2020 at 01.00 p.m.). Subsequently, the procuring agency announced the bid evaluation reports via the Authority's PPMS website¹⁷ whereby the appellant's participation or submission of the bids was not shown, despite getting bid securities/ pay orders confirmed through the Issuing bank¹⁸ under the competitive bidding process in contravention to Rule-45 read with Rule-37(3) ibid¹⁹.

9. The appellant's representative contended that the procuring agency in the first stage was required to announce the technical evaluation results giving valid reasons for rejection or acceptance of the bids. After that, the procuring agency was required to publicly open the financial bids as per the bidding procedure adopted for these procurement works; however, such a process was not maintained before announcing the results. Therefore, the appellant prayed before the Committee to declare the instant bidding process as mis-procurement and fix the responsibility on the officers who found involved in loss to the public exchequer by accepting the bids on the higher rates.

PROCURING AGENCY'S VERSION

10. Mr. Sohail Hameed Baloch, Superintending Engineer Khairpur Irrigation Circle Sukkur 'the procuring agency's representative' submitted that he was neither the PC's member nor attended the bids submission/ opening meeting. However, he has been reported by the procuring agency that the PC opened and announced/ read aloud the bidders' total quoted amount on 26.08.2020 at 01.00 p.m. in the presence of bidders' representatives who attended the meeting, and the same can be verified

¹⁵ <https://verification.pec.org.pk/vfV/sFD/l.aspx?fid=382F3030313536>

<https://employeesportal.info/pec-extends-validity-of-relief-package-for-constructors-operators/>

¹⁶ Appellant's CDRs were Issued by First Women Bank Ltd. Larkana Branch (Issuing bank's branch code 0024) on 25.08.2020

¹⁷ Ibid.

¹⁸ First Women Bank Limited, Larkana Branch (0024)

¹⁹ 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 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. The procuring agency shall get the bid security verified in the [following] manner: (a) all bid securities of contracts with estimated cost up to Rs. 50.00 million (rupees fifty million) shall be verified by the issuing agency; (b) all bid securities of contracts with estimated cost above Rs. 50.00 million shall be verified by the head office of the procuring agency.

through the minutes of the meeting and the bidders' attendance sheet accessible along with the evaluation reports²⁰.

11. Mr. Junaid Hashim Talpur, Director Design in Sindh, Irrigation Department Hyderabad 'Chairman CRC' admitted that the appellant approached the CRC, which could not call its meeting to decide the appellant's case on the presumption that the procuring agency had already cancelled the bidding process; therefore, the appellant's matter did not warrant further action/ decision.

- Mr. Manzoor Ahmed Memon (Member of Review Committee) pointed out that the procuring agency cancelled the NIT's only two (2) out of four (4) works then how could the CRC Chairman presumed for cancellation of the bidding process against all the works without affording an opportunity of hearing to the parties concerned or confirming the procurement's status through the procuring agency or the Authority's website;
 - ◆ The Chairman CRC stated that the procuring agency furnished a copy of the cancellation notice in response to a letter issued by the CRC for seeking views/ comments. While going through the cancellation notice content, it appeared that the procuring agency cancelled the bid process against some works; resultantly, the CRC presumed the NIT's works, including the appellant's works, cancelled.
- Subsequently, Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representatives to update current status of the procurement works listed at NIT's Sr. # 1 & 3;
 - ◆ The procuring agency's representatives confirmed that the bid evaluation reports against these works have been uploaded on the Authority's website on 15.09.2020; however, the procurement contracts have not been awarded as yet in compliance with the Authority's instructions conveyed vide letters dated 01, 18, 21 & 29.09.2020. Conversely, the procuring agency submitted a letter dated 01.10.2020 which reads as follow:

"In pursuance of Review Committee meeting held on 30.09.2020 on the appeal of M/s Abdul Hafeez Kolachi, Government Contractor against the NIT No. TC/G-55/2551 dated 06.08.2020, the undersigned confirms that the works 'rehabilitation of employees residence quarters including construction of compound wall of irrigation colonies in Irrigation Department and renovation/ reconstruction of regulator on districts and minors in Sindh' have been awarded to M/s Ghulam Murtaza and M/s H.K., Government Contractors, on 18.09.2020 [Sd/- Executive Engineer Barrage Division Sukkur]"

REVIEW COMMITTEE'S FINDINGS

12. The chronology of the procurement process/ record shows that the procuring agency solicited bids under instant procurement via posting the NIT on the Authority's website on 11.08.2020 in terms of Rule-17(1A) *ibid*²¹. In turn, the Authority conveyed observations (including rectifying the NIT's contradictory clauses-1 & 5)²² to the procuring agency via the PPMS website on 21.08.2020 with advice to rectify the same before proceeding further²³. In response, the procuring agency furnished its clarification as reproduced herewith 'agreed – the same is required for post technical qualification which

²⁰ Minutes of the meetings and bidders' attendance sheets are accessible along with the bid evaluation reports

²¹ All procurement opportunities over two million rupees shall be advertised on the Authority's website as well as in the newspapers as prescribed.

²² NIT's Clause-1: The sealed bids for the following works separately are hereby invited under single stage single envelope procedure from the interested bidders/ contractors under the SPPRA Rules. The interested bidders should have PEC license in category C-4 for Serial # 1 & 2 & C-5 for Serial # 3. Clause-5: All bids shall be accompanied with earnest money/ call deposit 5% of the quoted bid price in shape of call deposit from any scheduled bank of Pakistan in favor of the Executive Engineer, Barrage Division Sukkur (unnamed call deposit or pay order of any firm will not be allowed/ acceptable as call money). The earnest money should be attached/ submitted with the envelope of Technical Proposal. In absence of requisite earnest money with technical proposal, the submitted 'Technical Proposal' will not be entertained.

²³ These observations are publicly accessible via the Authority's PPMS website (refer to the NIT's comments section)

will be done after opening of bids to ascertain the eligibility of bidder whether he is technically capable or not. The work at Sr. # 1 to 3 is of technical nature which requires massive experience'. Simultaneously, the procuring agency issued/ posted two notices (vide letters dated 24 & 26.08.2020) for cancellation of the bidding process against the procurement works listed at Sr. # 2 and Clause-6 of the NIT²⁴.

13. Thereafter, the procuring agency posted the bid evaluation reports, against the NIT's two active works, on the Authority's website on 15.09.2020 that shows the participation of 10 and 9 bidders under the NIT's impugned works as listed at Sr. # 1 & 3, respectively. It is outwardly apparent from these evaluation reports that the PC in the first stage opened the bidders' technical proposals and thereof disqualified 4 bidders under work # 1 and 3 bidders under work # 3 and then opened the financial bids of only technically qualified bidders (as summarized hereunder). As such, the PC adopted the process that leads to the blatant violation of the evaluation procedure as enumerated under Clause-7.9.1 of the Authority's Procurement's Regulation (Works)²⁵ read with Rules-42(1), 46(1)(c) & 21(A) ibid²⁶.

SUMMARY OF THE NIT'S IMPUGNED WORKS (PKR IN MILLION) ²⁷			
Sr. #	Bidder's name	Quoted bid	Remarks
Work # 1: Rehabilitation of employees residence quarters (estimated cost = 198.890 million)			
I.	M/s Muhammad Alam Baloch	-	Disqualified (valid PEC license not provided)
II.	M/s Soomar Khan	-	Disqualified (earnest money not provided)
III.	M/s Al-Muzamil	-	Disqualified (valid PEC license not provided)
IV.	M/s Z.L. Mahar	-	Disqualified (valid PEC license not provided)
V.	M/s Ghulam Murtaza	207.938	1 st lowest submitted/ evaluated bidder
VI.	M/s MZ Baloch	211.775	2 nd lowest submitted bidder
VII.	M/s Sehar Enterprises	213.204	3 rd lowest submitted bidder
VIII.	M/s Bukhari Engineers	214.800	4 th lowest submitted bidder
IX.	M/s Adeel Ahmed Construction	216.569	5 th lowest submitted bidder
X.	M/s Bahadur Ali	218.468	6 th lowest submitted bidder
Work # 3: Renovation/ reconstruction of regulator (estimated cost = 39.853 million)			
I.	M/s Muhammad Alam Baloch	-	Disqualified (valid PEC license not provided)
II.	M/s J.H.S	-	Disqualified (valid PEC license not provided)
III.	M/s Al-Muzamil	-	Disqualified (valid PEC license not provided)
IV.	M/s H.K. Government Contractor	29.014	1 st lowest submitted/ evaluated bidder
V.	M/s Zulfiqar Ali Abro & Co.	29.894	2 nd lowest submitted bidder
VI.	M/s Niaz Ali	30.353	3 rd lowest submitted bidder

²⁴ The procuring agency's response against the Authority's observations and notices for cancellation of the procurement's works are publicly accessible through the Authority's PPMS website (refer to the corrigendum posted on 11.09.2020)

²⁵ Single stage one envelope bidding procedure: Each bid shall comprise one single envelope containing the financial proposal only and company profile containing proof of relevant experience, annual turn-over of last three years, and registration with PEC or other authorities wherever applicable and information regarding litigation with government agencies, affidavit of not being black listed. Information regarding Company/Firm/Bidder's provided with financial bid will not be treated as Technical Proposal. Requirement of company profile is very essential; when bidders are not pre-qualified. In this method the relevant information or details required from interested bidders are mentioned in the advertisement/ notice inviting tender and bidding document. Non-serious bidders are screened out from bidding process. All bids received shall be opened and evaluated in the manner/criteria prescribed in the NIT or bidding document. Post qualification of lowest bidder is carried out to determine his responsiveness as per information or documents required and so provided as mentioned at clause (a) above; if he fails to be responsive, then same exercise is repeated for 2nd lowest bidder and so on till responsive bidder or lowest evaluated bid is determined. Procuring agency can verify the previous working, experience and financial statements made by the bidders in their bids.

²⁶ All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. All bids received shall be opened and evaluated in the manner prescribed in the notice inviting tenders or bidding document. The procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide clear and unambiguous evaluation criteria in the bidding documents shall amount to misprocurement.

²⁷ The data is based on the procurement record made available by the procuring agency via the PPMS website

VII.	M/s Agha Muhammad Khan & Co	30.624	4 th lowest submitted bidder
VIII.	M/s Lutufullah Bhabhro	30.931	5 th lowest submitted bidder
IX.	M/s Nabi Bux	31.277	6 th lowest submitted bidder

14. After the announcement of these results, the appellant preferred a complaint before the CRC, whereby the appellant contended for submission of the lowest bids against the NIT's Impugned works where his participation was excluded by the procuring agency to award the procurement contracts on favoritism basis. However, the CRC failed to discharge its legal obligations to decide the complaint on bare presumption, but not on any legitimate material, for cancellation/ termination of the procurement process against the NIT's works by the procuring agency. The Review Committee noted that the CRC, rather than relying on any presumption, had to fulfill its statutory obligations by following the steps laid down and communicated to the procuring agencies from time to time by this Authority for addressing the bidders' complaints on time and avoiding delays in completion of procurement's cycle in the best interest of the public's money:

- Comply with the grievances redressal mechanism described under Rule-31 fbid;
- Be familiar with the procurement documents and governed procurement rules;
- Review the aggrieved bidder(s) concerns along with the supporting documents;
- Call the report from the procuring agency, if mandatory, subject to cut off time;
- Convene the CRC meeting immediately to decide the matter within seven days;
- Afford an opportunity of hearing to the parties concerned (procuring agency and aggrieved bidder) for deciding the matter fairly and judiciously;
- Examine the issues and responses by taking into account the supporting documents/ evidence to reach corollary of the decision;
- Announce the decision and intimate the same to the aggrieved bidder and the Authority within three working days.

15. After hearing the parties at length and scrutiny of the procurement record, it is apparent/ standpoint that the procuring agency awarded the procurement contracts, against which the appellant submitted bids and then preferred an appeal before this forum. The procuring agency's representatives have also not denied the appellant's contention concerning his submission of the bids on the scheduled date and time. Besides, the appellant, in support of his participation in the bidding process, has placed copies of the relevant record/ documents along with a copy of the letter, bearing No. FWBL/LRK/NM/RJ-106 dated 01.09.20 issued by First Women Bank Limited, which reads as follow:

"To, Office of the Executive Engineer, Barrage Division, Sukkur
Verification of Call Deposits

With reference to your letter TC/G-55/2815/2020 Sukkur dated 27.08.2020, received as on 31.08.2020, in this regard we like to confirm you that below mentioned call deposits issued from our FWBL Larkana branch and these are genuine.

Sr.#	CDR#	Deal#	Date	Amount	Name of Contractor
I.	00412237	1061	25.08.2020	7,500,000	M/s Qalandar Bux Abro & Co.
II.	00412238	1062	25.08.2020	5,750,000	M/s Qalandar Bux Abro & Co.
III.	00412239	1063	25.08.2020	1,500,000	M/s Qalandar Bux Abro & Co.

This is for your kind information and record.
ORIGINAL CALL DEPOSITS ARE ALSO ENCLOSED.

[Sd/- Manager FWBL Larkana]"

16. A conjoint perusal of the bank's referred letter addressed to the procuring agency, and photocopies of the appellant's call deposits submitted to this Authority (refer to the paras # 7 & 14).

prima facie, suffice to establish the appellant's plea for submission of the bids, which were not only received but also opened/ evaluated by the procuring agency and then the appellant's call deposits were sent to the Issuing bank for verification purpose as required under Rule-37(3) *ibid*. Nevertheless, the procuring agency failed to show the appellant's participation or incorporate the appellant's bid while announcing the bid evaluation results that amount to the blatant violation of Rules-4 & 2(1)(aa) *ibid*²⁸ read with Clauses-2.2, 2.3 & 5.1 of the Authority's Procurement Regulation (Works)²⁹.

REVIEW COMMITTEE'S OBSERVATIONS

17. The Review Committee, *inter alia*, examined the procurement documents/ bidding process and observed that the procuring agency failed to comply with the following rules while undertaking the instant procurement process:-

- The procuring agency was required to rectify an observation (NIT's Clauses-I & V)³⁰, as conveyed by this Authority via the PPMS website on 21.08.2020³¹, through issuing a corrigendum in terms of Rule-21(2) *ibid*³²;
- The procuring agency was required to evaluate bids as per evaluation criteria and other terms and conditions outlined in the bidding documents in terms of Rules-8, 42(1) & 46(1)(c) *ibid*³³. It is apparent from bidders qualification reports³⁴ that the procuring agency did not take into account whether the lowest evaluated bidders fulfilled the essential requirements as listed in the NIT. These conditions were required to be adhered to with the principle of strict compliance as provided under referred rules; however, the procuring agency failed to do so³⁵;
- The procuring agency was required to award the contracts after the announcement of the CRC decision. In this case, the CRC failed to decide the appellant's complaint, and resultantly the appellant preferred an appeal in a timely manner; therefore, the procuring agency was required to restrain itself from awarding the procurement contracts till the final adjudication by this forum in terms of proviso to Rule-31(7) read with Rules-31(5) & (6) *ibid*.; and

²⁸ 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. An open competitive bidding means a fair and transparent specified procedure defined under these Rules, advertised in 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.

²⁹ Public procurement has number of objectives which are enumerated [as under]: (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. Procuring agencies must realize the importance of fairness, integrity, transparency and good governance in the procurement process while engaging in procurements and shall ensure that procurements are priced so as not to adversely affect the economic and financial viability of the project. Procuring agencies shall use open competitive bidding as the principal method of procurement for the procurement of works. Staff of procuring agency must maintain the highest standards of honesty and integrity in performing their duties by:- (i) developing the highest possible standards of professional competence; (ii) using funds and other resources for which they are responsible to provide the maximum benefit to the work; (iii) complying with both the letter and the spirit of the laws, rules and regulations of the procurement; so that work is awarded without influence of any unfair, corrupt or collusive practices; and (iv) treating all bidders and suppliers with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair and transparent competition

³⁰ *ibid*.

³¹ Refer to the Authority's NIT observation # III conveyed through the PPMS website on 21.08.2020

³² Any information, that becomes necessary for bidding or for bid evaluation, after the invitation to bid or issue of the bidding documents to the interested bidders, shall be provided in a timely manner and on equal opportunity basis. Where notification of such change, addition, modification or deletion becomes essential, such notification shall be made in a manner similar to the original advertisement.

³³ The procurement committee(s) shall be responsible for; (1) preparing and/ or reviewing the 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; (5) perform any other function ancillary and incidental to the above.


³⁴ As posted along with the bid evaluation reports


³⁵ Refer to the Authority's BER observations conveyed through the PPMS website on 20.09.2020


- The procuring agency awarded the procurement contracts in question on 18.09.2020; 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 required to be posted within fifteen (15) of the signing of contracts in terms of Rule-50 read in conjunction with Rule-10 ibid³⁶.

REVIEW COMMITTEE’S DECISION

18. Given the preceding findings and observations, as at paras-12 to 17, and after due deliberation, the Review Committee, under the statutory powers conferred under Rule-32(7)(g) ibid read with Sub-section(i) Section-2 of SPP Act, 2009³⁷, declares the instant procurement as Mis-Procurement and decides to refer the matter to the administrative department for initiation of disciplinary action against the officials of the procuring agency responsible for mis-procurement. Besides, the Committee decides to refer the matter to the Sindh Enquiries & Anti-Corruption Establishment for initiating action against the officers involved under the impugned procurement in terms of Rule-32(A)(2) ibid³⁸.


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


 (Member)
 Manzoor Ahmed Memon
 Private Member SPPRA Board


 (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

³⁶ 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.

³⁷ [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. 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.

³⁸ 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.