



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1830/2019-20/1604

Karachi, dated the 02nd December, 2020

To,

The Deputy Secretary (Admin & Accounts),
Finance 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 Askari General Insurance Co. Ltd. v. Finance Department, Government of Sindh*) held on 18th November 2020, for information and further necessary action, please.

DEPUTY DIRECTOR (LEGAL)

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

1. The Secretary to Government of Sindh, Finance Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. 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*].
4. The Staff Officer to the Chairman/ Members of the Review Committee.
5. M/s Askari General Insurance Co. Ltd., Office No. G-167, Mezzanine Floor, Marium Square, Khalid Bin Waleed Road, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1830/2020-21/1604

Karachi, dated the 2nd November 2020

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

REVIEW APPEAL

Between:

M/s Askari General Insurance Co. Ltd.

v.

Finance Department, Government of Sindh

NIT ID Number

To0526-20-0002 dated 18.08.2020

DATE OF HEARING

18.11.2020

FACTS AND BACKGROUND

The appellant, M/s Askari General Insurance Co. Ltd.¹, lodged a complaint (vide letter dated 14.10.2020) addressed to this Authority² – copy endorsed to Complaints Redressal Committee (CRC)³ – against the NIT No.FD/HIC/30-02/2016 dated 19.08.2020 floated by the Deputy Secretary (Admin/Accounts), Finance Department ‘procuring agency’ for procurement of ‘health insurance services for the employees (including their entitled family members) of Sindh Secretariat/ Sindh Assembly at an estimated cost of PKR 550.00 million per annum⁴ for three (3) years in accordance with the SPP Rules, 2010.

2. The appellant therein claimed for their intention to submit a bid under instant procurement on the scheduled date/ time/ venue, whereupon the Procurement Committee (PC)⁵ restrained the appellant from bid submission for being merely five (5) minutes late from the closing time⁶ that occurred due to deliberate misleading information concerning the PC members’ meeting at the building’s 1st floor as reported by the procuring agency’s lower staff. As per the appellant, the PC acted so by repeatedly extending the deadline for submission/ opening of bids, despite the appellant’s timely objections over such extensions in contravention of Rule-23(1) *ibid*⁷, to patronize a single bidder M/s United Insurance Co. Ltd. under this mega financial three years’ deal, which tantamount to transparency deficiency and collusion act while compromising value for money. Therefore, the appellant requested the Authority to declare the entire procurement proceedings null and void by revising the next date to submit the bids. *In turn, the Authority (vide letter dated 16.10.2020) advised the appellant to approach the CRC for redressal of grievances in terms of Rules-31(1) & (3) *ibid*⁸.*

3. Subsequently, the appellant (vide letter dated 19.10.2020) lodged a complaint before the CRC – copy endorsed to this Authority – with a request to allow an independent hearing for redressal of

¹ Having its office located at G-167, Mezzanine Floor, Marium Square, Khalid Bin Waleed Road, Karachi

² Sindh Public Procurement Regulatory Authority

³ Constituted under the chairmanship of Secretary to Government of Sindh, Finance Department, vide notification No.FD/HIC/30-02/2016 dated 11.05.2020 Issued by the Section Officer (Medical-I), Finance Department

⁴ Detailed description/ nature of the procurement can be accessed via the Instant procurement’s NIT available on the PPMS website at ID # To0526-20-0002 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁵ Constituted under the chairmanship of Additional Secretary (Admin/SR), Finance Department, vide notification No.FD/HIC/30-02/2016 dated 12.08.2020 Issued by the Section Officer (Medical), Finance Department

⁶ The deadline for submission/ opening of bids as per corrigendum was 05.10.2020 at 11.00 a.m. and 12.00 p.m., respectively

⁷ Any interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding documents in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bid; provided that any clarification in response to a query by any bidder shall be communicated to all parties who have obtained bidding documents.

⁸ The procuring agency shall constitute a committee for complaint redressal comprising odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings prior to award of contract. 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.

grievances and to declare the PC's whole proceedings held on 05.10.2020 as null and void. In turn, this Authority (vide letter dated 22.10.2020) also forwarded the appellant's matter to the CRC with advice to take appropriate action as per rules.

4. Upon receiving the complaint, the procuring agency (vide letter dated 22.10.2020) called the CRC meetings on 23.10.2020 & another on 26.10.2020 to redress the grievances by affording an opportunity of hearing to the complainant/ appellant. Subsequently, the procuring agency (vide letter dated 28.10.2020) announced the CRC's decision – an excerpt of which reads as follows⁹:

10. The meeting of CRC held on 26.10.2020 at 04.00 pm, wherein the complainant appeared before the forum. As per the direction of CRC to the procuring agency in the last hearing on 23.10.2020, to seek an opinion in respect of the rules from the Authority/ SPPRA quoted by the complainant in its complaint.

The Authority (vide letter dated 26.04.2020) forwarded its views and the same presented before the forum and reproduced as under:

Rule-22: Accordingly to Rule-22(1) of SPP Rules, 2010, the procuring agency may extend the deadline for submission of bids only, if one or all of the [following] conditions exists: (1) Fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the bidders un-opened.

Rule-24(1): In terms of Rule-24(1) of SPP Rules, 2010, bids shall be submitted on the place, date and time and in the manner specific 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.

In view of the above, it is the prerogative of the procuring agency to extend the deadline for submission of bids in terms of Rule-22(1) either on its own initiative or on the request of a bidder. Further, any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee.

11. In light of the views of SPPRA and Rules as mentioned under para-10 above, and after due deliberation, CRC unanimously decided that there is not any apparent violation of rules as alleged by the complainant. Hence, the CRC unanimously decides to reject the complaint of the aggrieved bidder and upheld the decision of the PC.

5. Given the CRC's decision, the appellant (vide letter dated 06.11.2020) preferred an appeal, along with the supporting documents and review appeal fee¹⁰, before the Review Committee in terms of Rules-32(1) & (5) *ibid*¹¹ whereby the appellant submitted that the CRC decided the matter based on the legal opinion of the Authority without specifically going further into the facts of the case. Hence, the appellant prayed for passing orders to entertain the appellant's bid for further evaluation while setting aside the CRC's impugned order dated 28.10.2020 being against the principles of law, applicable SPPRA Rules, and facts on the grounds [reproduced below for better appreciation of the case]:

I. That, the notice inviting the bids and fixing the date/ time/ place of making direct submission by the participating bidders, is contrary to Rule-24(2), which reads as 'submission of bids: bidders shall be permitted to bid by mail or by hand.' It is observable that neither the initial tender notice dated 19.08.2020 and nor the subsequent corrigendum ever provided for making submission of bids through mail. Had this been allowed in tender notice or in subsequent corrigendum, the appellant could not have hesitated in submitting its already ready bid, much before 28.09.2020 or then before 05.10.2020 instead of being unjustifiably trapped in and exposed to and implicated in factual controversies on account of delay, which is subject to proof in nature having documentary evidentiary value.

II. The impugned order fails to appreciate the pre-requisites for allowing extension of time period as

⁹ <http://www.pprasindh.gov.pk/committee/129CRCFinanceDepartmentKh102112020.PDF>

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

¹¹ 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. 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.

envisaged in Rule-22 *ibid* which reads as 'extension of time period for submission of bids: 1. Fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the bidders unopened. (2) If the procuring agency is convinced that such extraordinary circumstances have arisen owing to law and order situation or a natural calamity that the deadline should be extended; provided that advertisement of such extension in time shall be made in a manner similar to the original advertisement.' It therefore needs to be appreciated that (as had been rightly pinpointed earlier by Mr. Amjad Ali during meeting dated 23.09.2020) Sub Rule-1 essentially requires, as condition for extending the deadline, the eventually where the bidders are fewer than three bids. Obviously, in this case, it was only United Insurance Company Limited that was singularly entertained, which negates the spirit of widening competition. Rather it defeats the underlying objective set forth in Sub Rule-1 of Rule-22 *ibid*.

III. The impugned order, upholds that reason for allowing extension in time period for submission of bids from 28.09.2020 to 05.10.2020 was stately to address the queries raised by Jubilee Insurance Company. Whereas, it completely ignores the Sub Rule-1 of Rule-23, which provides that any such queries are to be raised five (5) days before the scheduled date for submission of bids. Sub Rule-1 of Rule-23 reads that 'an interested bidder, who has obtained the bidding documents, may request for clarification of contents of the bidding document in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bid; provided that any clarification or response to a query by any bidder shall be communicated to all parties who have obtained bidding documents.'

IV. The impugned order appears to have erred in admitting the plea of the procuring agency that any further extension for the submission of bids (beyond 05.10.2020) would cause further delay. However, the appellant considers that such plea should not be admissible as it has not substance as already two (2) extensions were allowed, once on 09.09.2020 and then the extension was granted on 28.09.2020 for up to 05.10.2020. Apart from this, it did not take into consideration that still 87 days were available for the months of October, November, and December 2020 were sufficient for the completion of process during which we were earlier informed that the services for insurance coverage would continue to remain available to the procuring agency. The impugned order mentions the facts that existing insurance coverage would be available up to December 2020.

V. That, the corrigendum vide Ref. No. FD/HIC/30-02/2016 issued by Finance Department, Government of Sindh on 28.09.2020 states in para-2 that 'the bids will now open on 05.10.2020 (Monday) at 12.00 noon in the office of Additional Finance Secretary (Admin/SR) at 4th Floor, Finance Department, Building No. 6, Sindh secretariat Kamal Atta Turk Road, Karachi.' Whereas, it is observable that said 2nd corrigendum as well as the 1st corrigendum did not mention as to where the bids were to be deposited. While giving clarification, the members of the PC stated in para-8 of the impugned order that 'bids were scheduled to be received on 05.10.2020 (Monday) on or before 11.00 a.m. in the office of Section Officer (Medical), Health Insurance Cell, Finance Department GoS, Room No. 139, 6th Floor, Finance Complex, A.K. Lodhi Block, Sindh Secretariat Building No. 06, Kamal Atta Turk Road, Karachi.' The appellant would take exception to this, as perusal of annexures would show this statement is not correct.

VI. The appellant begs for the leave to raise any further ground as subsequent state.

6. After initial scrutiny, the appellant's case was taken up by the Review Committee for a hearing in its meeting scheduled on 18.11.2020 at 02.00 p.m. In this regard, the Authority (vide letter dated 16.11.2020) issued a summon to the parties concerned to appear in person or depute authorized representatives, well conversant with the instant matter, 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*¹². Simultaneously while forwarding the appellant's case, the Authority restrained the procuring agency from issuing any contract until final adjudication by the Committee.

7. In compliance, Mr. Aamir Zia Isran (Deputy Secretary Admin/ Accounts), Mr. Sanjay Talreja (Legal Consultant), Finance Department "the procuring agency's representatives" and Mr. Kader Ali

¹² 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.

Baig, Country Head-Personal Line Business, M/s Askari General Insurance Company Limited "the appellant's representative" appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

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

APPELLANT'S VERSION

9. Mr. Qadir Ali Baig "the appellant's representative" while narrating the background of the case, apprised of his presence, along with other five prospective firms, during two pre-bid meetings called by the procuring agency on 03 & 15.09.2020. After the first pre-bid meeting, the procuring agency extended the schedule for submission/ opening of bids from 10.09.2020 to 28.09.2020 by communicating such information via whatsapp text message during the evening of 09.09.2020 when the appellant had already prepared the bid with bid security and other supporting documents. After that, during the second pre-bid meeting, the procuring agency reiterated the bidders to ensure the bids' submission/ opening on 28.09.2020, but the given schedule was re-extended to 05.10.2020 through issuing another corrigendum without mentioning therein the place for bids' submission. The appellant emphasized that he had to wander from one floor to another (the procuring agency's building) due to non-disclosure of the exact location for bid submission in these referred corrigenda, which are reproduced herein-below for a facility of reference¹³:

Corrigendum # I (Issued vide letter No. FD/HIC/30-02/2016 dated 10.09.2020)

Reference Tender Notice No. FD/SO/HIC/TENDER/2020-21 issued vide this office of undersigned on 23.07.2020 vide Serial No. INF-KRY No. 2073/2020 and also uploaded on PPMS & Finance Department's Official websites vide PPMS's Serial No. T00526-20-0002 posted on 18.08.2020. It is to bring in the notice through this corrigendum for all concerned interested bidders that the bids submission date has been extended from Thursday 11.00 am dated 10.09.2020 to Monday 11.00 am dated 28.09.2020 in terms of Rule-22 of SPPRA-2010 (Amended 2019).

Revised bidding documents can be obtained by all interested bidders (free of cost) from Section Officer Medical, Room 139, 6th Floor, A.K. Lodhi Complex, Finance Department, Sindh Secretariat No. 6, Karachi or <https://www.pprasindh.gov.pk> or <https://fd.sindh.gov.pk> till Friday 05.00 pm dated 25.09.2020. Last date and time for submission of tender is Monday, 28.09.2020 till 11.00 am. Tender will be opened on the same day at 12.00 noon.

Corrigendum # II (Issued vide letter No. FD/HIC/30-02/2016 dated 28.09.2020)

Reference Tender Notice No. FD/HIC/30-02/2016 Issued vide this office of undersigned on 23.07.2020 vide Tender Advertisement No. INF-KRY No.2073/2020 and also uploaded on PPMS & Finance Department's Official websites vide PPMS's Serial No. T00526-20-0002 posted on 18.08.2020. It is to bring in the notice through this corrigendum for all concerned interested bidders that the bids submission date has been further extended from Monday 11.00 am dated 28.09.2020 to Monday 11.00 am dated 05.10.2020 in terms of Rule-22(1) of SPPRA-2010 (Amended 2019).

The bids will now opened on 05.10.2020 on Monday at 12.00 noon in the office of Additional Finance Secretary (Admin/SR), at 04th Floor, Finance Department, Building No. 06, Sindh Secretariat, Kamal Atta Turk Road, Karachi, whereas the other terms & conditions are remain same as laid down in the revised bidding document.

This corrigendum is also available on PPMS & Finance Department's official websites, i.e. <https://www.pprasindh.gov.pk> and <https://fd.sindh.gov.pk>.

Sd/-

Deputy Secretary (Admin/ Accounts)

¹³ The procuring agency posted corrigenda on the PPMS website on 09 & 28.09.2020 (PPMS ID # T00526-20-0002) [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

10. The appellant contended that he proceeded for bid submission as per schedule; however, the delay occurred due to security checking formalities at the reception area, rush at parking, long queues, and altogether misguidance of the procuring agency's staff to disclose the exact location for the bids' submission, which eventually caused him an unintentional delay. Nonetheless, when he reached the destined office room after unlocking by the office peon, he observed the presence of PC's two members who, in the absence of other members, disbar the appellant's bid to favor the specific bidder under this mega procurement worth billions of rupees.

11. The appellant highlighted that the CRC in its meeting called an independent professional, Mr. Amjad Bahadur Ali (Chief Financial Officer, Premier Insurance Limited), who raised a question as to why the PC did not re-extend the schedule when received only a single bid to ensure the transparency within the procurement process. In response, the PC responded that further extensions could not be made due to the time constraint. The appellant submitted that the PC's given justification was implausible even when their existing contract under similar procurement is valid up to 31.12.2020.

12. The appellant further contended that the rules expressly allow the bidders to submit their bids by hand or by mail, and the procuring agency, following these rules, was required to mention such option (submission of the bids by mail) in the NIT. Secondly, the procuring agency had to disclose the place with an address for submission of bids in these corrigenda for the sake of compliance with the rules. However, the procuring agency failed to do so that leads to a violation of the procurement rules.

- Syed Adil Gilani (Member of Review Committee) asked the appellant as to how he would prove his presence in the procuring agency's office before the deadline for submission of bids?
 - ◆ The appellant's representative stated that he was present there in the procuring agency's office before the bids submission deadline, and the forum, in this regard, should not rely on digital evidence (CCTV recording presented by procuring agency).

PROCURING AGENCY'S VERSION

13. Mr. Aamir Zia Isran '*the procuring agency's representative/ PC's member*', while defending the case, explained that the PC received and opened bids on 05.10.2020 at 11 a.m. and 12 p.m., respectively, following the schedule announced through corrigendum (vide letter dated 28.09.2020) that had been communicated among all prospective bidders including the appellant and also posted the same on Authority's website. Overall, the PC received two bids, one from M/s United Insurance Co. Ltd. before the scheduled time and another from M/s Askari General Insurance Co. Ltd. after the scheduled time, as can be witnessed from CCTV recordings. Resultantly, the appellant's bid being late by thirty eight (38) minutes from the closing time was not entertained as per Rules-24(1) & 41(7) *ibid*¹⁴.

14. Mr. Sanjay Talreja '*the procuring agency's representative/ PC's coopted member*' vehemently denied the appellant's allegations by stressing that the appellant (vide letter dated 09.10.2020) had admitted for his late arrival by five (5) minutes from the closing time that caused the PC to decline receiving his bid. Again, the appellant repeated a similar statement before the CRC with a request to entertain the bid; however, the CRC unanimously rejected the request by upholding the PC's decision. The appellant has presented a conspired and baseless story for wandering from one floor to another when CCTV recording is available showing the appellant's entry from the main gate at 11.38 a.m. The PC, in the given circumstances, could not accept a late bid in any case or reason when the exact place for submission of bids was mentioned in the bidding document. The procuring agency, following the

¹⁴ Bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any submitted late due to any reason whatsoever, shall not be considered by the procurement committee. 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.

terms of the bid document, designated the specified room with supporting staff to receive the bids within the closing time where the appellant could not approach on time.

- Syed Adil Gilani pointed out as to why only a single bidder approached the procuring agency for timely submission of a bid under this mega procurement worth billions of rupees?
 - ◆ The procuring agency's representatives clarified that the NIT was published in widely circulated newspapers as per Rules-17(1A), (2) & (4) *ibid*¹⁵. Later on, the procuring agency issued a corrigendum for the general information of bidders to get the revised bid document, and then issued another corrigendum to attract a wider competition while extending the time for submission of bids in terms of Rules-21(2) & 22(1) *ibid*¹⁶. In response, a total number of six (6) bidders, including Messrs Takaful Pakistan Ltd., Atlas Insurance Ltd., Jubilee Insurance Co. Ltd., United Insurance Company of Pakistan, Adamjee Insurance Co. Ltd., and Askari Insurance Co. Ltd., purchased bid document; however, four (4) bidders did not approach for bids submission and reasons thereof are unknown to the procuring agency. In a nutshell, the procuring agency received only a single timely bid that (technical proposal) was opened and its evaluation at this stage is in the pipeline, and the procurement contract award is contingent upon the bidder's technical and financial qualification subject to compliance of Rules-46(2)(e) & 48 *ibid*¹⁷.
- Syed Adil Gilani asked the procuring agency's representative to confirm whether a similar nature of procurement was undertaken before the instant procurement?
 - ◆ The procuring agency's representatives stated that similar services were procured in 2017 through an open competitive bidding process, where seven (7) firms purchased the bid document; nevertheless, the procuring agency received only a single bid quoted by M/s United Insurance Company of Pakistan Limited that was awarded procurement contract, being the lowest evaluated bid, which is still valid at this stage.
- Subsequently, Syed Adil Gilani, while referring to the Rule-48 *ibid*, raised a query as to how the procuring agency calculated the financial estimates for procurement in question as the cost directly seems to play a vital role under instant procurement?
 - ◆ The procuring agency's representatives clarified that the financial estimates were calculated based on the previous actual expenditure while taking into account the floating inflation rate and the expected number of employees. These estimates were further deliberated at different forums and then ratified by the Government of Sindh¹⁸.

REVIEW COMMITTEE'S FINDINGS

15. The Committee heard the respective parties at length and perused the relevant record very carefully. In this case, the appellant has raised various grounds assailing the CRC's unanimous decision with a request to pass appropriate orders for considering the appellant's bid for further evaluation.

¹⁵ All procurement opportunities over two million rupees shall be advertised on the Authority's website as well as in the newspapers as prescribed. The advertisement in the newspapers shall appear in at least three widely circulated leading dailies of English, Urdu and Sindhi languages. In case, the procuring agency has its own website, it shall also post all advertisement concerning procurement on that website as well.

¹⁶ 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. [The procuring agency may extend the deadline for submission of bids only, if one or all of the following conditions exist] fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending deadline. In such case, the bids submitted shall be returned to the bidders unopened.

¹⁷ The procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was advertised in accordance with rules, and prices are comparable to PC-I cost or financial estimates or the prices or rates of the last awarded contract or the market prices.

¹⁸ The procuring agency submitted previous procurement record (bid document, evaluation report, contract agreement – original and extended –, and funds allocated/ released) to this Authority on 20.11.2020 in compliance of the Review Committee orders.

Concisely, the appellant's grounds/ issues, mostly relating to the CRC decision upholding the procurement process conducted so far, have been separately categorized as (i) the NIT and subsequent corrigenda did not mention any provision for submission of bids through the mail as reflected under Rule-24(2) *ibid*¹⁹; (ii) the PC was essentially required to re-extend the schedule for submission/ opening of the bids, as previously held due to receipt of fewer than three bids in terms of Rule-22(1) *ibid* and availability of sufficient time to complete the procurement cycle; (iii) the PC, despite the appellant's objection, extended the closing schedule from 28.09.2020 to 05.10.2020 on a request made by M/s Jubilee in terms of Rule-23(1) *ibid*, when two bidders were already present in the procuring agency's office to submit bids on the scheduled time; (iv) the corrigenda could not disclose any place for submission of the bids that caused the appellant to get a delay in finding exact location for submission of his bid on 05.10.2020; and (v) the PC restrained the appellant from bid submission for being 5 minutes late from the closing time that restricted competition while accepting the single bid under this mega financial deal.

16. The Committee minutely examined these revolving issues one by one while taking into account the relevant rules and record/ facts of the case presented by the rival parties (as mentioned earlier), and then concluded the findings as under:

- I. The NIT and subsequent corrigenda did not mention any provision for submission of bids through the mail as reflected under Rule-24(2) *ibid*: - The procuring agency solicited bids through advertising the NIT, containing the requisite information needed for dissemination as laid down under Rule-17(3) *ibid*²⁰, in newspapers and altogether posting the same on its own as well as the Authority's website. The NIT's Clause-1 and bid document's Clause-13, as reproduced below, clearly envisage that the instant procurement is being carried out as per procedure laid down under SPP Rules, 2010, from where it was implied that all the rules governing the instant procurement would be applicable, thus the appellant was free to choose his submission of bid either by hand or mail. The objection raised by the appellant does not seem to violate any rule in the given position.

Government of Sindh, Finance Department, invites sealed bids from authorized Health Insurance Providers/ Companies who must have comprehensive presence in Pakistan and registration with GST, SRB & Income Tax Department, under Sindh Stage-One Envelope bidding procedure as per provision of SPP Rules, 2010 (Amended from time to time) regarding the procurement of Health Insurance Services for the employees of Sindh Secretariat/ Sindh Assembly, Government of Sindh, Karachi, and their entitled family members vide the Tender Inquiry No. FD/HIC/30-02/2016.

The bidders must ensure that they submit all the required documents indicated in the bidding documents without fail. Bids received without undertakings, valid documentary evidence, supporting documents and the manner for the various requirements mentioned in the bidding documents or test certificates are liable to be rejected at the initial stage itself. The data sheets, valid documentary evidences for the critical components as detailed hereinafter should be submitted by the bidder for scrutiny. It is intimated that no objection shall be entertained regarding the terms and conditions of the bidding documents at the later stages during the tender process. This bidding process will be governed under Sindh Public Procurement Rules-2010 (amended 2019).

- II. The PC was essentially required to re-extend the schedule for submission/ opening of the bids, as previously held due to receipt of fewer than three bids in terms of Rule-22(1) *ibid* while having availability of sufficient time to complete the procurement cycle: - The referred directory rule does not enforce an obligatory condition on the procuring agency to extend the deadline for

¹⁹ 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.

²⁰ The notice inviting tender shall contain the [following] information: (a) name, postal address, telephone number(s), fax number, e-mail address (if available), of the procuring agency; (b) purpose and scope of the project; (c) schedule of availability of bidding documents, submission and opening of bids, mentioning place from where bidding documents would be issued, submitted and would be opened; (d) amount and manner of payment of tender fee and bid security; (e) any other information that the procuring agency may deem appropriate to disseminate at this stage.

bids' submission until the receipt of sufficient bids, i.e. three or more. On a bare perusal of the referred rule together Rule-48 *ibid*, it appears that the procuring agency could extend the deadline against bids' submission only when the procurement committee had unanimously recommended it so, but it does not seem to have happened in this case on 05.10.2020. The perusal of the record evinces that the procuring agency extended the previous deadline from 28.09.2020 to 05.10.2020 based on the PC's recommendation as also revealed by the appellant at para-5 of his letter dated 09.10.2020 as reproduced herein-below. It is noteworthy to add that the referred rules allow the procuring agency to carry on the bidding process even in the situation where a single bid is received subject to the condition that the bid was advertised in accordance with the rules, and the prices of the received bid are comparable to the PC-I or financial estimates or the prices of rates of the last awarded contract or the market prices. The Committee is of view that the procuring agency or its CRC cannot direct the PC to re-extend the deadline in the existing circumstances, but further process, if deemed appropriate, for the award of procurement contract should be essentially subject to qualification of criteria and compliance of the rules.

5. Incidentally, on the eve of second tender submission date of 28.09.2020, only two of the bidders i.e. Askari General Insurance Company Limited and the United Insurance Company Limited were physically present to submit the bidding documents but all the six procurement committee members present at the time were of the opinion to postpone tender submission and with consensus decided on 05.10.2020.

- III. The PC, despite the appellant's objection, extended the closing schedule from 28.09.2020 to 05.10.2020 on a request made by M/s Jubilee in terms of Rule-23(1) *ibid*, when two bidders were already present in the procuring agency's office to submit bids on the scheduled time: - The available record reveals that the PC extended the deadline for bids submission while exercising the statutory powers conferred upon it under Rule-22(1) *ibid* (refer to the para-9). Any bidder, being aggrieved of such a decision, was entitled to raise an objection only when three or more bids were submitted that should have restricted the PC to extend the further deadline.
- IV. The corrigenda could not disclose any place for submission of the bids that caused the appellant to get a delay in finding exact location for submission of his bid on 05.10.2020: - It is the matter of law that the procuring agency has to disseminate all the information symmetrically among all bidders to ensure procurements are conducted fairly and transparently as per procurement principles laid down under Rule-4 *ibid*²¹. The essence for issuing a corrigendum is to notify bidders for corrections made or in other words, there must be an error occurred, which is amended or rectified. The procuring agency, under impugned corrigenda, only extended the deadline for submission/ opening of the bids by mentioning therein relevant rules with further addition that 'the other terms & conditions are remain same as laid down in the revised bidding document'. As such, the disclosure of supplementary information or term & conditions, other than amended, was optional but not required for incorporation within issued corrigenda.
- V. The PC restrained the appellant from bid submission for being 5 minutes late from the closing time that restricted competition while accepting the single bid under this mega financial deal: - The central issue of this entire case is that the PC did not receive the appellant's bid being late by merely five (5) minutes that occurred due to misled information by the procuring agency to disclose the exact location for the submission of bids. Before further examination, it is useful to look into the relevant clauses relating to the bid submission given in the revised bid document for greater and minute details as reproduced below:

| Page # 1 – For Information/ Issuance & Submission of Bidding Documents: Section Officer, Health

²¹ While procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the objection of procurement brings value for money to the agency and the procurement process is efficient and economical.

Insurance Cell, Finance Department, Government of Sindh, Karachi. [Office Address: Health Insurance Cell, Finance Department, Government of Sindh, Room No.139, 6th Floor, Finance Complex, A.K Lodhi Block, Sindh Secretariat Building No.06, Kamal Atta-Turk Road, Karachi – Pakistan.
Email address: dys.adm.acc@gmail.com Phone#021-99222214]

Page # 4 – Instruction to Bidders Clause 1: Bids / Proposals should be submitted with the Health Insurance Cell, Finance Department GoS. The bidders shall be required to submit a Bid Security in the shape of Pay Order equivalent to 02% of the Assumed Project Cost (Section-7) in favour of Drawing and Disbursing Officer, Finance Department, GoS.

Page # 15 – Terms & Conditions Clause 12: The sealed proposals/bids should be submitted on or before 11:00 a.m. on 28.09.2020²² to the Section Officer (Medical), Health Insurance Cell, Finance Department, Government of Sindh, Room No.139, 6th Floor, Finance Complex, A.K Lodhi Block, Sindh Secretariat Building No.06, Kamal Atta-Turk Road, Karachi.

Page # 48 – Bid Data Sheet Clause-3: Address for submission of bids – Section Officer, Health Insurance Cell, Finance Department, Government of Sindh, Room No.139, 6th Floor, Finance Department, A.K. Lodhi Complex, Sindh Secretariat Building No. 6, Shahrah-e-Kamal Atta Turk Road, Karachi, Pakistan.

The above clauses are consistent with the express information relating to the destined place for submission of the bids. Nevertheless, the appellant had to wander from one floor to another on a mere presumption of staff members or whatsoever, which lead delay in submission of his bid. It is a well-settled rule that the PC could not consider any bid received beyond the specified time for submission of a bid, due to any reason whatsoever, as per the provisions laid down under Rules-24(2) & 41(7) ibid to ensure the integrity of the process and mutual compliance of the conditions. The Committee is of view that the appellant's bid received late due to the reasons stated herein-above was not entitled for further consideration. It was the appellant's responsibility to ensure submission of bid on time while calculating the risks relating to the time required for parking vehicle, passing security spots, and ascertaining the destined etc. which can never be associated as a justification for late submission of bid.

17. In view of the above factual and legal aspects of the matter, the Committee could not find any ground or material violations of any rule, as alleged by the appellant, requiring to pass orders for either setting-aside the CRC's decision or accepting the appellant's bid at this stage. Therefore, the procuring agency may extend the process subject to strict compliance of rules leading to the award of contract, according

to para 18, quoted below.

18. However, Syed Adil Gilani (Member of Review Committee) expressed his dissent while mentioning the following observations relating to the procurement process/ bid document:

- The procuring agency despite receiving two bids on 28.09.2020 extended the bids' submission schedule from 28.09.2020 to 05.10.2020, on a request made via email by M/s Jubilee Insurance Company before one day of the closing date, whereas the provision allows for consideration of such request was made at least five calendar days before the deadline for submission/ opening of bids in terms of Rule-23(1) ibid. Secondly, the procuring agency extended the previous deadline when two bidders were already present there to submit their bids, then why did the procuring agency not extended the deadline in the given situation when only a single bidder approached and submitted bid on time. Thirdly, the procuring agency solicited bids under instant procurement for three (3) years, rather than one (1) year, by incorporating a framework agreement in contravention of Rules-15(B) & 16(1)(b)(e) ibid²³; therefore, the procurement process based on these grounds needs to be reinitiated in compliance the rules.

²² The given schedule extended to 05.10.2020 through second corrigendum

²³ Entering Into Framework Contract: (1) Where the procuring agency has to make similar procurements at different intervals in a defined period of time and it expects better price because of economies of scale, it may enter into a framework contract at specified prices during that defined period. (2) Framework contracts shall be concluded following open competitive bidding with one or more bidders to provide a range of goods, works and services over a defined period of time not exceeding one year.

Repeat Orders: means procurement of additional quantities of the item(s) from the original contractor or supplier, where, after the items originally envisaged for the project or scheme have been procured through open competitive bidding, and such

REVIEW COMMITTEE'S DECISION

19. Given the preceding findings, as at paras-15 to 17, and after due deliberation, the Review Committee (based on the majority), in the exercise of statutory powers conferred upon it under Rule-32(7)(a) *ibid*²⁴, decides to reject/ dismiss the appeal and vacates the bar provided for in the proviso of Rule-31(7) *ibid*²⁵, with further directions to re-consider the observations as pointed-out the member, as at para-18, before proceeding further.



(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



(Chairman)
Riaz Hussain Soomro
Managing Director
Sindh Public Procurement Regulatory Authority

additional quantities of the same item(s) of goods or works are needed to meet the requirement of the project scheme; provided that (i) the cost of additional quantities item(s) shall not exceed 15% of the original contract amount; (ii) the original supplier and contractor are willing to supply goods or carry out additional work on the same prices as agreed in the original contract; and (iii) in case of goods, it shall be permissible only within the same financial year, and in case of works, during currency of the project(s) or scheme(s).

²⁴ [The Review Committee may] reject the reference, stating its reasons and vacate the bar provided for in the proviso of Sub-Rule 7 of Rule-31

²⁵ [Mere fact of lodging a complaint shall not warrant suspension of the procurement proceedings;] provided that in case of failure of the complaint redressal committee to decide the complaint; the procuring agency shall not award the contract, until the expiry of appeal period or the final adjudication by the Review Committee.