



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1470/2020-21/1731

Karachi, dated the 24 December, 2020

To,

**Executive Engineer,
Rohri Division,
MORO**

**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 **Ameer Ali Chanido V/s XEN Rohri Division Moro**) held on 18 & 23.11.2020, for your information and further necessary action, under intimation to this Authority, at the earliest.

DEPUTY DIRECTOR (LEGAL)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, Irrigation Department.
2. 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**)
3. The Staff Officer to the Chairman / Members Review Committee.
4. The Appellants/Complainants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1470/2020-21

Karachi, dated the

December, 2020

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

REVIEW APPEAL

Between:

M/s Ameer Ali Chandio

v.

Rohri Division Moro

NIT ID Number

To1517-19-0002 dated 09.06.2020

DATES OF HEARINGS

18.11.2020 and 23.11.2020

FACTS AND BACKGROUND

The appellant, M/s Ameer Ali Chandio, Government Contractor Hyderabad¹, lodged complaints (vide letters dated 24.07.2020 & 07.08.2020) addressed to this Authority² as well as the Complaints Redressal Committee (CRC)³ against the NIT No. TC/G-55/1263/2020 dated 05.06.2020 floated by the Executive Engineer, Rohri Division Moro 'the procuring agency' for procurement of four (4) works⁴ following the single-stage two envelopes bidding procedure as laid down under the SPP Rules, 2010:-

Sr.	NAME OF WORK	Estimate Cost	Earnest Money	Time Period
		PKR in Million		
I.	Cement concrete lining of Phull Distry from RD-0+000 to 40+000 and construction modules along Phull Distry	217.837	10.892	12 months
II.	Cement concrete lining of Phull Distry from RD-40+000 to 82+150, construction of modules along Phull Distry, and reconstruction of village road bridge at RD-48, 62, 64 & 72 along Phull Distry	199.169	9.958	12 months
III.	Cement concrete lining of Daulatpur Distry from RD-38+150 to 100+00 and construction of modules and bridges	316.815	15.841	12 months
IV.	Cement concrete lining of Nather Detha Distry from RD-0+000 to 80+000 and construction of modules and bridges	369.282	18.464	12 months

2. The appellant therein claimed for submission of a sealed bid, with separate technical and financial proposals, against the instant procurement NIT's work listed at Sr. # I on 26.06.2020⁵, and the Procurement Committee (PC)⁶ opened the technical proposal on the very same date; however, the announcement of technical evaluation results and the opening of financial proposals not made despite a lapse of reasonable time. Consequently, the appellant requested the authorities to direct the procuring agency for opening the financial proposals in terms of Rule-46(2)(g) Ibid⁷. In turn, this Authority (vide letter dated 29.07.2020) forwarded the matter to the CRC, while endorsing a copy to the procuring agency, with advice to redress the grievances within the stipulated period as per Rules-31(3) &

¹ Having its office located at Bungalow # A16-17, Sammanabad near Honda Palace, Hyderabad

² Sindh Public Procurement Regulatory Authority

³ 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 Section Officer (RR&S), Irrigation Department

⁴ Detailed description/ nature of the procurement works can be accessible via the instant procurement's NIT available on the PPMS website at ID # To1517-19-0002 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁵ The deadline for submission and opening of bids as per NIT was 26.06.2020 at 03 p.m. and 04 p.m., respectively

⁶ Constituted under the chairmanship of Executive Engineer Rohri Division Moro vide notification No.WB-11/RDM/PC/2020/4-W/1994 dated 28.05.2020 issued by the Chief Engineer Sukkur Barrage Left Bank, Sukkur Region

⁷ Financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance.

(5) *Ibid*⁸. In response, the procuring agency (vide letter dated 04.08.2020) ensured opening of financial proposals in its due course, subject to the finalization of the bidders' technical evaluation⁹.

3. After that, the appellant lodged other complaints (vide letters dated 12 & 22.10.2020) with the Authority and the CRC¹⁰ by raising severe reservations over disqualification/ rejection of a bid based on relevant experience as communicated so by the procuring agency (vide letter dated 08.10.2020) after a lapse of more than three months. As per the appellant, he submitted a bid with all the supporting documents, including experience certificates; nonetheless, the PC rejected the same under technical evaluation process to award the procurement contract on a favoritism basis while contravening the NIT's terms & conditions. Consequently, the appellant requested the authorities to convene the CRC meeting to re-examine the technical evaluation process/ record. In turn, this Authority (vide letters dated 21 & 26.10.2020) forwarded the matter to the CRC, while endorsing a copy to the procuring agency, with advice to redress the grievances within the stipulated period as per Rules-31(3) & (5) *Ibid*. Simultaneously, the Authority restrained the procuring agency from issuing procurement contract till the CRC decision or expiry of the appeal period in terms of Rule-31(6) read with Proviso of Rule-31(7) *Ibid*¹¹.

4. Subsequently, the appellant preferred an appeal along with supporting documents and review appeal fee¹² (vide letter dated 26.10.2020) before this Authority by stating that the CRC failed to fulfill its statutory obligations on deciding the matter; therefore, the appellant requested to place the case before the Review Committee as per Rules-31(5) & Rule-32(5) *Ibid*¹³. In turn, this Authority (vide letter dated 28.10.2020) forwarded the case to the procuring agency with advice to confirm the appellant's bid security status, latest by 04.11.2020, for ascertaining maintainability of case in terms of Rule-32(1) read with Rule-31(7) *Ibid*¹⁴; though, the procuring agency failed to respond the same within given time.

5. Accordingly, the appellant's case was taken up by the Review Committee for a hearing in its meeting scheduled on 18.11.2020 at 12.00 p.m. In this regard, the Authority (vide letter dated 06.11.2020) issued a summon to the parties concerned to appear in person or depute authorized representatives, well conversant with instant procurement, along with relevant record and evidence before the Committee on the scheduled date, time and venue in terms of Rules-32(6), (8) & (10) *Ibid*¹⁵.

6. In compliance, Mr. Ameer Ali 'the appellant' appeared before the Committee; whereas, the procuring agency's representatives did not attend the meeting while submitting a written intimation, received to the Authority on 19.11.2020, wherein the Superintending Engineer Rohri Canal Circle made a request for rescheduling hearing on account of certain engagement in Pre-IRC meetings scheduled on 18.11.2020. Due to which, the Committee decided to afford another opportunity to the procuring agency's representatives to appear/ contest the case in the next hearing scheduled on 23.11.2020 at 12.00 p.m. for deciding the matter in a fair and judicious manner while observing the principles of audi

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.

⁹ This Authority (vide letter dated 20.08.2020) forwarded the procuring agency's response to the appellant for information.

¹⁰ The appellant's record evinced that the Chairman CRC office acknowledged receipt of the referred complaint on 12.10.2020.

¹¹ 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.

¹² This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinidh.gov.pk/PPMS/>]

¹³ 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/ redressal committee, if any.

¹⁴ 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.

¹⁵ 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.



alteram partem and natural justice system as required under the law. Resultantly, the Authority (vide letter dated 19.11.2020) issued another summon to the parties concerned. In compliance, Mr. Niaz Ahmed Memon (Superintending Engineer, Rohri Canal Circle Hyderabad), Mr. Tarique Ahmed Kehar (Executive Engineer Rohri Division Moro) 'the procuring agency's representatives' and Mr. Ameer Ali, Chief Executive Officer, M/s Ameer Ali Chandio 'the appellant' appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

7. 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.

APPELLANTS' VERSION

8. Mr. Ameer Ali Chandio, 'the appellant', while narrating facts leading to the filing of this case, argued that the PC opened the bidders submitted technical proposals 26.06.2020. After that, the appellant had made various requests to the procuring agency to get an update for the announcement of technical proposals evaluation results and financial proposals opening schedule; however, the procuring agency failed to respond despite the original bid validity period's expiry.

9. The appellant submitted that the procuring agency (vide letter dated 08.10.2020) – after a lapse of 105 days when reckoned from the date for opening the bids – communicated the appellant for rejection of bid due to non-conformance with the technical evaluation criteria (relevant experience/ performance certificate of similar work). Being aggrieved from such rejection, the appellant instantly filed a complaint before the CRC that convened meeting on 21.10.2020, whereupon the appellant was heard in detail in presence of the Executive Engineer, albeit, the CRC could not announce its decision.

10. The appellant contended that he had undertaken various works, also relevant/ similar to the procurement in question, with different procuring agencies and, he, in this regard, submitted all the documentary record/ evidence (work orders completed and in-hand/ progress as tabulated below)¹⁶. Nevertheless, the PC failed to consider those documents even after hearing of the case by the CRC on 21.10.2020, and conversely, qualified the bids that could not meet the mandatory requirements.

Appellant's List of Works/ Work Orders (PKR In million)				
Sr.	Issued By	Issued On	Description	Amount
I.	Public Health Eng. Division Naushahro Feroze	23.03.2020	Supply of AC electric motor	8.4
II.	Thar Division Mirpurkhas	09.12.2019	Cement concrete lining	361.8
III.	Town Committee Tharushah	03.07.2019	Construction of CC toping	—
IV.	Provincial Highway Div. Naushahro Feroze	11.06.2018	Construction of road	49.7
V.	Highways Division (W&S) Dept. Hyderabad	08.06.2018	M&R of road	59.9
VI.	Provincial Highway Division Hyderabad	07.05.2018	Construction of new road	7.1
VII.	Town Committee Tharushah	09.04.2018	Construction of surface drains	—
VIII.	Local Government Project Hyderabad	15.02.2018	Construction of road	68.8
IX.	Thar Division Mirpurkhas	12.01.2018	CC lining	83.6
X.	Municipal Committee Qasimabad	09.10.2017	RCC drainage line	28.2
XI.	Municipal Committee Qasimabad	09.10.2017	Construction of CC block	45.2
XII.	Rohri Canal Division Khesano Mori Hyderabad	12.02.2015	Rehabilitation of earth work	19.6
XIII.	Drainage Division Mirpurkhas	05.04.2013	Construction of village road	10.5
XIV.	Taluka Municipal Administration Matiar	26.03.2011	Construction of CC block	0.2
XV.	Highways Division Naushahro Feroze	21.12.2011	Construction of link road	—
XVI.	Drainage Div. LBOD Shaheed Benazirabad	04.09.2010	Supplying and fixing of material	1.1
XVII.	Provincial Highway Division Mirpurkhas	—	M&R of road	6.8

¹⁶ The tabulated data is derived from the appellant's technical proposal submitted to the procuring agency.

11. The appellant further contended that he submitted a bid against the impugned work as PKR 208.812 (40 million below the lowest evaluated bidder) and entitled for the award of work. However, the procuring agency, despite the Authority's outright instructions to halt the process, announced the evaluation results and then awarded the impugned procurement contract without seeking the bidders' consent relating to extension in bid validity period. Besides, the procuring agency misrepresented information in the contract evaluation form while indicating that they did not receive even single complaint under instant process that was contrary to the facts and record of present case.

PROCURING AGENCY'S VERSION

12. Mr. Niaz Ahmed and Mr. Tarique Ahmed Kehar 'the procuring agency's representatives', while opposing the appellant's stance and clarifying the queries raised by the forum, submitted that the PC received and opened the technical proposals on 26.06.2020 in terms of Rule-46(2)(c) to (f) *ibid*¹⁷. After that, the procuring agency forwarded the copies of bidders' experience certificates and bid securities to the issuing authorities to seek confirmation/ verification of the record, which took time in finalizing the technical evaluation results. As such, the original bid validity period of ninety (90) days that was about to expire was extended thirty (30) days and then again another thirty (30) days after seeking approval of the competent authority and consent of the bidders in terms of Rule-38(2) & (3) *ibid*¹⁸.

13. The procuring agency's representatives further submitted that the PC publicly opened the financial proposals of technically qualified bidders on 14.10.2020, and after that, the procuring agency announced the bid results via the PPMS website on 15.10.2020¹⁹. Meanwhile, all bidders, including the appellant, who declared technically disqualified, were communicated the results containing therein reason(s) against their rejection of the bids. Subsequently, the procuring agency awarded the procurement contracts to the lowest evaluated bidders and publicized the contract documents via the PPMS website on 09.11.2020²⁰.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representatives to confirm whether the consent for extension in the original bid validity period was sought from all bidders in terms of Rule-38(2) *ibid*? As in this case, it is *ex-facie* clear that the PC opened technical bids on 26.06.2020 and announced evaluation results on 15.10.2020 (after the original bid validity period that expired on 23.09.2020) when all the bidders' bid securities were intact with the procuring agency, and technical evaluation was in process of finalization;
 - ◆ The procuring agency's representative confirmed that they made a request (*vide* letters dated 24.09.2020) for an extension in the bid validity period to the technically qualified bidders only who agreed upon such extension by submitting their written consent (*vide* letters dated 25.09.2020). [Emphasis added – refer to the case findings]
- Mr. Manzoor Ahmed Memon (Member of Review Committee) raised a query that the appellant has claimed from an Infancy stage for possessing requisite experiences under the relevant field that (documentary record/ certificates) were annexed with the proposal submitted to the procuring agency; then why did the PC not consider it during evaluation?
 - ◆ The procuring agency's representatives clarified that all the bidders needed to have similar work experience with a similar amount, among other conditions, to qualify

¹⁷ Initially, only the envelope marked "TECHNICAL PROPOSAL" shall be opened; envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened; 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; no amendments in the technical proposal shall be permitted during the technical evaluation.

¹⁸ Extension of bid validity may be allowed subject to approval by the competent authority of the procuring agency, and with reasons to be recorded in writing; provided that if validity period has to be extended due to some slackness on the part of procuring agency, the competent authority shall fix responsibility and take appropriate disciplinary action. After obtaining such approval, the procuring agency, shall request in writing all bidders to extend the bid validity period. Such a request shall be made before the date of expiry of the original bid validity period.

¹⁹ Bid evaluation reports at ID # BE01517-19-0002-1 to 4 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

²⁰ Contract Documents at ID # C01517-19-0002-1 to 4 [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/contract_list]



the technical evaluation criteria requirements. However, the appellant's proposal did not contain any work with a completion certificate that resulted in his rejection of the bid. Per contra, the appellant emphasized that the NIT's referred condition at Clause-8(a)²¹ did not mention the work needed to be of a similar amount, but it required bidders to have completed a similar work against which the appellant furnished a completion certificate issued by Executive Engineer Thar. The appellant averred that the procuring agency might have deliberately detached his certificate for ease of disqualification.

- While referring to the following letters/ correspondence, the Committee members noticed that the procuring agency verified the appellant's work order through the issuing authority and then rejected the appellant's bid even without seeking any clarification, if deemed mandatory, as provided under Rule-43(1) Ibid²² to avoid undue delays and to ensure procurement principles within the bidding process. In case, the appellant had submitted a completion certificate, issued beyond the deadline, then the PC could reject the same by providing such reason on time rather than delaying the process without any substantial or justifiable reasons;

No.TC/G-55/1516/2020

Moro, dated the 29.06.2020

To: The Executive Engineer Thar Division Mirpurkhas.

Subject: Verification of letter of commencing work 'cement concrete lining of Theaba Minor'.

Reference: This office NIT No.TC/G-55/1263 dated 05.06.2020

Kindly refer to this office NIT cited above, It is brought to your kind notice that this division floated NIT vide No.TC/G-55/1263 dated 05.06.2020 (ID No.T01517-19-0002). Technical bids have been opened on 26.06.2020, wherein the contractor M/s Amir Ali Chandlo, Government Contractor, applied for tender and the above subjected letter has been incorporated in the bidding document as work specialization and experience (letter No.TC/G-55/TD/45 dated 12.01.2018 photocopy attached) so this office has sent to your good office the letter for verification, please return letter within three days after verification...

Sd/- Executive Engineer Rohri Division Moro

No.BC/G-55/TD/1005/2020

Mirpurkhas dated 13.07.2020

To: The Executive Engineer Rohri Division Moro.

Subject: Verification of letter of commencing work 'cement concrete lining of Theaba Minor'.

Reference: Your office letter No.TC/G-55/1516 dated 29.06.2020

In response to your letter number cited above, It is stated that the work order No.bc/g-55/td/45 dated 12.01.2018 in favor of M/s Ameer Ali Chandlo, Government Contractor, for the work of 'CC Lining of Theaba Minor' issued by this Division. The copy of the same is returned herewith duly verified.

Sd/- Executive Engineer Thar Division Mirpurkhas

No.TC/G-55/2374/2020

Moro, dated 08.10.2020

To: M/s Amir Ali Chandlo, Government Contractor, Hyderabad

Subject: NIT NO. TC/G-55/1263 DATED 05.06.2020 (SPPRA ID NO. T01517-19-0002 Sr. # 1).

Reference: Your technical proposal dated 26.06.2020

Refere your technical proposal cited above, It is informed you that after scrutiny/ assessment of your proposal by the PC, It found that the required experience/ performance certificate of similar work of your company could not meet criteria, so that your firm/ agency is disqualified....

Sd/- Executive Engineer Rohri Division Moro

- ◆ The procuring agency's representatives clarified that they did not seek the clarification as the bidders could submit their completion certificate issued by the respective authority after the deadline for submission of the bids. On a query raised by the forum, the representatives presented a copy of the lowest evaluated bidder's completed work that was found without any issuance date on the bare letter.

²¹ List of complete work of CC lining jobs with documentary evidence along with satisfactory completion certificate of work from employer details of ongoing C.C lining jobs with copies with letter of award of work

²² No bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bids; provided that the procuring agency may ask the bidders for clarifications needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid.



CHRONOLOGY OF THE BIDDING PROCESS²³

14. The chronology of significant procurement events evinces that the procuring agency in the present case (NIT's work # 1) invited bids under open competitive bidding while formulating/ incorporating evaluation criteria, as tabulated below, in accordance with the single stage two envelope bidding procedure laid down under Rule-46(2) read with Rule-47(2) & Clause-aa of Sub rule-2(1) *ibid*²⁴:

EVALUATION CRITERIA	
I.	List of complete work of CC lining job with documentary evidence along with satisfactory completion certificate of work from employer details of ongoing CC lining jobs with copies of letter for award work;
II.	Detail of machinery and equipment be reported with documentary wherever applicable;
III.	Technical supportive staff be supported in advance;
IV.	Bank statement last six (6) months showing worth of all cost of 25% of bid cost;
V.	Instruction to bidders, bidding date, contract conditions, contract date mentioned in SBD are applicable;
VI.	The technical proposal is submitted in one original and two photocopies with original affidavit regarding not in dialoged litigation/ firm is not blacklisted by any procurement agency/ information documents also date is absolutely true and correct; and
VII.	NTN, SRB, and PEC certificates etc.

15. In response to the NIT, the procuring agency received fifteen (15) timely proposals²⁵ (technical and financial) that were opened/ evaluated by the PC on 26.06.2020 and 14.10.2020, respectively. Then, the procuring agency announced the evaluation results (as summarized below) via the PPMS website on 15.10.2020 in terms of Rule-45 *ibid*²⁶:

SUMMARY OF THE BIDS EVALUATION RESULTS (NIT'S WORK # 1) (PKR IN MILLION) ²⁷					
Sr. #	Bidder's Name	Technical Eva. Results	Bid Quoted	Ranking	Bid Accepted/ Rejected
I.	M/s Al-Ramzan Construction Comppany	Qualified	249.404	1 st	Technically qualified but higher side
II.	M/s MBC & Sons Builders & Developers	Qualified	249.873	2 nd	
III.	M/s Salar Enterprises	Qualified	249.999	3 rd	
IV.	M/s Abdul Hakeem Chachar & Sons	Qualified	250.937	4 th	
V.	M/s GHB Construction Company	Qualified	252.218	5 th	
VI.	M/s Abra Construction Company	Qualified	253.067	6 th	
The procuring agency posted the bid evaluation report showing therein submission/ participation of fifteen (15) bidders; however, the report could not disclose further information relating to the other bidders, including the appellant, and reasons leading to their disqualification as required under Rule-45 <i>ibid</i> .					

16. Before the announcement of results, the appellant, being aggrieved and dissatisfied with the PC's action, challenged the decision before the CRC that heard the appellant but failed to announce or intimate any decision. Resultantly, the appellant preferred an appeal before the Review Committee, which allowed the rival parties to present/ defend the case for deciding matter in a fair, transparent and judicious manner. Meanwhile, the procuring agency awarded the procurement contract on 06.11.2020²⁸ and posted/ publicized the incomplete contract documents (without a form of contract and letter of award) via the PPMS website on 09.11.2020²⁹.

²³ The procurement procedure under which sealed bids invited, received, opened, examined and evaluated for the purpose of awarding a contract.

²⁴ Single stage two envelope bidding procedure shall be used for goods, works and services where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation. Open competitive bidding means 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...

²⁵ As mentioned in the bid evaluation report.

²⁶ 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.

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

²⁸ So far, the procuring agency has not disclosed the information relating to the contract agreement via the PPMS website.

²⁹ *ibid*.

REVIEW COMMITTEE'S FINDINGS/ OBSERVATIONS

17. The Committee has given anxious thought to the contentions canvassed by the respective representatives and perused the relevant record made available by the rival parties. Concisely in the present case, it is not in dispute that the procuring agency received the appellant's bid that, inter alia, contained the details of various completed and ongoing works. It is also undisputed here that the PC opened the appellant's technical proposal on 26.06.2020, and on the next working day, the procuring agency (vide letter dated 29.06.2020) forwarded a copy of the appellant's work order 'cement concrete lining of Theaba Minor' to the Issuing authority (Thar Division Mirpurkhas), which endorsed and verified the work order on 13.07.2020. After that, the procuring agency (vide letter dated 08.10.2020) communicated to the appellant for rejection of bid based on the required experience/ performance certificate. *The Committee examined the issue in detail by taking into account the relevant facts and noticed that the appellant submitted copies of various work orders; out of those, the PC referred only a single specific work order - similar in nature to the impugned procurement work - that was timely verified by the Issuing authority. After such an end to end verification process, it raises a fundamental question as to how the PC rejected the appellant's technical proposal based on the required experience alone. If the appellant had not possessed required experience, then what was the rationale behind verifying the work order. Secondly, if the PC had recommended rejecting the appellant's bid based on the given reason, then why such a step took a span of around 105 days. In a nutshell, the appellant submitted the requisite documents sufficed to qualify the criteria as mentioned under the NIT's Clause-8(b) and if the PC had any ambiguity or confusion relating to the evaluation of the appellant's proposal, then the procuring agency could seek the appellant's clarification as provided under Rule-43(1) Ibid.*

18. The Committee further noticed that the procuring agency invited bids under certain mutually agreed terms and conditions, including but not limited to as under:

Instructions to Bidders Clause 15.4 – Bid Security: Bid security shall be released to the unsuccessful bidders once the contract has been signed with the successful bidder or the validity period has expired.

Instruction to Bidders Clause 14 – Bid Validity: Bids shall remain valid for the period stipulated in the bidding data from the date of opening of bid specified in clause IB.23. In exceptional circumstances, prior to expiry of the original, the procuring agency may request the bidders to extend the period of validity for a specified additional period, which shall not be for more than one third of the original period of bid validity. The request and the responses thereto, shall be made in writing. A bidder may refuse the request without the forfeiture of the bid security. In case, a bidder agreed to the request, shall not be required or permitted to modify the bid, but will be required to extend the validity of the bid security for the period of the extension, and in compliance with Clause IB.15 in all respects.

Instruction to Bidders Clause 29.1 - Award: Subject to clauses IB 30 and IB 34 and provision of the rule: The procuring agency shall award the contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents, and who has offered the lowest evaluated bid, but not necessarily the lowest submitted price, within the original or extended period of bid validity. Provided that such bidder has been determined to be eligible in accordance with the provisions of clause IB 03 and qualify pursuant to sub-Clause IB 29.2.

Bidding Data Clause-14.1: Bid validity period = within 90 days

19. On a careful analysis of the above-reproduced clauses with the bidding process, it can be extracted that the procuring agency received and opened the bids on 26.06.2020, from where the bid validity period began for counting in terms of Rule-38(1A) *ibid*³⁰, and as such, the original period of bid validity of ninety (90) days expired on 23.09.2020. *Following these conditions read together with Rule-38(2) to (3) Ibid, the procuring agency had to extend further bid validity period while initiating a request to all the bidders before the original bid validity period expiry. However, in the present case, the procuring agency requested such extension to only specific bidders after the original bid validity period's expiry. It is*

³⁰ The bid validity period shall start from the date of opening of technical or financial bids, whichever is earlier.



also noteworthy to add that the procuring agency, in this case, re-extended the bid validity period (second extension) by seeking approval of the competent authority on 23.10.2020³¹.

20. The Committee further observed that the procuring agency failed to comply with the following procurement rules while undertaking the instant bidding process:

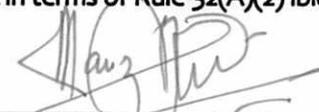
- The procuring agency had to award the procurement contract, within the original or extended bid validity period, after the announcement of the CRC decision and/ or after the expiry of the appeal period and/ or the final adjudication by the Review Committee in terms of Rules-31(6) & 49 read with proviso of Rule-31(7) *ibid*³². Secondly, the procuring agency was required to post the bid evaluation report, giving reasons for acceptance or rejection against all the received bids in terms of Rule-45 *ibid*. Thirdly, the procuring agency needed to post the contract documents (including a form of contract/ contract agreement and letter of the award) within fifteen (15) days of the signing of the contract in terms of Rule-50 read with Rule-10 *ibid*³³.

REVIEW COMMITTEE'S DECISION

21. Given the preceding findings/ observations, as at paras 17 to 20, and after due deliberation, the Review Committee, in the exercise of statutory powers conferred upon it under Rule-32(7)(g) *ibid* read with Sub-section(i) Section-2 of SPP Act, 2009³⁴, declares the instant procurement as Mis-Procurement and decides to refer the matter to the Competent Authority for initiation of disciplinary action against the officials of the procuring agency responsible for mis-procurement in terms of Rule-32(A)(2) *ibid*³⁵.



(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

³¹ The record evinces that the Chief Engineer Sukkur Barrage Left Bank Region (vide letter dated 22.09.2020) extended the bid validity period for thirty (30) days on the procuring agency's request forwarded by Superintending Engineer, Rohri Canal Circle Hyderabad. Subsequently, the Chief Engineer (vide another letter dated 23.10.2020) further extended the bid validity period for another thirty (30) days.

³² The procuring agency shall award the contract after the decision of the complaint redressal committee; provided that in case of failure of 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. The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity.

³³ 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 the procuring agency's website, if the procuring agency has such a website...

³⁴ [unless 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.

³⁵ 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.

