



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-2707/2020-21

Karachi, dated the , December, 2021

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

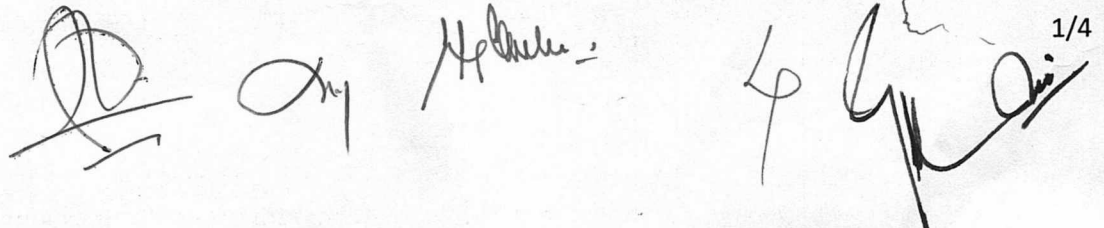
M/s WSKB & Company

Vs


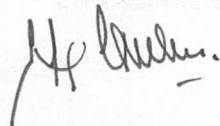

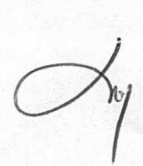
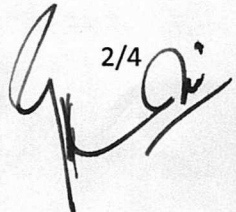
Culture, Tourism, Antiquities Archives Department & The Director PDM & I Culture Tourism,
Antiquities Archives Department.

Decision of the Review Committee held on 14.12.2021

Date(s) of meeting(s)	14.12.2021		
Appellant	M/S WSKB & Company		
Procuring Agency	The Director PDM&I Culture Tourism, Antiquities Archives Department		
Appeal received on	11.10.2021		
Impugned order	Notification NO.SO.(G)/CTA&AD/7-57/2021/1987 dated 4 th October		
Work Order issued on	7 th April 2015		
Reasons for the delay in decision of the Review Committee in terms of rule 32(10)	Many complaints were pending before the Review Committee because the working of the committee was kept in abeyance due to the non-availability of one member of the Review Committee.		
Sr.1	The appellant's Version	The Procuring Agency's Version	Remarks/SPP Rules/Regulations
1	The appellant submitted that The Secretary to Government of Sindh, Culture, Tourism, and Antiquities Archives Department had notified the blacklisting of the appellant which was against the rules, procedure and natural justice.	The Procuring agency submitted that the blacklisting was notified after the thorough investigation and on the recommendation of the investigation Committee that was constituted to investigate into the cause of the collapse of main gate of Pucca Qilla Hyderabad and to fix the responsibility.	
2.	The appellant submitted that the main gate was demolished by unknown persons who have nothing to do with the appellants and his company.	The procuring agency submitted that during investigation ,it was observed that the main gate was collapsed due to the careless behavior of workers who caused the collapse of the protected heritage	
3.	The appellant denied the linkage with the persons who were involved in the	The procuring agency re-iterated that the work had	





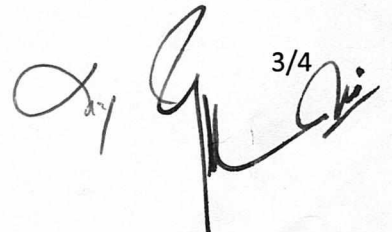
	demolition of main Gate of Pucca Qila Hyderabad.	been awarded to the contractor and the labor that worked had been hired by the contractor.	
4.	The appellant submitted that the procuring agency did not Carry out investigation for the determination of cause of blacklisting but in the instant case investigation was carried out for determining the cause of collapse not for blacklisting.	The procuring agency submitted that investigation was carried out by the member committee under the Chairmanship/Supervision of Director Sindh Provincial Museum Hyderabad. The committee had recommended for cancellation of contract with the contractor and recommended for the stern action the contractor	
5.	It was also informed that the process of blacklisting was neither initiated nor the process of blacklisting was followed in accordance with the procedure laid down in regulations of SPPRA.	The procuring agency submitted that the contractor was well aware about the collapse of the protected building and was aware about the investigation.	
6.	It was also contended that Fair opportunity to be heard to the bidder to defend the blacklisting as a fundamental right was not afforded by the procuring agency.	The procuring agency did not give any satisfactory reply regarding the offer of fair opportunity to be heard to the bidder to defend the blacklisting as a fundamental right	
7	The appellant also informed that the impugned notification was issued in haste on political and popular grounds rather than on legal and technical grounds	The procuring agency informed that the notification was issued because due to the careless working of the contractor the main gate of Pucca Qilla, the protected heritage was collapsed.	
8.	The appellant also informed that the procuring agency had no cause for blacklisting.	It was informed that the contractor has violated the contract conditions and illegally had caused the damage of the protected heritage.	

9	The appellant submitted that the contract was signed in 2015 and the work was to be completed till 2017 but the procuring agency could not shift the population, illegal occupants, that is living inside the Pucca Qilla Hyderabad	It was informed that the consent of the appellant was sought for the extension of work time.	
10	The appellant submitted that the investigation was carried for the ascertaining the cause of the collapse of main gate of Pucca Qilla Hyderabad and to fix the responsibility. It had nothing to do with the Blacklisting of the contractor.	The procuring agency submitted that the investigation committee had recommended for the stern action against the bidder	

Findings and Observations of the Review Committee

1. It was observed by the Review Committee that the bidder **was not heard properly before blacklisting**. Law is well settled that nobody should be blacklisted without giving an opportunity of being heard. An order of blacklisting a person results in civil consequences. It affects the reputation of the blacklisted person not only in his dealings with the Government but also in his dealing with private firm. It affects his business prospects. Therefore, it was necessary to provide the opportunity of personal hearing to the bidder before being blacklisted.
2. The committee also observed that the decision **to blacklist contractor for all times to come is highly disproportionate**. The procuring agency has passed the order of blacklisting without mentioning time for which the appellant was to remain blacklisted.
It is well settled principle of law that the penalty shall be proportionate to the wrong done.
3. It was also observed that the procuring agency had carried out the investigation for ascertaining the cause of demolition of gate of Pucca Qila, whereas as per rules the procuring agency had got to specifically conduct investigation for ascertaining sufficient cause for the blacklisting.
4. At the outset, it must be noted that it is the first principle of natural justice that a person against whom any action is taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent.
5. Therefore, it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the person to answer the case against him. If these conditions are not addressed, the person cannot be said to have been granted any reasonable opportunity of being heard.
6. It was noted by Syed Adil Gilani that the work order mentions that the contractor will complete the work within two years Mr. Gilani was of the view that the procuring agency should deal with the matter in accordance with the terms and conditions of the contract. If the bidder has committed wrong or has underperformed he should be penalized in accordance with the agreed upon conditions of the contract. Furthermore, in case the fault lies with the procuring agency, the bidder may be compensated accordingly.




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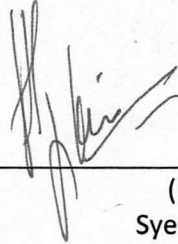
Decision of the Review Committee:

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32 the Review Committee sets aside the blacklisting Notification NO.SO.(G)/CTA&AD/7-57/2021/1987 dated 4th October 2021 issued by the Secretary to Government of Sindh, Culture, Tourism, Antiquities Archives Department Karachi. The matter shall be deemed to be pending before the procuring agency that shall pass a well speaking order after affording a fair opportunity of hearing and defense to the appellant by observing all rules, regulations accordingly.



(Member)

Manzoor Ahmed Memon
Member SPPRA Board



(Member)

Syed Adil Gilani
Transparency International Pakistan



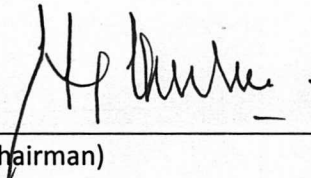
(Member)

G. Muhiud Din Asim
Representative of P & D Board ,P& D
Department Karachi



(Member)

Munir Ahmed Shaikh
Independent Professional



(Chairman)

Abdul Haleem Shaikh
Managing Director

Sindh Public Procurement Regulatory Authority