



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1245/2020-21/1856 Karachi, dated the 7<sup>th</sup> January, 2021

To,

Executive Engineer (District Council),  
Local Government Department,  
**THATTA.**

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 Kashif Rafique Enterprise V/s District Council Thatta, held on 23.12.2020, for taking further necessary action in compliance of referred decision, 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, Local Government Department.
2. The Deputy Commissioner District Thatta.
3. The Chief Municipal Officer, District Council Thatta.
4. 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)
5. The Staff Officer to the Chairman / Members Review Committee.
6. The Appellants.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.DD(L-)/SPPRA/CMS-1338/2019-20

Karachi, dated the 7<sup>th</sup> January, 2021

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

**(REVIEW APPEAL)**

**(Appeal)**

*M/s Kashif Rafiq Enterprises (Petitioner / Appellant)*  
*Versus*  
*District Council Thatta (Procuring Agency)*

**(NIT ID # T00638-19-0008 dated 09.12.2019)**  
**(NIT ID # T00638-19-0009 dated 10.12.2019)**  
**(NIT ID # T00638-19-0010 dated 17.12.2019)**  
**(NIT ID # T00638-19-0011 dated 12.03.2020)**

**FACTS AND BACKGROUND**

In compliance of the orders passed by the Honorable High Court of Sindh, Karachi while deciding Constitutional Petition No.D-2830 to 33, the Authority issued notices to the concerned parties (Vide Letter dated 14.12.2020) for appearing before the Review Committee on 17.12.2020 at 11:00 a.m. in the Committee Room of SPPRA, Barrack No.8, Sindh Secretariat No.4A, Court Road Karachi. However, due to the engagements of the members of the Review Committee on aforementioned date, the matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 23.12.2020 at 11:00 a.m. and notices in these connections were again issued to the parties concerned (vide this Authority's letter date 21.12.2020) for appearing before the Committee on scheduled date, time and venue. In compliance Mr. Muhammad Najmal Majeed (District Engineer) '*representatives of the Procuring Agency*' and Mr. Kashif Rafiq (Petitioner/Appellant) appeared before the Review Committee.

2 The appellant claimed that he had participated in the following schemes and NITs:

Sr. #	NIT ID # and date	Serial Number of Schemes in which appellant participated
1	T00638-19-0008 dated 09.12.2019	24
2	T00638-19-0009 dated 10.12.2019	12, 26, 31 and 32
3	T00638-19-0010 dated 17.12.2019	26, 31 and 36
4	T00638-19-0011 dated 12.03.2020	7, 36, 39 and 45

## REVIEW COMMITTEE PROCEEDINGS

3. The meeting started with the recitation of verses from the Holy Qur'an. The chairperson of the Review Committee welcomed all the participants of the meeting and introduced the members of the Review Committee. The chair enlightened the forum that instant matter had been referred by the Honorable High Court of the Sindh, Karachi, with direction to decide the matter within (10) days after providing abundant opportunity of hearing to the petitioner (Appellant) as well as Procuring Agency. Then the chair asked the appellant to present his case/ version on the instant procurements before the committee.

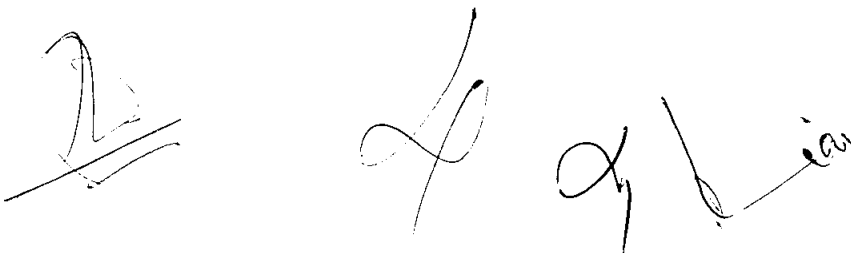
### APPELLANT'S VERSION

4. Mr. Kashif Rafiq (Petitioner) Appellant while arguing his appeal apprised the Committee that they participated in the bidding process of above mentioned schemes through submitting bids along with bid security and requisite documents by hand to the Procuring Agency before the deadline for submission of bids. The Procuring Agency also got signatures of all bidders including them on the attendance sheet; however, despite waiting for whole day in the office of the District Council Thatta, the bids were not opened publicly, due to nonappearance of the members of Procurement Committee. Upon enquiry from the office clerk who was alone present in the office, he verbally informed that bid opening will not take place today and the next date (schedule) for opening of the bids will be communicated later on.

5. Subsequently, the appellant (Petitioner) surprisingly learnt that the Procuring Agency (District Council Thatta) – without convening public opening of the bids – had awarded the above mentioned works on highest rates to his blue-eyed contractors by preparing false/ fictitious bid evaluation reports. The appellant claimed that Procuring Agency had clearly misused the authority by not incorporating their bids in the bid evaluation reports, which is violation of Principles of Procurement and SPP Rules. He added that their bids securities still laying with the Procuring Agency.

6. The appellant disclosed that shockingly the Procuring Agency had awarded him two other works (items Nos. 22 and 24 of NIT # T00638-19-0009), in which he had neither participated nor submitted bids/applied. He further deliberated that the Procuring Agency had malafidely deprived him from his right despite being the lowest evaluated bidder. In this regards, the appellant being aggrieved by the decision of the Procurement Committee/Procuring Agency lodged the complaint to the Procuring Agency's Complaint Redressal Committee (CRC) (vide letter dated 30.12.2019), but the Complaint Redressal Committee (CRC) failed to furnish decision on aforementioned complaint within stipulated time period.

7. The chair educated the Appellant (Petitioner) that Rule-32 of SPP Rules, 2010 provides for an opportunity to the aggrieved bidders, who are either not satisfied with the decision of the CRC of the Procuring Agency or whose complaints are not decided by CRC within stipulated time period, to lodge an appeal to the Review Committee of the Authority, before filing a petition in the Honourable High Court of Sindh. In case, the bidder's grievances were not redressed by the Review Committee then the aggrieved bidder might approach the Honourable Court.

The image shows four handwritten signatures in black ink, arranged horizontally. The signatures are stylized and appear to be the names of the members of the Review Committee.

## PROCURING AGENCY'S VERSION

8. *Mr. Muhammad Najmal Majeed (District Engineer), District Council, Thatta 'representatives of the Procuring Agency clarified that the Appellant (M/s Kashif Rafiq) while participated in the various works of instant NITs had attached photocopies of pay orders of bid security as well as tender fee instead of original, which was mandatory requirement for the eligibility. He added that due to this noncompliance from the bidder side his bid was rejected by the Procurement Committee.*

9. *The representative of the Procuring Agency denied the allegations of the appellant that the bids were not opened on the scheduled date and time. Rather, the appellant was not present in the office at the time of opening of bids. He further clarified the review committee that the bidding process carried out according to SPPRA Rules. The chair enquired the current status of the procurement of works under discussion from the Procuring Agency's representative, who confirmed that they have awarded the contracts. He also added that the two works have al been awarded to the appellant.*

10. *Syed Adil Gilani (Member of Review Committee) asked the Procuring Agency as to whether meeting of the CRC was convened upon receipt of the complaint or otherwise. In turn, the representative of the Procuring Agency replied that CRC had been convened and had already announced its decision. The Members of the Review Committee sought confirmation from the Complainant as to whether the complainant was called by the CRC for meeting. In turn, the complainant denied the statement of the representative of PA and said that he had not received any notice for CRC meeting. The Members then requested the representatives of PA to produce a copy of the meeting notice and decision of CRC, but they failed to produce the same before the Review Committee. The committee allowed the Procuring Agency to furnish the notice of the meeting and decision of the CRC latest by 5:00 p.m. on 24.12.2020 to decide the matter. However, despite then the PA failed to provide the requisite documents.*

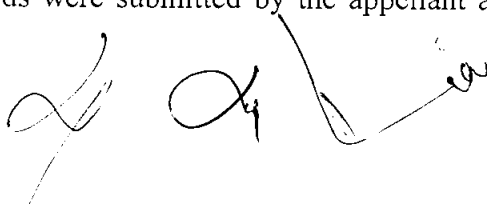
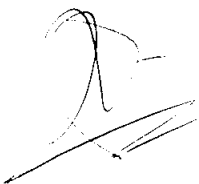
11. *Mr. Manzoor Ahmed (Member of Review Committee) enquired from the representatives of the PA, as to why the contracts were awarded without disposing of the complaints, as required under Rule-31(6) and Rule 31(7) of SPP rules, 2010 (Amended 2019) which stipulate that:*

**Rule-31(6):** *The Procuring Agency shall award the contract after the decision of the complaint redressal committee.*

**Rule-31(7):** *Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings; provided that in case 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.*

However, *the representative of the Procuring Agency failed to respond to the query of the member.*

12. *Mr. Muneer Ahmed (Member of Review Committee) raised the query, as to why the Procuring Agency awarded those works to the appellant, in which the appellant neither submitted the bids nor deposited the pay order of the bid security. The representative of the Procuring Agency stated that bids were submitted by the appellant along with pay orders but*

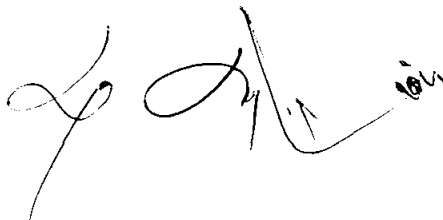



upon enquiry he couldn't produce the evidence or bids submitted by the appellant for works which were awarded to the appellant.

### **REVIEW COMMITTEE OBSERVATIONS / FINDING**

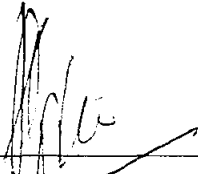
13. After hearing parties at length and perusal of the available record, the review committee observed that: -

- (a) The Procuring Agency's CRC was required to decide the appellant's grievances within seven days and intimate the decision to the appellant as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010. However, the Procuring Agency's CRC failed to convene the meeting, which is the violation of Rule-31(5) of SPP Rules, 2010 (Amended 2019).
- (b) The appellant's plea that bids were not opened on the scheduled date and time in the presence of bidder is violation SPP Rules-41 (3) and (4).
- (c) The Procuring Agency was required to award the procurement contract either after the announcement of CRC decision in terms of Rule-31 (6). Whereas, in the instant case PA had awarded the contract without announcement of decision of CRC, hence violated the Rule-31(6).
- (d) The Procuring Agency was required to upload contract award document on the Authority's website within fifteen (15) days of the award of contract in terms of Rule-50 read in conjunction with Rule-10 of SPP Rules, 2010; however, the Procuring Agency has failed to post the document on the Authority's website [as yet], violating the aforementioned rules;
- (e) The Procuring Agency was required to accept and open bids received from the bidder, without taking into consideration any other factor or requirement. The reasons for acceptance or rejection of bids should have been recorded in the bid evaluation report in terms of Rule-45 of SPP Rules, 2010 (Amended 2019);
- (f) The act of the Procuring Agency, to award the works to the appellant for which the appellant neither submitted bids nor submitted bid security, is a sheer violation of Rule-37, Rule-49 and principles of procurements laid down in Rule-4;
- (g) The Committee also observed that Procuring Agency award the contracts after expiry of extended Bid Validity Period hence violated Rules-49 and 38(5) of SPP Rules, 2010 (Amended 2019);
- (h) The works at Sr.# (22 & 24) of NIT # T00638-19-0009 for which the Claimant neither applied nor accepted the award may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010 (Amended 2019), and fresh tenders be floated in terms of Rule -26 of SPP Rules, 2010 (Amended 2019).



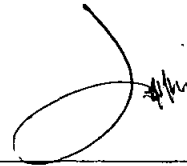
## REVIEW COMMITTEE DECISION

*In the light of the above observations and violations of Rules and after due deliberation, the Review Committee unanimously declares the said procurement as **Mis-Procurement** in light of SPP Rule-32(7)(g) of SPP Rules, 2010, read with Section-2(i) of SPP Act, 2009 and decides to refer the matter to the Competent Authority for initiating disciplinary proceedings against the officer(s)/ official(s) responsible for mis-procurement in terms of Rule-32(A)(2) of SPP Rules, 2010 (Amended 2019).*



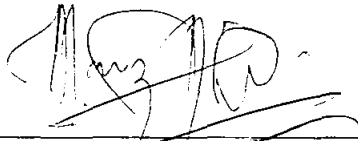
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**(Member)**  
Syed Adil Gilani  
Private Member SPPRA Board  
Representative Transparency International



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**(Member/ Independent Professional)**  
Engr. Munir Ahmed Shaikh  
Independent Professional



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**(Member)**  
Manzoor Ahmed Memon  
Private Member SPPRA Board



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