



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1706/2021-22/ 0952

Karachi, dated 24th March 2022

TO,

The Executive Engineer Hydrant Cell,
Hydrant Services/Tanker Operation
Karachi Water & Sewerage Board,
KARACHI.

Subject: DECISION OF THE 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 namely **M/s S.S.S Corporation V/s Executive Engineer Hydrant Services/Tanker Operation KW&SB Karachi** held on 18.3.2022, for information & necessary action.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for necessary action to:

1. The Secretary to the Government of Sindh, Local Government Department Karachi.
2. The Managing Director Karachi Water & Sewerage Board Karachi.
3. The PS to Chairman / Members of the Review Committee.
4. Assistant Director I.T. SPPRA (with advice to post the decision on authority website in terms of Rule-32(11) of SPP Rules, 2010).
5. The Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-1706/2020-21

Karachi, dated the, 21st March, 2022

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

Decision of the Review Committee held on 18.03.2022

Back Ground of the Appeal:-

1. This appeal was listed for hearing before the Review Committee on 18.03.2022 following the directions of the Honorable High Court of Sindh Karachi, passed vide order dated 04.03.20200 in the Suit no. 1545/2022.
2. Earlier, this Authority had received an appeal from the appellant on 15.10.2020 wherein the appellant had requested to place the matter before the Review Committee. From the perusal of the appeal it was observed that the matter did not relate to the procurement rather than the matter was that of Auction. Therefore, the appellant was informed that the matter of Auction did not fall under the SPP Rules.
3. The appellant thereafter approached the Honorable High Court of Sindh and instituted SUIT NO.1545. This Authority had apprised the Rules position to the Honourable Court mentioning therein that the Auction Issues did not fall under the applicability of the SPP Rules 2010 (amended up-to-date). The comments submitted by the Authority in the Honourable High Court of Sindh at Karachi in Suit No. 1545/2020 are reproduced as under:-

That, Sindh Public Regulatory Authority has been established for carrying out the purpose of SPP Act 2009 for regulating public procurement of Goods, Works & Services in public sector. According to Section 2(m) of SPP Act 2009 Public Procurement means acquisition of Goods, Services construction or any works financed wholly or partly out of the Public Funds including projects of Public Private Partnership unless excluded otherwise by Government.

Since auction does not fall under the definition of Public Procurement. Therefore it is humbly requested that defendant No. 02 may be excluded from the subject suit.

4. However, the Honorable High court of Sindh vide its order dated 04.03.2022 has been pleased to direct the Review Committee to hear the appeal of the appellant as already submitted. The operative Para of the court order is reproduced as under;

"Before filing this Suit the plaintiff have since surrendered themselves to the jurisdiction under the Sindh Public Procurement Regulatory Authority Rules 2010, therefore, it may be in all fairness that the plaintiff may appear before the addressee

where they claimed their Review Appeal is pending and seek its disposal in accordance with law after the notice to the respondents. It is expected that the appeal, as preferred, be heard and decided in 15 days' time and till such period the appeal is decided, the interim order shall continue to operate. It, however may not take more than 15 days to be taken to its logical end".

BRIEF FACT OF THE CASE:-

Procuring Agency (KW& SB) invited tender for open auction of water hydrant for two years on offer rate basis from the interested contractors / firms/ Joint Venture (JV) having relevant experience of providing services of similar nature under two stage two envelope procedure.

The duration of the contract was fixed at 730 days (Two Years). Accordingly tender documents and instructions to applicants were also issued, which contained seven (07) points' eligibility criteria, which read as under:

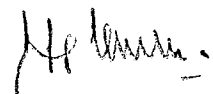
1. Eligibility.

- a. Valid Commercial License for Vehicles from concerned Authority.
- b. No Vehicles and drivers are allowed whose FIR lodged by KW&SB in theft case are supplying of health hazard contaminated water case.
- c. Registration with FBR, Sales Tax and SRB if applicable.
- d. Valid Registration of Vehicle with regional Transport Authority with clearly specified WATER TANKER on road permit.
- e. Valid Registration of Vehicle with Excise & Taxation Department with clearly specified WATER TANKER on registration book and pad Vehicle tax up to contract period.
- f. No dues certificate from KW& SB>
- g. All bidders must show the documentary evidence of hydrant operations.

Evaluation Criteria for Tankers Service firms was also mentioned and it was marks based criteria of total three hundred marks (300) out of which qualifying marks were fixed at 210. The applicant has not denied these terms and conditions.

The applicant was technically disqualified. Since at the relevant time the complaint redressal committee (CRC) was not constituted the applicant filed suits No 1243 of 2020. In the said suit only stay was granted and thereafter on 30.09.2020 the Suit was disposed of in view of agreement reached between the parties that the complainant of the applicant shall be heard by CRC.

The applicant challenged the order dated 12.10.2020 passed by the CRC before M.D SPPRA and also filed the Suit No. 1545 of 2020. In the said Suit the order (dated 04.03.2022) noted above has been passed. Therefore in view of the order passed by Honourable High Court of Sindh, the appeal was placed before the review committee meeting held on 18.03.2022, which has been attended by the applicant and representatives of the Procuring Agency (KW&SB).

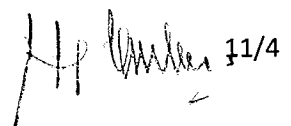
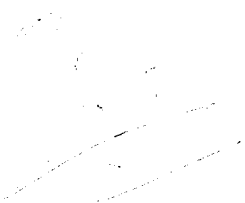


Both parties were given ample opportunity to present their point of view, which has not been disputed by any of the parties.

The appellant's Version:-

1. The appellant submitted that he could not appear in the first meeting of the Review Committee as he had not received the service notice by mail.
2. The appellant emphasized that he had been rigorously contesting his illegal, illogical and uniformed disqualification during the Technical Bid Evaluation. The appellant considered that it was sheer disregard of Sindh Public Procurement Regulatory Authority Rules, 2010.
3. The appellant informed that the process of procurement of services for supply of Potable Water through Tankers to District South from Sherpao Hydrant, Steel Town, Karachi was initiated by KWSB through public notice dated 30.06.2020. As per the terms of the public notice, KWSB adopted Two Stage--Two Envelope procedure for the procurement.
4. The appellant further informed that, as per the evaluation criteria, point 5, a company having 50 tanker vehicles would be given 50 marks, whereas, a company having 41-50 tanker vehicles would be given 30 marks and so on. The bid opening date was fixed on 21.07.2020, however, on 15.07.2020, an addendum was issued by KWSB, however, the mandatory 15 days' time was not given which the appellant considered as illegal.
5. The appellant also contended that since, KWSB adopted the two stage-two envelope procedure, it was mandatory to follow the same as per provisions of Rule 46 (4) of the Rules, 2010, which provides that a bid shall comprise of a single package containing two separate envelopes having separately the financial proposal and technical proposal.
6. The appellant also submitted that KWSB only called Technical Proposal and the Financial Proposal was not called from the bidders, which was violative of Rule 46 (4)(a)(i) of SPPRA Rules, 2010. The appellant informed that he had submitted his Technical Proposal on 21.07.2020 after completion of all codal formalities viz. Bid Security, all required documents including experience and company assets.
7. The appellant submitted that, on 13.08.2020, he submitted original documents of the Tanker Vehicles for verification from the concerned Excise Department. However, vide Letter dated 16.09.2020, he was informed that he had been technically disqualified, however, according to the appellant, no reason was given. The appellant approached the Honourable court and in compliance of Order dated 30.09.2020 passed by the Honourable High Court of Sindh in Suit No. 1243/2020. The appellant was informed about the reasons of disqualification vide Letter dated 01.10.2020, wherein he informed that he was technically disqualified due to unavailability of Tankers and lack of evidence of similar work experience.
8. The appellant contended that the reasons were not appropriate because he had submitted original documents of 62 tankers and submitted proof of similar work experience, however, the same was ignored by KWSB.

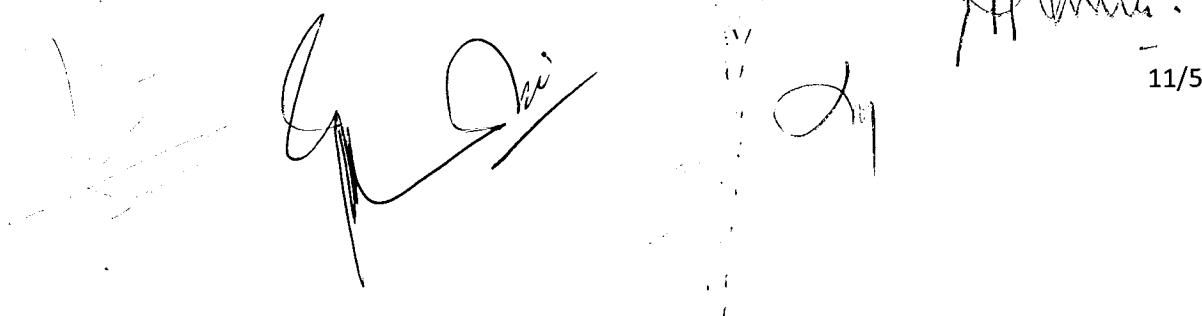
9. The appellant also informed that the disqualification was also challenged by them before the Complaint Redressal Committee in compliance of the Honourable High Court's Order dated 30.09.2020 vide Letter dated 07.10.2020, however, vide Letter dated 12.10.2020 (served upon them on 15.10.2020) the CRC rejected their appeal without giving them any opportunity of hearing and without perusing the record of procurement.
10. The appellant also informed that he had filed Review Appeal under rule 32 against the decision of CRC and filed Civil Suit No. 1545/2020 in the Honourable High Court of Sindh at Karachi and the Honourable High Court of Sindh vide Order(s) dated 16.10.2020, KWSB restrained the procuring agency from opening the financial bid. However, the financial bid was opened by the procuring agency.
11. The appellant also pleaded that the Honourable High Court of Sindh passed Order dated 19.10.2020, whereby KWSB was directed to maintain status quo however, despite two restraining orders, the financial bids were opened and were accepted vide Letter dated 13.11.2020.
12. The appellant also informed that the procuring agency willfully did not comply with the court orders.
13. The appellant also mentioned that the entire procedure provided in Rule 46 (4) was not followed in the instant procurement process, for instance, as per sub-rule (4)(a)(v) and (vi), the Technical Proposal was not discussed with the bidders nor the appellant was given any opportunity to meet the requirements of KWSB and revise our Technical Bid. Moreover, recourse was never made to the second stage of the bidding procedure.
14. The appellant emphasized that KWSB proceeded with the procurement process in disregard of the provisions of SPPRA Rules, particularly Rule 4, 8, 9, 10, 13, 18, 21-A, 44, 45, 46(4), and 50 of the SPPRA Rules, 2010 and the appellant was disqualified only to favour the purported successful bidder.
15. The appellant prayed that his disqualification be set aside and procurement process in respect of Sherpao Hydrant be declared a nullity in the eyes of law and / or misprocurement with directions to KWSB to complete the process strictly in accordance with SPPRA Act, 2009 and Rules, 2010.
16. The appellant also claimed that the procuring agency had inserted the difficult and discriminatory conditions which restricted the competition which the bidder considered the violative of SPP Rules especially Rule 44 of the SPP Rules.
17. The appellant submitted that the procuring agency restricted the competition by putting Unnecessary or excessive technical and economic requirements, providing Inappropriate weighting of the different scoring criteria and Excessive weighting given to criteria of negligible importance for the provision.
18. The appellant claimed that the procuring is accustomed to put an unnecessary criterion which paves the way for the selected bidder and no new bidder is given opportunity to compete in the bidding process.
19. The appellant claimed that there were six chosen contractors which are being awarded contract and no other bidder is given an opportunity to trade in the public matters. It



was also claimed by the appellant that the current tendering process costed Rs.200 million more due to Mala-fide working of the procuring agency.

The procuring agency's Version:-

1. The procuring agency submitted that the procuring agency had adopted the procedure of SPPRA consider in it to be transparent fair. it was also clarified that only guidance was taken from the SPP Rules but the Auction Bids were not called under the authority and jurisdiction of Sindh Public Procurement Regulatory Authority.
2. The procuring agency submitted that the appeal was not maintainable as the Auction Tender was neither hoisted on SPPRA's website nor the authority of SPPRA was invoked.
3. It was informed that the appellant was disqualified because the appellant could not secure minimum qualifying score.
4. The procuring agency submitted that technical disqualification was challenged by the applicant before the Complaint Redressal Committee. The Complaint Redressal Committee rejected the complaint and the decision of disqualification of the complainant by procuring agency was upheld.
5. The procuring agency also contended that the technical bids were to be evaluated by awarding marks and in order to qualify technical qualification the threshold marks were fixed at 210 and general condition **No.1 (d) of the General Instructions provided that valid registration of vehicles with Excise & Taxation Department were clearly specified as WATER TANKER and registration book and paid vehicles tax up to the contract period.**
6. The procuring agency informed that likewise clause 3.6 clearly provided that the bidder should own fleet of minimum 60 tankers but the appellant was unable to submit the same. The Applicant had submitted documents of 59 vehicles as it is evident from letters available at Pages 219 & 220, of the documents submitted by the appellant before the procuring agency.
7. The procuring agency submitted that in sheer violation to the general conditions of the Contract, the Applicant submitted documents of Oil Tanker as is evident from the registration book of TLJ-713 available at Page 281. The description of other vehicles (documents available at Pages 253, 263 & 279) had been tempered. Thus, the Applicant had been awarded zero marks which were to be awarded on the basis of 60 vehicles owned by the firm / proprietor. The procuring agency submitted that the Applicant even if 50 marks were to be awarded, the appellant would not have been successful in getting the minimum score because the overall score of the Applicant would have reached to 185.5 which was much below the maximum threshold of 210 marks.
8. The procuring agency further submitted that, M/s Ghulam Nabi (WC) secured 252 marks, M/s Affan Transport Company secured 242 marks, M/s H2O Enterprises secured 242 marks and M/s Qasim and Brothers secured 250 marks. However, they could not be successful in financial bid. However, no protest of any nature was made by the aforementioned companies.



11/5

9. The procuring agency also submitted that the applicant also failed to submit any prove to justify that the applicant possessed relevant experience with KW&SB, Government / Private Department. Consequently, the Applicant failed to secure the requisite marks.
10. The procuring agency submitted that the appellant secured full marks wherever he was qualified i.e company profile, bank statement, tax return, copy of audit report and police verification certificates for drivers. The appellant bid was evaluated in accordance with the firm's profile which was submitted by the Applicant.
11. The procuring agency denied any kind of violation during the Auction process.
12. On an inquiry on adopting bidding process of the SPPRA Rules, which are not applicable in auction matters, the procuring agency cited a letter of the SPPRA dated 22.11.2016 whereby it was advised to adopt relevant rules procedures. Hence it decided to adopt SPPRA procedure in the auction for the sack of conducting the auction process in a fair and transparent manner.
13. The procuring agency submitted that the work had not been awarded due to pendency of the matter before the Honorable Court.

Observations of the Review Committee:-

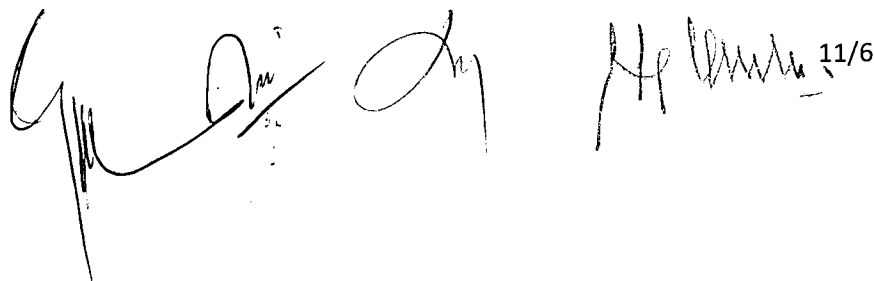
1. From the record, proceedings and documents submitted by both the parties, it appears that the issue of technical disqualification revolves around the water tankers. Otherwise, there are no other major issues involved in the appeal. In order to thrash out this issue, we have examined clause 3.6 which is being reproduced as under for ready reference;

3.6 **The bidder(s) should own fleet of minimum 60 tankers of specified capacities as defined in the document in his name. In case of JV the associate firms should own minimum of 60 tankers in their respective names any of the JV partner and the leading firm will be leading partner as specified in JV agreement. JV agreement shall be attached on Non Judicial Stamp paper. All or any affiliated company (ies) / proprietor / firms forming JV shall comply with other qualification criteria.**

This clause is provided in INSTRUCTIONS TO APPLICANTS and has not been denied by any of the parties. As also through addendum it has been clarified that no marks would be awarded for less than 60 tankers.

2. RC observes that although in paragraph 9 of appeal the applicant has mentioned that they have a fleet of 62 tankers at their disposal and original registration of such tankers has been provided to the Procurement Committee of the P.A. However, in the letter attached by the applicant it has stated it has 59 tankers. Besides duplication and triplication of vehicle number to meet the threshold through forgery in the tankers numbers as mentioned below, the applicant has himself mentioned at **Sr.34 that vehicle bearing NO.TQAA-1771 is an oil tanker.**

Sr. No	Vehicle NO	Certificate will Issue Date	Certificate Will Expire Date
--------	------------	-----------------------------	------------------------------



 11/6

17	JP-0376	06/12/2020	12/11/2020
18	JP-0376	16/06/2020	15/12/2020
48	JP-0376	--/---/-----	---/---/---




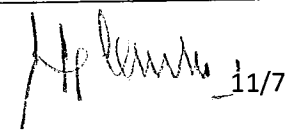
S. No.	Vehicle No.	Certificate will issue Date	Certificate will Expire Date
15	TTA-733	06.09.2020	12.08.2020
51	TTA-733	--/---/---	--/---/---

S. No.	Vehicle No.	Certificate will issue Date	Certificate will Expire Date
21	TUD-576	18.06.2020	17.12.2020
58	TUD-576	---/---/---	---/---/---

S. No.	Vehicle No.	Certificate will issue Date	Certificate will Expire Date
26	TUC-478	23.06.2020	22.12.2020
55	TUC-478	----/----/---	----/----/---

S. No.	Vehicle No.	Certificate will issue Date	Certificate will Expire Date
31	TUA-862	26.06.2020	25.12.2020
52	TUA-862	---/---/---	----/----/---

S. No.	Vehicle No.	Certificate will issue Date	Certificate will Expire Date
7	TUC-466	06.09.2020	12.08.2020

56	TUC-466	----/----/----	---/---/---
----	---------	----------------	-------------

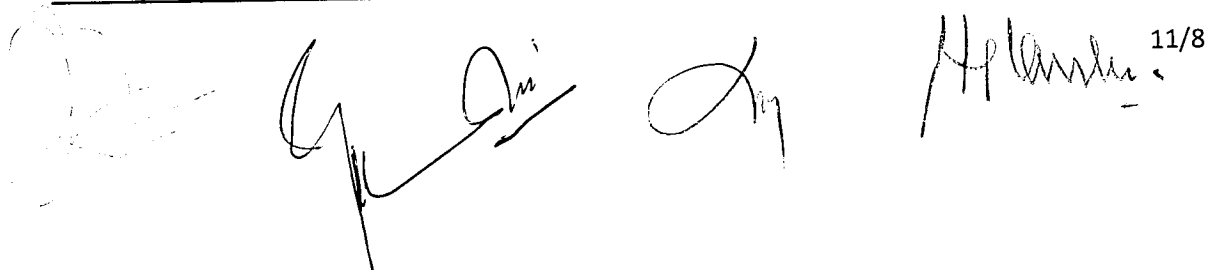
S. No.	Vehicle No.	Certificate will issue Date	Certificate will Expire Date
4	TUV-070	06.03.2020	12.02.2020
57	TUV-070	--/---/---	--/---/---

- RC observed that since the applicant failed to meet the requirement of Clause 3.6 as noted above no marks were awarded to him.
- The Review Committee observed that the appellant could not secure the minimum required score hence his bid was declared as Unresponsive. For the sake of easiness, the operative part of bid evaluation report is pasted as under.

12. TECHNICAL BID OPENING REPORT:-

S.No	Name of Firms	Total Marks	Minimum Marks	Marks Obtained	Responsive / Un-responsive
1	M/s. Sittara Pak Pattan.	300	210	128	Un-Responsive
2	M/s. A.A. Builders & Developers (JV).	300	210	240	Responsive
3	M/s. S.S.S Corporation	300	210	135.5	Un-Responsive
4	M/s. Ghulam Nabi (W.C)	300	210	252	Responsive
5	M/s. Affan Transport & Co.	300	210	242	Responsive
6	M/s. H ₂ O Enterprises.	300	210	242	Responsive
7	M/s. Qasim & Brothers.	300	210	250	Responsive

- It is noted that the appellant could not secure the minimum marks required for the technical evaluation. Furthermore, it was also observed by the Review Committee that the appellant did not own fleet of minimum 60 tankers as required under Instruction 3.6 of the bidding documents.
- During the Review It was observed that after advertisement of the tender, the appellant participated in the pre-bid meeting held on 9th July, 2020; however, he did not raise any objection with regard to proposed NIT, addendum, terms and conditions or any other issue.
- The committee also observed that change in terms and conditions were done / carried out equally for all bidders without any discrimination. It was observed that the


11/8

addendum was issued before the submission of bid documents and; thus, the appellant had sufficient time to prepare its bid. So far the conditions added in the addendum are concerned; it was observed that through addendum some of the conditions of the tender documents were relaxed in favor of all the bidders except one pertaining **to the requirement of 60 vehicles to be owned by the firm/proprietor intending to take part in the auction process.** Such change in terms and conditions was well within the competence of the procuring agency which could modify the bidding documents and terms and conditions mentioned thereon.

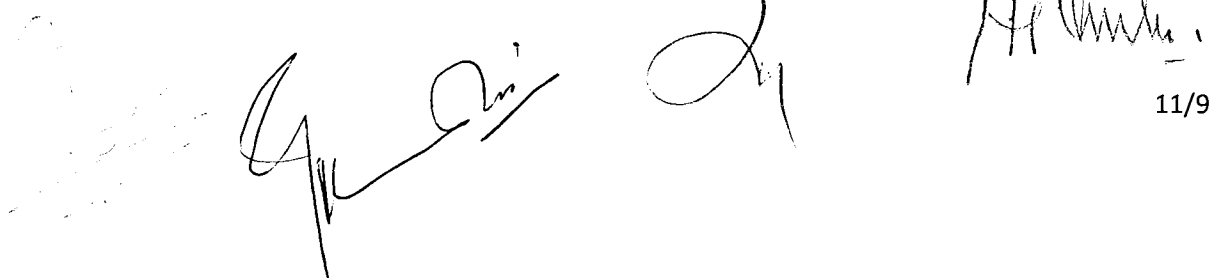
8. The Review Committee observed that the appellant did not meet the **mandatory requirement of 60 vehicles to be owned by the firm/proprietor intending to take part in the auction process.** It was noted From the perusal of tender documents that it was pre-requisite under Clause 3.1 of the tender that the prospective bidder should have minimum fleet of 60 tankers of specified capacity of its own and at its full disposal so as to supply maximum quantity of 1,620,000 gallons of the water per day, while under Clause 7.1 of the tender documents it was required that the bidder should own minimum 60 water tankers fleet and in case of Joint Venture/bidder should have valid Joint Venture Agreement, with firm/proprietor with JV agreement; **hence, the condition of 60 vehicles in the addendum appears to be in consonance with the tender documents. However, the appellant could not fulfill the mandatory requirement.**
9. **The appellant also could not fulfill** general condition No 1 which stipulated that the appellant should provide valid registration documents. The relevant condition is reproduced as under.

Valid Registration of vehicles with Excise & Taxation Department with clearly specified WATER TANKER on registration Book and Paid vehicles Tax up to contract period.

10. The Review Committee also observed that the bid of the appellant was rejected in terms of bidding documents. The procuring agency had clearly mentioned in the bidding documents that any bid that did not fulfill the conditions would be cancelled. For the sake of ready reference the instruction No.9.3 is reproduced as under;

9.3 Tenders which do not fulfill all or any of conditions or are submitted incomplete or are not in accordance with the terms of the Tender Documents in any respect will be rejected.

11. The Review Committee observed that the procuring agency had evaluated the bids in accordance with the evaluation Criteria mentioned in the bidding documents.
12. The Review Committee also observed that the procuring agency formulated an appropriate evaluation criterion, listing all the relevant information against which a bid was to be evaluated and criteria of such evaluation formed an integral part of the bidding documents. The Evaluation Criteria is clear and there was no any ambiguity in it as mentioned in the bidding documents.



11/9

13. The Review Committee also observed that the decision-making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational or against the terms and conditions of NIT or bidding documents.
14. The appellant contended that he was denied the revision of technical proposal to meet the requirements of the procuring agency in terms of Rule 46 (4) (iv), which lays down provision to revise their technical proposals. In this regard, the Review Committee observed that no such revision was allowed to any bidder in the bidding documents or NIT. Why should the appellant be singled out to revise his proposal?
15. The Review Committee was of the view that Bidding Documents and NIT are two documents which are considered to be binding upon the parties. The bidding documents were signed, stamped, agreed upon and submitted by the appellant which showed that he had accepted the terms and conditions of NIT and bidding documents at the time of submission of bids. **There was no revision clause either in the bidding documents or in NIT.** However, when the bidder was disqualified, he challenged the process of bidding. Such contention regarding the terms and conditions of NIT, at that stage, was not acceptable, justifiable and practically viable. Furthermore, the procuring agency did not allow the revision, modification and charge in the proposal to any other bidder, so it was not permissible to allow the revision all alone to the appellant. Therefore, the bidder's contention for not allowing the revision of bidding documents is not maintainable.
16. It may be noted that the appellant had also acknowledged that he had read, understood and accepted the bidding documents and the same was also submitted by the appellant on Affidavit. Therefore, contending, challenging and litigating the same is not to be accepted at later stage.
17. Regarding the appellant's allegation of mala fides in the issuance of the corrigenda, he, instead of hurling **a vague or wild allegation, should have come forth with solid proof of mala fides, which he did not. The mala fides must have been** demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide or any such considerations or by fraud on power or colorable exercise of power, it cannot be allowed to stand.

For any allegations of mala-fides need proof of high degree and that an administrative action is presumed to be bona fide unless the contrary is satisfactorily established.

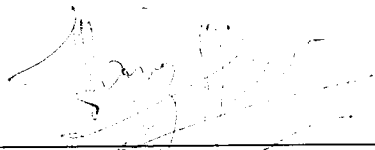
18. In the last after having discussed and observed as above, Review Committee observes that it is very pertinent to point out and recall that the procuring agency had requested SPPRA ^{for} uploading of the Auction Notice vide letter **NO.KW&SB/EE/HS/TO/2016/626/DATED 16-11-2016.** the procuring agency was informed by SPPRA vide letter NO.AD(AS)/SPPRA/K/(30509-KW&SB)2016-17/90, dated 22.11.2016 that the Auction matter did not fall under SPP Rules 2010. For the sake of clarification and easiness the operative Para is reproduced as under:

I am directed to refer to the Auction Notice received vide above referred letter and to inform that the subject matter does not fall under SPP Rules 2010(Amended Up-to-date) It is therefore advised to proceed as per relevant rules/procedure.


19. The letter mentioned above had made it clear that the Auction matter did not fall under the administration of SPPRA, and the SPP Rules and procedures were not applicable to the auction matters. However, the Review Committee has carried out all above exercise on the orders of the Honourable High Court of Sindh passed vide order mentioned in the proceeding paras.

Decision of the Review Committee:

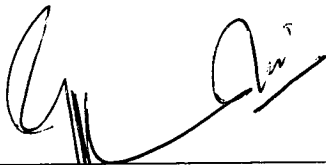
The Review Committee (RC) has noted with concern that admittedly in order to secure the contract the applicant has submitted documents of oil tanker and there are documents which have been tempered to manipulate to achieve the threshold of the required Vehicles. The applicant has alleged lack of transparency whereas from the conduct of the applicant it appears that the applicant has himself failed to follow the standards set/ desired by him. Therefore, apparently the review committee does not find any error in the technical disqualification of the applicant by Procuring Agency. As a result we hereby uphold the order passed by procuring agency and the appeal of the applicant is hereby dismissed.



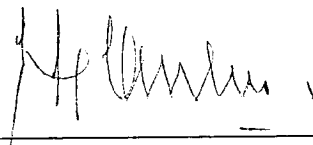
Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



Member
(G. Muhiuddin Asim)
Representative of P & D Board ,P& D
Department Karachi



Chairman
(Abdul Haleem Shaikh)
Managing Director
Sindh Public Procurement Regulatory Authority