GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-718/2019-20/1184 Karachi, dated the 04th December, 2019

To,

- The Chairman,
  Town Committee Matli,
  District Badin.

- M/s Nawab & Sons Construction Services,
  Government Contractor,
  House # C-147, Block-3, Phase-I,
  Near Markazi Jamia Masjid, Qasimabad,
  Hyderabad.

- M/s Noor Enterprises,
  Suite No. 4, 1st Floor, Makkah Plaza,
  Behind the City School, Phase-II, Qasimabad,
  Hyderabad.

- M/s Muhammad Siddique Engineering Works,
  Suite # 504-B, Bait ul Hina,
  Gulistan e Jauhar, Block-18,
  Karachi.

Subject: **DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEALS LODGED BY M/S NAWAB & SONS CONSTRUCTION SERVICES, M/S NOOR ENTERPRISES, AND M/S MUHAMMAD SIDDIQUE ENGINEERING WORKS VERSUS TOWN COMMITTEE DAULATPUR).**

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision taken in its meeting on 20th November, 2019 for your information and further necessary action, please.

04/12/2019

ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Local Government Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Assistant Director (I.T), SPPRA ***[with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010.]***
4. The Staff Officer to the Chairman Review Committee/ Managing Director SPPRA/ Review Committee Members (all).

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-718/2019-20 Karachi, dated the December, 2019

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

(Appeals)

M/s Nawab & Sons Construction Services; M/s M. Siddique Engineering Works; and M/s Noor Enterprises
Versus
Municipal Committee Matli, District Badin

(NIT ID # T00603-19-0005 dated 30.09.2019)

Facts and background

The appellants[1], M/s Nawab & Sons Construction Services, Hyderabad; M/s Muhammad Siddique Engineering Works, Karachi; and M/s Noor Enterprises, Hyderabad, lodged separate complaints (vide letters dated 19.10.2019, 29.10.2019 and 04.11.2019, respectively) addressed to Mr. Abdul Waheed Nizamani, Technical Engineer RBOD/ Chairman Complaints Redressal Committee (CRC) and copy endorsed to the Sindh Public Procurement Regulatory Authority – for taking necessary action – against the NIT bearing No. MCM/361/2019 dated 30.09.2019 floated by Chairman, Municipal Committee Matli ***'the procuring agency'*** for procurement of ten (10) works related to the *providing & fixing cement paving blocks etc.*[2]. In turn, the Authority vide letters dated 06.11.2019 forwarded the appellants' matter to the procuring agency's CRC with an advice to redress the grievances and furnish its decisions to the appellants as well as this Authority within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019)[3].

2. Subsequently, the appellants (vide letters dated 03.11.2019, 11.11.2019 and 12.112.19, respectively) preferred separate appeals, along with review appeal fee[4], before this Authority by stating that the procuring agency's CRC had failed to redress/ decide their grievances within stipulated time period[5]; hence, the appellants requested to place their matter before the Authority's Review Committee in terms of Rule-31(5) read with Rule-32 of SPP Rules, 2010. In turn, the Authority vide letter dated 08.11.2019 advised the procuring agency to update the current status of the bid security submitted by the appellant for proceeding the matter in terms of Rule-32 of SPP Rules, 2010, which the procuring agency confirmed vide its letter bearing No.MCM/410/2019 dated 11.11.2019[6].

3. Resultantly, the appellants' matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 20.11.2019 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letters dated 15.11.2019 and 18.11.2019 to appear before the Committee on scheduled dated, time, and venue. In compliance, the meeting was attended by the following (representatives):

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Mr. Qambar Ali Chadhar, Tax Superintendent	Municipal Committee Matli
Appellants		
I.	Mr. Taj Muhammad Soomro, Proprietor	M/s Nawab & Sons Construction Services
II.	Mr. Ashique Ali, Proprietor	M/s Muhammad Siddique Engineering Works
III.	Mr. Salal Khan, Proprietor	M/s Noor Enterprises

[1] Appellant # 1: M/s Nawab & Sons; Appellant # 2: M/s Muhammad Siddique Engineering; and Appellant # 3: M/s Noor
[2] Detailed description/ nature of these works can be accessed through instant procurement's NIT and bid documents available on the PPMS website at ID # T00603-19-0005 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]
[3] Appellant # 1 & 2
[4] SPPRA's Office Order No.Dir(A&F) /SPPRA/18-19/0325 dated 26.07.2019
[5] Appellant # 1 & 2 claimed to have submitted their complaints through TCS that were received/ acknowledged by the CRC; whereas, the appellant # 3 claimed to have submitted the complaint by hand to the CRC on 04.11.2019
[6] The Authority sought status/ confirmation of bid security of the appellant # I as rest of the appellants approached thereafter.

Review Committee Proceedings

4. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellants to present their case/ version, one by one, on the instant procurement before the committee.

Appellant's Version

5. **M/s Nawab & Sons Construction Services:** Mr. Taj Muhammad Soomro *'representative of the appellant # I'* apprised the Committee of appellant's submission of bids, along with requisite documents, under instant procurement's NIT works listed at Sr. # 8, 9 & 10 on the scheduled date for submission/ opening of bids that was 18.10.2019[7]. The appellant claimed to be present in the procuring agency's office on 18.10.2019 during office working hours; however, the procurement committee's members, except the Municipal Engineer who received but did not open the appellant's bids, were absent. Resultantly, the appellant along with other contractors demonstrated protest over non-compliance of the rules and also requested the procuring agency to extend the schedule for submission/ opening of bids through issuing corrigendum, which the procuring agency verbally agreed. The appellant later on came to know, through the Chairman Town Committee Matli, that the bids were already opened on 18.10.2019 and the procurement committee recommended for award of procurement contracts to bidders on higher rates, as compared to the appellant's competitive bids that were not incorporated in the evaluation reports; hence, the appellant lodged a complaint to the CRC via TCS that was acknowledged on 26.10.2019[8] but not heard/ decided within due course of time.

6. **M/s Muhammad Siddique Engineering Works:** Mr. Ashique Ali *'representative of the appellant # II'* apprised the Committee of appellant's submission of bids, along with requisite documents, under instant procurement's NIT works[9] listed at Sr. # 4 & 7 through courier services (TCS) that were received by the procuring agency before the deadline for submission of bids; however, the procuring agency did not open and incorporate their bids in the bid evaluation reports that are still available along with call deposits to the procuring agency.

7. **M/s Noor Enterprises:** Advocate Zain Soomro *'representative of the appellant # III'* apprised the Committee of appellant's submission of bids under instant procurement's NIT works listed at Sr. 7 & 10 that were opened and announced by the procurement committee as the lowest submitted bid at the time of bids' opening meeting. After announcement of the bids, the procurement committee assured to communicate the bid evaluation reports, which were posted on the Authority's website on 30.10.2019 whereby the procuring agency deliberately changed the appellant's financial ranking from the first lowest bidder to second and third lowest bidder under works # 7 & 10, respectively[10]. When the Authority issued notice (vide letter dated 15.11.2019) to the procuring agency for placing the appellant's case before the Review Committee, the procuring agency cancelled the bidding process by issuing cancellation notice on 15.11.2019 but such notice was posted on the Authority's website on 19.11.2019 in violation of Rule-25(3) of SPP Rules, 2010, which lays down that *'intimation of the cancellation of bidding process shall be immediately hoisted on the Authority's website and procuring agency's website followed by prompt return of bid security.'*

Procuring Agency's Version

8. Mr. Qamber Ali Chadar, Tax Superintendent, Municipal Committee, Matli *'representative of the procuring agency'* clarified that the procuring agency solicited bids for procurement of these works under Single Stage One Envelope bidding procedure that were received and opened in a timely manner as specified in the NIT[11]; however, the appellants might have reached in the procuring agency's office after deadline for submission/ opening of the bids and then started to lodge complaints at various forums in

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[7] ibid.

[8] TCS Tracking ID # 55002525851 reveals that the consignee (Engineer Abdul Wahab/ CRC Chairman) shifted from delivery address (Karachi), due to which he could not receive shipment. Thereafter, TCS at its own level delivered the shipment to the consignee at another address (Hyderabad) that was received by Mr. Niaz.

[9] ibid.

[10] BER # 00603-19-0005-1 to 10 dated 01.11.2019 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber].

[11] ibid.

order to blackmail or threaten the procuring agency to gain the procurement contracts in which the procuring agency would never indulge.

- Syed Adil Gilani (Member of Review Committee) pointed out that the appellant # II submitted the bids to the procuring agency through courier service (TCS) then why their bids were not incorporated in the bid evaluation reports[12], as required under Rule-45 of SPP Rules, 2010[13];
  - The procuring agency's representative stated that they had already cancelled the bidding process of instant procurement **owing to certain mistakes** as well as **paucity of available funds**[14];
- The Chair of the Review Committee pointed out that the procuring agency had to ensure fulfillment of pre-requisite conditions, before floating the NIT, as required under Clauses 2.21(iii) & (iv) of SPPRA's Procurement Regulation (Works), which provides that ***'[procuring agency/ committee shall not invite bids for development works, unless]*** *technical sanctions of a detailed estimate is obtained and* ***funds are either released or anticipated to be released before award of contract.***[15]' Mr. Assadullah Soomro (Member of the Review Committee) endorsed the observation by adding that the procuring agency's representative has affirmed the mistake on their own part, due to which the bidding process was cancelled. Mr. Asadullah Soomro directed the procuring agency's representative to submit a written statement, showing reasons for cancellation of the bidding process, to this Authority for official record;
  - The procuring agency's representative submitted written statement **as reproduced verbatim herewith** *"[I, Qambar Ali S/o Ali Akber Chadhar as a Tax Superintendent, Municipal Committee Matli, do hereby state that] NIT No. T00603-19-0005 has been cancelled (Rule-25) dated 30.09.2019 vide Order No. dated 15.11.2019 for administrative reasons funds, and technical reasons little fault [Sd/- dated 20.11.2019]."*

Review Committee Observations/ Remarks

9. After hearing the parties at length and perusal of the available record, the Review Committee observed that the procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal in terms of Rule-25(1) of SPP Rules, 2010; however, the procuring agency was required to ensure compliance of the following observations, which are reproduced herewith for the procuring agency's record as well as compliance in upcoming tenders:-

- It was the responsibility of the procuring agency to adhere to the procurement rules, regulations, and instructions and to ensure that procurements were conducted in a fair and transparent manner and that the object of procurement must bring value for money to the agency and that the procurement process was efficient and economical in terms of Rule-4 of SPP Rules, 2010;
- The procuring agency was required to ensure that the pre-requisite conditions, including but not limited to the funds availability or to be released before the award of contract, were fulfilled before inviting bids in terms of Clause 2.21 of the Authority's Procurement Regulation for Procurement (Works)[16];
- The procuring agency was required to post/ update procurement plan, containing the annual procurement requirements of the procuring agency, on the Authority's website in terms of Rules-11 & 12 of SPP Rules, 2010;
- The procuring agency's CRC was required to decide the complainant's grievances within seven days and intimate the same to the appellant as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010;

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[12] ibid.

[13] Procuring agency 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.

[14] The Authority verified that the procuring agency posted the cancellation notice on the PPMS website on 19.11.2019.

[15] http://www.pprasindh.gov.pk/downloads/files/Guidelines2010-11NewOriginal280511.pdf

[16] ibid.

- The procuring agency was required to insert the bids, submitted by the appellants by mail or by hand (except late submitted bids), into the tender box and/ or consider the same for further evaluation; bid deficiency(ies), if any, was required to be incorporated by the procurement committee under the bid evaluation report as required under Rule-45 read with Rules-8 & 42(1) of SPP Rules, 2010;

Review Committee Decision

10. In light of the above observations/ remarks, as at para-9, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeals in the light of SPP Rule-32(7)(a) of SPP Rules, 2010 (Amended 2019) and advises the procuring agency to record the observations for compliance in upcoming tenders.

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

(Member)
Assadullah Soomro
Private Member
SPPRA Board

(Member)
Nominee of Director General Audit Sindh

(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
Retd. Executive Engineer
Public Health Engineering Department
Government of Sindh

(Chairman)
Abdul Rahim Sheikh
Managing Director
Sindh Public Procurement Regulatory Authority