GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-714/2019-20 /1234 Karachi, dated the 11th December, 2019

To,

- The Chairman,
  District Council,
  Badin.

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

- M/s Ayaz Qureshi,
  House # 2208, Qureshi Mohallah, Ward # 3,
  Thatta.

- M/s Tawakal Engineering Works,
  Hussaini House Islampur Mohallah Ward # 3,
  Thatta.

Subject: **DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEALS LODGED BY M/S NAWAB & SONS CONSTRUCTION SERVICES, M/S AYAZ QURESHI, AND M/S TAWAKAL ENGINEERING WORKS VERSUS DISTRICT COUNCIL BADIN).**

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 27th November, 2019 for your information and further necessary action, please.

11/12/2019

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 Commissioner Badin.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. 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.]***
5. 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-714/2019-20 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 Ayaz Qureshi; and M/s Tawakal Engineering Works
Versus
District Council Badin

(NIT ID # T00997-19-0002 dated 13.09.2019)

Facts and background

The appellants[1], M/s Nawab & Sons Construction Services, Government Contractor Hyderabad; M/s Ayaz Qureshi, Government Contractor Karachi; and M/s Tawakal Engineering Works, Government Contractor Thatta, lodged separate complaints (vide letters dated 05.10.2019, 30.10.2019, and 31.10.2019, respectively) addressed to the Vice Chairman, District Council Badin/ Chairman Complaints Redressal Committee against the NIT bearing No. DC/BDN/430/2019 dated 11.09.2019 floated by the Chairman, District Council Badin ***'the procuring agency'*** for procurement of eighteen (18) works/ packages[2]. In turn, the Authority (vide letter dated 22.10.2019) forwarded the matter (appellant # I)[3] to the procuring agency's CRC with an advice to redress the grievances and furnish its decisions to the appellant as well as this Authority within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010.

2. Subsequently, these appellants (vide letters dated 30.10.2019 and 12.11.2019, respectively)[4] preferred separate appeals, along with requisite documents and review appeal fee[5], before this Authority by stating that the procuring agency's CRC had failed to redress/ decide their grievances within stipulated time period; 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[6].

3. Resultantly, the appellants' matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 27.11.2019 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned vide this Authority's letters dated 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.	Engr. Zulfiqar Ali, District Engineer	District Council Badin
Appellants		
I.	Mr. Taj Muhammad Soomro, Proprietor	M/s Nawab & Sons Construction Services
II.	Mr. Ayaz Ahmed Qureshi, Proprietor	M/s Ayaz Qureshi
III.	Syed Shahzad Shah, Proprietor	M/s Tawakal Engineering Works

[1] **Appellant # I:** M/s Nawab & Sons; **Appellant # II:** M/s Ayaz Qureshi; and **Appellant # III:** M/s Tawakal Engineering Works
[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 # T00997-19-0002 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]
[3] Appellant # II & III lodged separate complaints through TCS bearing consignment numbers 2066027673 & 2066027670 dated 02.11.2019 & 03.11.2019, respectively, addressed to the procuring agency, which refused to receive the same as per record.
[4] Appellant # I lodged appeal, without review appeal fee, to this Authority vide letter dated 19.10.2019 and then furnished review appeal fee vide letter dated 31.10.2019 in response to this Authority's letter dated 29.10.2019.
[5] SPPRA's Office Order No.Dir(A&F) /SPPRA/18-19/0325 dated 26.07.2019
[6] Rule-31(5) provides that the complaints 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 rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

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 the appellant's submission of bids along with requisite documents under instant procurement's NIT works listed at Sr. # 12 & 13, through courier service (TCS) that were received by the procuring agency forty nine (49) minutes **ahead of opening of bids that was 30.09.2019 at 01.00 p.m.**[7]

- The Review Committee examined the record whereof it was found that the appellant's bids, having consignment number 2064407825, were received by the procuring agency on 30.09.2019 at 12.11 p.m. i.e. after deadline for submission of bids that was 30.09.2019 up to 12.00 p.m.; hence, the Committee unanimously rejected the appellant's claim in terms of Rule-24(1) of SPP Rules, 2010, which provides that *'bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and* ***any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee.'***

6. **M/s Ayaz Qureshi:** Mr. Ayaz Ahmed Qureshi *'representative of the appellant # II'* apprised the Committee of appellant's submission of bid along with requisite documents under instant procurement's NIT work[8] listed at Sr. # 18 that was received by the procuring agency on 30.09.2019; however, the procuring agency did not open the bids submitted by the appellant as well as other contractors on the scheduled time for opening of bids. The District Engineer (procuring agency) informed that bids would be opened by the procurement committee on next schedule, albeit, the procuring agency did not communicate such schedule and posted bid evaluation reports on the Authority's website. Subsequently, they lodged a complaint through courier service addressed to the procuring agency, which refused to receive the same[9]. The appellant confirmed that his documents including call deposit (5% of procurement's estimated cost), as submitted with the bid, are still available with the procuring agency[10].

- Syed Adil Gilani (Member of Review Committee) asked the appellant to share a copy of the tender document, earlier submitted to the procuring agency, for bid review purpose;
  - The appellant stated that they quoted the bid at par; however, they could not retain a copy of the documents/ bid submitted to the procuring agency.

7. **M/s Tawakal Engineering Works:** Syed Shahzad Shah *'representative of the appellant # III'* apprised the Committee of appellant's submission of bid along with requisite documents and bid security under instant procurement's NIT work listed at Sr. 16 through courier service (TCS) on 26.09.2019 that was received by the procuring agency on 27.09.2019 i.e. three (3) days before the deadline for submission of bids[11]. When the appellant approached the procuring agency on 30.09.2019 to witness the opening of bids, the procuring agency affirmed the receipt of their bid through TCS and assured to inform the results within couple of days; however, the bid opening results were not communicated despite lapse of around a month. In the similar manner, the appellant participated in the procuring agency's last NIT where the bids were not opened publicly and thereof the procuring agency assured the appellant to participate in next bidding process but previous practice is repeated here in this procurement case. Resultantly, they lodged a complaint through courier service addressed to the procuring agency, which refused to receive the same[12].

---

[7] ibid.
[8] ibid.
[9] TCS CN # 2066027673 revealed the appellant's complaint/ consignment reached in the procuring agency's office on 04.11.2019 that refused to receive the same.
[10] The appellant shared a copy of CDR No. LD1926900056 dated 26.09.2019 issued by JS Bank for Authority's official record.
[11] TCS CN # 2065935538 revealed the appellant's bid/ consignment was received by the procuring agency on 27.09.2019.
[12] TCS CN # 2066027670 revealed the appellant's complaint/ consignment reached in the procuring agency's office on 03.11.2019 that refused to receive the same.

Procuring Agency's Version

8. Engr. Zulfiqar Ali, District Engineer, District Council Badin *'representative of the procuring agency'* clarified that the procuring agency received the appellants[13] bids that were comprised of only two documents i.e. Call Deposit and Pakistan Engineering Council Certificate. The representative of the appellants did not attend bid opening meeting and then started to threat the procuring agency's officials via phone calls. Nevertheless, the procuring agency **verbally contacted the appellants to submit their remaining documents**[14] and then also called the appellants to appear before the CRC subsequent to receipt of the **Authority's letters/ instructions**, albeit the appellants neither submitted the documents nor appeared before the CRC[15].

- The Chair of Review Committee asked the procuring agency's representative to clarify whether the bids were opened publicly by the procurement committee in presence of all bidders as required under Rule-41(4) of SPP Rules, 2010[16] and any report (bidders' qualification report) as required to be prepared by the procurement committee, if prepared, also be shared to ascertain the appellants status/ reasons for disqualification;
  - The procuring agency's representative affirmed that the bids were opened by the procurement committee in presence of all bidders; however, he failed to provide probable evidence with regard to both the appellants' disqualification made by the procurement committee.
- Syed Adil Gilani pointed out that it is the bidder's own choice whether to attend bid opening meeting or not; however, the procuring agency cannot disqualify any bidder on such reason (not participating the bid opening meeting). Indeed, it was the primary responsibility of the procurement committee to evaluate all the bids in accordance with Rule-42(1) of SPP Rules, 2010[17] and then prepare bid evaluation reports giving reasons for acceptance or rejection of bids in accordance with Rule-45 of SPP Rules, 2010. Subsequently, the Chair and Syed Adil Gillani asked the procuring agency's representative to share a copy of the appellants proposal along with bid security submitted to the procuring agency;
  - The procuring agency's representative stated that they returned all the documents, including technical proposal and bid security, to the appellants **on their own request** *(such statement was absolutely denied by the appellant # II & III who asked the procuring agency's representative to disclose probable proof if exist any in this regard);*
- The Chair and Syed Adil Gillani pointed out as to how the procuring agency returned those documents, except financial proposal, once the bidders submitted to the procuring agency. **These documents (record of procurement proceedings) were required to be retained/ maintained by the procuring agency for the sake of transparency and auditing process in terms of Rule-9(1) of SPP Rules, 2010[18];**
  - The procuring agency's representative stated that the appellants started quarrelling with the officials of the procuring agency to receive their all documents; therefore, the procuring agency returned the same. Subsequently, the procuring agency's representative changed its statement that these documents were issued to the appellants on their request.

---

[13] Appellant # II & III

[14] Rule-43(2) provides that any request for clarification in the bid, made by the procuring agency, **shall invariably be in writing.** The response to such request shall also be in writing.

[15] The Authority neither forwarded the complaints nor advised the procuring agency to redress the appellants grievances through CRC; hence, the procuring agency's representative stance in this regard seems a misrepresentation (unambiguous false statement of the fact).

[16] Rule-41(4) provides that all bids shall be opened publicly in the presence of all the bidders, or their representatives, **who may choose to be present in person,** at the time and place announced in the invitation to bid.

[17] Rule-42(1) provides that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.

[18] Rule-9(1) provides that all procuring agencies shall maintain a record of their respective procurement proceedings along with all associated documentation for a minimum period of five years.

- Syed Adil Gilani asked the procuring agency's representative to share a copy of the letter for announcement of the bid evaluation reports issued to the bidders in terms of Rule-45 of SPP Rules, 2010[19];
    - The procuring agency's representative stated that they hoist the bid evaluation reports on the Authority's website and then award the contract after seven days of announcement of these reports.
- Syed Adil Gilani asked the procuring agency's representative to note down the recent amendment under Rule-45 whereby standstill of seven (7) days had been replaced with three (3) working days. Subsequently the chair asked the procuring agency's representative to update the Authority regarding current status of the instant procurement works;
    - The procuring agency's representative stated that they already awarded the procurement contracts for all works except the works listed at Sr. # 16 & 18 of the NIT where the appellant # II & III participated/ submitted bids.
- Mr. Assadullah Soomro (Member of Review Committee) advised the procuring agency's representative to submit written statement showing current status of the procurement works and also ensure not to award these contracts till the final adjudication of the Committee;
    - The procuring agency's representative submitted written statement **as reproduced herewith** *"[There were 18 packages under the NIT floated by District Council Badin. Different contractors participated in all of these works on the scheduled date for opening of bids. M/s Ayaz Qureshi and M/s Tawakal Construction Company participated under NIT works listed at Sr. # 16 & 18 through submitting bids (CD & PEC certificate) via TCS. Such documents were incomplete therefore their bids were rejected; secondly, the [representatives of these] bidders neither come to the procuring agency's office nor submit any complaint to the CRC. The procuring agency received a letter of the SPPRA whereby it was mentioned that M/s Tawakal Engineering and M/s Ayaz have lodged complaint against NIT works listed at Sr. # 16 & 18; hence, the District Council has stopped to award the work orders against these works till final decision of the Review Committee – **signed by Zulfiqar Ali, District Engineer, District Council Badin**[20]."*

Review Committee Observations/ Remarks

9. After hearing the parties at length and perusal of the available record, the Review Committee observed that:-

- 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 maintain a record of their respective procurement proceedings along with all associated documentation (including bids submitted by all the bidders) in terms of Rule-9(1) of SPP Rules, 2010; but it failed to do so;
- The procuring agency's CRC was required to decide the complainants grievances within seven days and intimate the same to the appellants as well as Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010; however, the procuring agency failed to comply these requirements;
- The procuring agency was required to ensure that any clarification in the bid, made by the procuring agency, was required to be obtained from the bidder **in writing** in terms of Rule-43(2) of SPP Rules, 2010; however, the procuring agency failed to do so;

[19] Rule-45 provides that 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.

[20] Copy of the written statement is available on the Authority's record.

- The procuring agency was required to incorporate the bids submitted by appellant # II & III in the bid evaluation report by giving reasons for acceptance or rejection of their bids in terms of Rule-45 of SPP Rules, 2010; however, the procuring agency failed to do so[21].

Review Committee Decision

10. In light of the above observations/ remarks, as at para-9, and after due deliberation, the Review Committee unanimously decides that since the procuring agency had not awarded or signed procurement contracts against the works listed at Sr. # 16 & 18 of NIT ***(against which the appellants submitted their bids)***, therefore, the procurement proceedings for these two works may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010, and fresh tenders be floated in terms of Rule-23(2) of SPP Rules, 2010 (Amended 2019). **Compliance of this decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.**

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

(Member)
Assadullah Soomro
Private Member
SPPRA Board

(Not attended)

(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

[21] Bid evaluation reports posted on the Authority's PPMS website on 11.10.2019 do not show the participation of appellant # II & III [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber]