GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-949/2019-20/1898 Karachi, dated the 26 February, 2020

To,

The Chairman,
Town Committee Pithoro,
District Umerkot.

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 Mukhtiar & Company and Anors* v. *Town Committee Pithoro, District Umerkot)* held on 12th February, 2020, for your information and further necessary action under intimation to this Authority, at the earliest.

26/02/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Govt. of Sindh, Local Government Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Town Officer, Town Committee Pithoro, District Umerkot.
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/ Members Review Committee.
6. M/s Sheryar Khan & Brothers, Al-Atta Town, Mirpurkhas.
7. M/s Rehmatullah Khan, H # 184, Parveen Nagar Block-2, Mirpurkhas.
8. M/s Mukhtiar & Company, Flat # A-09, Al-Raheem Villas, Jamshoro Road, Qasimabad, Hyderabad.
9. M/s Nawab & Sons Construction Services, House # C-147, Block-3, Phase-I, Near Markazi Jamia Masjid, Qasimabad, Hyderabad.

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-949/2019-20 Karachi, dated the February, 2019

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

(Appeals)

M/s Mukhtiar & Company and Anors
Versus
Town Committee Pithoro District Umerkot

(NIT ID # T01471-19-0001 dated 14.12.2019)

Facts and background

The appellants[1], M/s Mukhtiar & Company; M/s Sheryar Khan & Brothers; M/s Rehmatullah Khan & Brothers; and M/s Nawab & Sons Construction Services, Government Contractors Hyderabad/ Mirpurkhas, lodged separate complaints (vide letters dated 02, 08 & 10.01.2020, respectively) addressed to the Chairman Town Committee Pithoro/ Chairman Complaints Redressal Committee (CRC) and copy endorsed to this Authority against the NIT # TC/Pithoro/478/2019 dated 13.12.2019 floated by Chairman, Town Committee Pithoro, District Umerkot ***'the procuring agency'*** for procurement of *'Construction of Chamber, C.C Road, Black Top, Bricks Pavement, Open Surface Drain, Repair Open Drain, Culverts, Road Cross, Repair/ Renovation Office etc.'*[2] whereby the appellants alleged that they approached the procuring agency's office for submission of bids on 31.12.2019 where the procuring agency did not receive/ accept their bids in order to award the procurement contracts to its blue eyed contractors. In turn, the Authority (vide letters dated 09 & 10.01.2020, respectively) also forwarded the matter to the procuring agency's CRC with an advice to redress the appellants' grievances and then furnish decisions within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019)[3].

2. In response, the procuring agency's CRC (vide letter No.TC/ESTT:/PHO/39/2020 dated 13.01.2020) furnished its decision to this Authority that is reproduced herewith *'the powers conferred to the Complaint Redressal Committee under Rule-31(5) of SPP Rules, 2010 (Amended 2019) announced the decision before the participants that the complaints from Sr. 1 to 7 are baseless as the contractors reached too late after the process of receiving at 01.00 p.m. and opening at 02.00 p.m. on dated 31.12.2019 of tenders NIT No.TC/Pithoro/478/2019 dated 13.12.2019 hoisted on SPPRA website vide ID No.t01471-19-0001 dated 14.12.2019, the complainant contractors from Sr. 1 to 7 did not file any application for issuance of tenders/ bidding documents by themselves or their attorney, neither they visited office of the Assistant Executive Engineer, T.C Pithoro during the process of issuance of tenders/ bidding documents from 13.12.2019 to 30.12.2019 till 12.00 p.m.* ***The Complaint Redressal Committee decided to reject the entire complaints*** *in the best interest of Council and the public of Pithoro Town.'*[4]

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1 Appellant # I: M/s Mukhtiar & Company; Appellant # II: M/s Sheryar Khan & Brothers; Appellant # III: M/s Rehmatullah Khan; and Appellant # IV: M/s Nawab & Sons Construction Services

2 Detailed description/ nature of the works can be accessed through instant procurement's NIT available on the PPMS website at ID # T01471-19-0001 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

3 Rule-31(5) provides that the complaint 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 under rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

4 http://www.pprasindh.gov.pk/committee/25CRCTCESTPHO462020.PDF

3. Subsequently, the appellants (vide letters dated 15, 20 & 22.01.2020, respectively) preferred separate appeals, along with review appeal fee[5], against the CRC decision and requested the Authority to place their cases before the Review Committee in terms of Rule-32(1) of SPP Rules, 2010[6]. Accordingly, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 12.02.2020 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 30.01.2020) to appear before the Committee on scheduled dated, time, and venue[7]. In compliance, the meeting was attended by the following (representatives):

Sr. #	Name of Representative with Designation	Name of Organization
Procuring Agency		
I.	Syed Buland Shah, Town Officer	Town Committee Pithoro
II.	Mr. Gulzar Ali Soomro, Deputy Accountant	Town Committee Pithoro
Appellants		
I.	Mr. Altaf Hussain Shaikh, Proprietor	M/s Mukhtiar & Company
II.	Mr. Sheryar Khan, Proprietor	M/s Sheryar Khan & Brothers
III.	Mr. Rehmatullah Khan, Proprietor	M/s Rehmatullah Khan
IV.	Mr. Taj Muhammad Soomro, Proprietor	M/s Nawab & Sons Construction Services

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 the 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, Proprietor *'the appellant # IV'* apprised the Committee of his intention to participate under instant procurement's NIT works listed at Sr. # 1 & 13 through submitting/ quoting bids on the bid documents downloaded from the Authority's website in terms of Rule-24(2) of SPP Rules, 2010[8]. The appellant alleged to have visited the procuring agency's office on 31.12.2019 for submission of bids, along with requisite documents including tender fee and bid security, to the procuring agency where the appellant could not find presence of any responsible officer of the procuring agency. The appellant further contended that various contractors were waiting there in the procuring agency's office; however, the procuring agency neither received the bids nor issued corrigendum for extending the schedule of submission and opening of bids. The appellant alleged that the procuring agency has recommended for award of contracts against all procurements works to 3 to 4 particular bidders on their bids quoted at par, whereas, the appellant was willing to execute similar works at competitive rates as compared to the bids recommended by procuring agency.

- The Chair of the Committee asked the appellant to present evidence in connection to submission of bids to the procuring agency and/ or refusal of the procuring agency to receive the bids;
    - The appellant stated that they cannot submit bids to each procuring agency through mail as they were not sure whether the courier service – within the locality of the procuring

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5 Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [https://ppms.pprasindh.gov.pk/PPMS/]

6 Rule-32(1) provides that a bidder not satisfied with decision of the procuring agency's complaints redrssal committee may lodge an appeal to the Review Committee within ten (10) days of announcement of the decision provided that he has not withdrawn the bid security, if any, deposited by him

7 The Review Committee's meeting for hearing instant cases was earlier scheduled on 31.01.2020; however, the meeting was rescheduled on 12.02.2020 due to unavailability of the members. Meanwhile, the Authority vide letter dated 24.01.2020 advised the procuring agency not to award the procurement contract till final decision of the Review Committee in terms of Rule-32 read in conjunction with proviso of Rules-31(7) & 32(7)(a) of SPP Rules, 2010

8 Rule-24(2) provides that the bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand

agency – is available or not. The appellant authorized M/s Mukhtiar to submit bids to the procuring agency that were not received by the procuring agency.

6. The representatives of rest of the appellants endorsed the concerns raised by M/s Nawab & Sons by further adding that they were also present to submit bids on the scheduled date that were not received by the procuring agency. Resultantly, they as well as other contractors demonstrated protest over the procuring agency's failure to ensure the transparent bidding process and such evidence was recorded in video format[9]. The appellants further highlighted that they also submitted bids to the procuring agency in previously NITs, which were later on cancelled without assigning any reason[10].

Procuring Agency's Version

7. Syed Buland Shah, Town Officer, Town Committee Pithoro *'representative of the procuring agency'* clarified that the bids were received and opened publicly on the scheduled date that was 31.12.2019 at 01.00 p.m. & 02.00 p.m., respectively, and subsequently the bid evaluation reports containing minutes of the meeting, bidders attendance sheet, and bidders' qualification reports were posted on the Authority's website on 08.01.2020[11] in terms of Rule-45 of SPP Rules, 2010[12]. The procuring agency's representative further stated that all the bidders who approached for submission of bids within the given timeline were allowed to participate in the bidding process. These appellants neither obtained bid documents nor submitted bids to the procuring agency through mail or by hand within the stipulated time period and ***if the appellants had any concern related to the bid submission/ opening process then they could approach/ lodge complaint to the CRC on the day of submission of bids.***

- The Committee asked the procuring agency about the current status of instant procurement;
  - **The procuring agency's representative confirmed that the procurement contracts have not been awarded so far due to the Authority's instruction as conveyed vide letter dated 24 & 30.01.2020[13].**

Review Committee's Observations/ Findings

8. After hearing the parties at length and close scrutiny of the procurement record, the Review Committee observed that the appellants submitted documents – copies of bids along with tender issuance fee and bid security to the Authority – that sufficed to entertain/ ascertain the maintainability of cases for hearing in terms of Rule-2(1)(f) read with Rules-31(5) & 32 of SPP Rules, 2010[14]; however, it cannot be conclusively ascertained whether the appellants approached the procuring agency to submit bids on the scheduled date for submission/ opening of bids as the Review Committee members were not physically present there in the procuring agency's office. The appellants could opt an alternative approach, but not mandatory, to submit bids through mail – reliable courier service – in terms of Rule-24(2) of SP Rules, 2010[15], which is convenient to trace through an independent/ third party forum as and when required. Nevertheless, when the appellants had any grievances related to the bidding process and/ or contravention to the rules/ procurement principles then they had to **spontaneously approach the CRC – *along with***

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[9] The appellants shared recorded video clips that are available on the Authority's record
[10] NIT ID # T01474-18-0001 & 2 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]
[11] See BER at ID # BE01471-19-0001-1 to 23 dated 08.01.2020 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber]
[12] 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 it exists and intimated to all the bidders at least three (3) working days prior to the award of contract
[13] Rule-31(7) provides that mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings; provided that in case of 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
[14] Ibid.
[15] Ibid.

supporting documents as well as circumstantial evidence - rather than waiting for anything else to get redressal of grievances in timely manner, however, the appellants failed to opt for such remedial steps.

Review Committee Decision

9. For the foregoing reasons/ findings, as mentioned under para-8, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeals and vacate the bar provided for in the proviso of sub-rule(7) of Rule-31 in the light of SPP Rule-32(7)(a) of SPP Rules, 2010[16].

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

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

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

[16] Rule-32(7)(f) provides that [the Review Committee may] reject the reference, stating its reasons and vacate the bar provided for in the proviso of sub-rule (7) of Rule-31