



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1113(1118)/2019-20/0330


Karachi, dated the 11<sup>th</sup> August 2020

To,

The Executive Engineer,  
Karachi Development Authority,  
Karachi.

**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 Shehzad Yousuf Zai and Anor versus Karachi Development Authority*) held on 07<sup>th</sup> July 2020, for your information, please.

  
11/08/2020

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 Director General, Karachi Development Authority, Karachi.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The 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. M/s Shehzad Yousuf Zai, Office A-19, Block-B, Unique Centre, Gulshan-e-Iqbal, Block 10-A, Karachi.
7. M/s S. Zaman & Brothers, Office No. P-482, Bilalabad, Block-S, North Nazimabad, Karachi.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1113(1118)/2019-20

Karachi, dated the

August 2020

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

**REVIEW APPEALS**

**BETWEEN**

M/s Shehzad Yousuf Zai and Anor  
Versus  
Karachi Development Authority

**NITs ID NUMBERS**

To0586-19-0011 dated 27.11.2019  
To1612-19-0002 dated 05.12.2019  
To1612-19-0004 dated 12.12.2019  
To1612-19-0005 dated 13.12.2019  
To1612-19-0006 dated 17.12.2019  
To1612-19-0007 dated 18.12.2019

**FACTS AND BACKGROUND**

The appellants' M/s Shehzad Yousuf Zai and M/s S. Zaman & Brothers, Government Contractors Karachi, lodged individual complaints (vide letters dated 06 & 09.03.2020) addressed to the Complaints Redressal Committee (CRC)<sup>2</sup> as well as this Authority against the NIT NOs. EE/EE/KDA/2019/210, 224, 227, 228, 253 & 254 dated 25.11.2019, 03 & 13.12.2019, respectively, floated by the Executive Engineer, Engineering Department, Karachi Development Authority 'the procuring agency' for procurement of various works related to the 'reconstruction/ widening/ improvement of roads, drainage systems, and sewerage systems, etc.'<sup>3</sup> whereby the appellants raised averments by claiming that the procuring agency awarded the procurement contracts in a biased manner while adjusting/ favoring the specific bidders' quoted rates. The appellant (M/s S. Zaman) further claimed for submission of the lowest bid, nevertheless, the Procurement Committee (PC)<sup>4</sup> recommended for award of work to the 4<sup>th</sup> lowest bidder without mentioning thereof any reason; hence, the appellants requested the authorities concerned for taking necessary action. In turn, this Authority (vide letter dated 10.03.2020) forwarded the appellant's matter to the CRC with advice to redress the grievances and then furnish the decision to the appellant as well as this Authority within the stipulated period as specified under Rule-31(5) of SPP Rules, 2010<sup>5, 6</sup>.

2. Subsequently, the CRC (vide letter dated 12.03.2020) furnished its decision concerning the grievances raised by aggrieved bidders/ the appellants whereby the CRC unanimously upheld the PC's

<sup>1</sup> Appellant # I: Shehzad Yousuf Zai; and Appellant # II: M/s S. Zaman & Brothers

<sup>2</sup> Constituted under the chairmanship of Chief Engineer KDA vide letter No. LG/DG/M&E/AD-Misc/117(72-Misc)/2017/1357 dated 20.10.2017 issued by Local Government Department [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>3</sup> Detailed description/ nature of procurement works can be accessed via instant procurements NITs available on the PPMS website at ID # To0586-19-0011, To1612-19-0002, To1612-19-0004, To1612-19-0005, To1612-19-0006, and To1612-19-0007 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>4</sup> Constituted under the chairmanship of Executive Engineer KDA vide order No.CE/ENG/DEV/2019/315 dated 07.11.2019 issued by the Karachi Development Authority [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>5</sup> 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.

<sup>6</sup> This Authority vide letter dated 10.03.20 advised the appellant # II to lodge a complaint before the CRC as per Rule-31 ibid

recommendations<sup>7</sup>. For the sake of convenience, the relevant portion of the CRC decision to the extent of the appellants' grievances is reproduced herein below:-

#### MINUTES OF THE CRC MEETING

**M/s Shehzad Yousuf Zai (reference number nil dated 06.03.2020)**

NIT # EE/ED/KDA/2019/210 dated 25.11.2019 – work # nil: The contractor *did not participate* in the bidding process in any work of the aforementioned NIT and the tender process has been carried out as per rules and regulations. The CRC after discussion decided that the application is not based on a factual position.

NIT # EE/ED/KDA/2019/224 dated 03.12.2019 – work # 2: reconstruction of internal roads of Bingo Gabol Goth, Bakhtawar Goth & Dhani Bux Goth, Ahsanabad PS-99, District East Karachi: After looking at the evaluation report, the criteria mentioned in the NIT and the documents/ profile provided with tender documents by the contractor M/s Shehzad Yousuf Zai, the CRC found that the bidder does not fulfill the requirement as per criteria 'c. average annual turnover of at least PKR 50 million duly supported by the bank statement and audit report (last three years each), which also shows the salaries of the employees' as well as another requirement 'd. the firm should maintain an account balance of at least 25% of the tender/ bid cost' as mentioned in the NIT. Hence, the CRC agrees to with the decision of the PC that the bid is rejected as per mandatory eligibility criteria.'

NIT # EE/ED/KDA/2019/227 dated 03.12.2019 – work # 2: rehabilitation of road of Shahnawaz Goth and Yousuf Goth near to Surjani 4K Chowrangl PS-122, District West Karachi: The matter was placed before CRC by the Procurement Committee of M/s Shahzad Yousuf Zai and looked into the documents/ profile provided by the contractor with tender documents and the criteria mentioned in the NIT. The CRC found that the bidder does not fulfill the requirement of criteria 'd. average annual turnover of at least PKR 50 million duly supported by the bank statement and audit report (last three years each), which also shows the salaries of the employees' as well as another requirement 'e. the firm should maintain an account balance of at least 25% of the tender/ bid cost' as mentioned in the NIT. Hence, the CRC agrees to with the decision of the PC that the bid is rejected as per mandatory eligibility criteria.'

NIT # EE/ED/KDA/2019/228 dated 03.12.2019 – work # 1: construction of road # 15 from Dalmia road to K-Electric Grid Station via Jamia Masjid Zia-ul-Islam including RCC sewerage line system and providing/ fixing of street lights Block-19 Gulshan-e-Iqbal District East Karachi: The matter was placed before CRC by the Procurement Committee M/s Shahzad Yousuf Zai and looked into the documents/ profile provided by the contractor with tender documents and the criteria mentioned in the NIT. The CRC found that the bidder does not fulfill the requirement of criteria 'd. average annual turnover of at least PKR 45 million duly supported by the bank statement and audit report (last three years each), which also shows the salaries of the employees' as well as another requirement 'e. the firm should maintain an account balance of at least 25% of the tender/ bid cost' as mentioned in the NIT. Hence, the CRC agrees to with the decision of the PC that the bid is rejected as per mandatory eligibility criteria.'

NIT # EE/ED/KDA/2019/253 dated 13.12.2019 – work # nil: The contractor *did not participate* in the bidding process in any work of the aforementioned NIT and the tender process has been carried out as per rules and regulations. The CRC after discussion decided that the application is not based on a factual position.

NIT # EE/ED/KDA/2019/254 dated 13.13.2019 – work # 2: Improvement/ rehabilitation of drainage system and road network in Karsaz Service Road, Karachi: After looking at the evaluation report, the criteria mentioned in the NIT and the documents/ profile provided with tender documents by the bidder M/s Shehzad Yousuf Zai, the CRC found that bidder does not fulfill the requirement of criteria 'c. average annual turnover of at least PKR 70 million duly supported by the bank statement and audit report (last three years each), which also shows the salaries of the employees' as well as another requirement 'd. the firm should maintain an account balance of at least 25% of the tender/ bid cost' as mentioned in the NIT. Hence, the CRC agrees to with the decision of the PC that the bid is rejected as per mandatory eligibility criteria.'

**M/s S. Zaman & Brothers (reference number SZB/129/20 dated 09.03.2020)**

NIT # EE/ED/KDA/2019/227 dated 03.12.2019 – work # 2: rehabilitation of road of Shahnawaz Goth and Yousuf Goth near to Surjani Chowrangl PS-122, District West Karachi: The matter was placed before CRC by the Procurement Committee of M/s S. Zaman & Brothers and looked into the documents/ profile provided by the contractor with tender documents and the criteria mentioned in the NIT, the CRC found that bidder does not fulfill the criteria 'e. the firm should maintain an account balance of at least 25% of the tender/ bid cost' as mentioned in the NIT. Hence, the CRC agrees to with the decision of the PC that the bid is rejected as per mandatory eligibility criteria.'

<sup>7</sup> <http://www.pprasindh.gov.pk/committee/46CRCKDAKHi7032020.PDF>

3. Given the CRC's decisions, both the appellants preferred separate appeals, along with review appeal fee<sup>8</sup> (vide letters dated 18 & 20.03.2020, respectively), whereby they showed dissatisfaction over the decision by leveling an allegation that the CRC called its meeting on 12.03.2020 to redress the aggrieved bidders' grievances but the meeting was thereof (during the proceedings) canceled; hence, the appellants requested the Review Committee to decide the cases/ appeals by taking into account all the observations/ concerns raised from time to time. In turn, the Authority (vide letters dated 20.03.2020) forwarded both the appeals to the procuring agency with advice to update/ confirm status of the appellants' bid security, latest by 30.03.2020, to ascertain the maintainability of the cases in terms of Rule-32(1) of SPP Rules, 2010<sup>9</sup>; however, the procuring agency did not furnish any response.

4. Resultantly, these cases/ appeals were taken up by the Review Committee for hearing in its meeting scheduled on 07.07.2020 at 12.30 p.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 18.06.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rule-32(8) & (10) of SPP Rules, 2010<sup>10</sup>. In compliance, Mr. Tariq Rafi Khan, Executive Engineer, Karachi Development Authority 'representative of the procuring agency' and Mr. Raheel Shehzad, Proprietor M/s Shehzad Yousuf Zai; Mr. Sher Zaman, Proprietor M/s S. Zaman & Brothers 'representatives of the appellants' appeared before the Committee.

### REVIEW COMMITTEE PROCEEDINGS

5. 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, over the instant procurements issues/ grievances.

#### APPELLANTS' VERSION

6. Mr. Raheel Shehzad and Mr. Bilal Khan 'the appellant # 1' apprised the Committee of his submission of bids, along with the requisite/ supported documents, under six (6) works containing in different NITs<sup>11</sup> in terms of Rule-24 of SPP Rules, 2010<sup>12</sup>, that were publicly opened and read aloud by the PC on the scheduled dates and subsequently the procuring agency posted the bid evaluation reports (BERs) on the Authority's PPMS website<sup>13</sup>. The appellant contended that the procuring agency without legal basis and with the mala fide intentions maneuvered the bid amounts quoted by the bidders to favor particular bidders and also issued varied bid documents (containing different bill of quantities/ schedule of requirements) against the same work, which can be traced from the bid document (issued to the appellant) for a work namely 'construction of road # 15 from Dalmia Road to K-Electric Grid Station via Jamia Masjid Zain-ul-Islam including RCC sewerage line system and providing and fixing street lights Block-19, Gulshan-e-Iqbal, District East- Karachi'<sup>14</sup> that did not contain the electrical part of the work. The appellant further contended that the procuring agency disqualified them on account of the non-payment of the commission but not on the bidders' eligibility/ qualification criteria.

<sup>8</sup> Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

<sup>9</sup> Rule-32(1) provides that a bidder not satisfied with decision of the procuring agency's complaints redressal 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.

<sup>10</sup> Rules-32(8) & (10) provide that it shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee as and when called and produce documents, if required. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

<sup>11</sup> Ibid

<sup>12</sup> Rule-24 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; 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.

<sup>13</sup> Bid Evaluation Reports at IDs # BE01612-19-0002-1 BE01612-19-0004-1 BE01612-19-0005-1 BE01612-19-0006-1 BE01612-19-0007-1 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

<sup>14</sup> NIT ID # T01612-19-0005 (work # 1)

7. Mr. Sher Zaman 'the appellant # II' apprised the Committee of his submission of the bid, along with the requisite/ supported documents, against a work namely 'rehabilitation of road of Shahnawaz Goth & Yousuf Goth near to Surjani 4K Chowrangl PS-122 District West Karachi' that was publicly opened by the PC, which announced the appellant's bid as the lowest among all other bidders. Subsequently, the procuring agency posted the BER on the Authority's PPMS website<sup>15</sup> whereof the bid quoted by three different bidders – including M/s S. Zaman & Brothers (the appellant), M/s Hascon Construction Company, and M/s S.K. Construction – was equally mentioned as PKR 31,722,626.00 (tied bid) and award of the procurement contract was recommended for another bidder M/s Kamran & Kampany who quoted bid as PKR 31,876,790.00 (higher than the appellant's bid). The appellant contended that three (3) bidders could not quote the exact amount of bid for the same work but in this case, this was made possible by the procuring agency on its malicious intention through disclosing the information including complete bid documents and PC-I, etc. to favor specific bidder for an award of contract. The appellant further contended that the procuring agency formulated the criteria beyond the purview of procurement rules by demanding bidders to have bank balance and net worth/ financial turnover.

- Syed Adil Gilani and Mr. Sheeraz Siddiqui (Members of Review Committee) pointed out that there was a mandatory requirement under eligibility criteria that the bidder should maintain an account balance of at least 25% of the tender bid cost. Did the appellants submit the supporting document/ bank statement(s) against the referred criterion (general for all works in question) along with their bids?
  - ◆ The appellants stated that they submitted accounts maintenance/ surety certificate issued by an operating bank(s) showing credit line facility in favor of the appellants that deemed to have fulfilled the requirement against the referred criterion.

#### PROCURING AGENCY'S VERSION

8. Mr. Tariq Rafi Khan 'representative of the procuring agency' contended that the bids against all works in question were being solicited under the Single Stage One Envelope bidding procedure and same were publicly opened by the PC as per mechanism laid down under Clause-7.5 of the Authority's Procurement Regulations (Works)<sup>16</sup> read with Rule-47(1) of SPP Rules, 2010<sup>17</sup>. Subsequently, the PC

<sup>15</sup> Bid Evaluation Report at IDs # BE01612-19-0004-1 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

<sup>16</sup> Clause-7.5 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 and the bid opening is not delayed on the plea of absence of bidders or their representatives, as their presence is optional. The public tender opening is an important step in the tendering process as opening of tenders publicly helps to demonstrate that the tendering process is transparent and increases bidders' confidence in the public procurement process. [steps to be followed are stated as under:-] (i) the tender box should be opened and all tenders removed and counted; (ii) first envelopes marked "Withdrawal" should be read out and the envelope containing the corresponding tender shall be returned without being opened. The withdrawal must be noted on the record of the tender opening; (iii) next, envelopes marked "Modification" should be opened one at a time and the envelope containing the corresponding tender located and opened. Details of the modified tender should be read out and recorded, ensuring that the details relate to the modified, not the original tender. Both the original tender and modification should be stamped on key pages and signed by the chairperson of procurement committee and by all members of the procurement committee, if demanded; (iv) after counting the remaining tenders, each tender envelope should be identified by giving it a serial number divided by total number of tenders received. When 5 bids are received then bids will be identified by marking them in following manner; 1/5, 2/5, 3/5, 4/5, 5/5; (v) bid opening sheet (BOS) is prepared containing the information relating to bids announced at the opening; (vi) tenders should then be opened, one at a time, and the relevant details i.e. the name of the bidder, total amount of each bid, alternative bids discount amount/percentage, and amount of call deposit and name of bank should be read out aloud and recorded as a line item against each serial number in the bid opening sheet. Reading out prices should avoid any disputes regarding price changes at a later date; (vii) officer/official chairing procurement committee shall encircle the rates and total bid price and all the members of PC shall sign each and every page of financial proposal; (viii) minutes of the opening of the tenders/bids shall be issued and shall also mention over writing or cutting if any; (ix) tender/bid with any condition or where the conditions mentioned in the NIT have been allured or omitted will not be entertained, will be declared non-responsive and shall stand rejected; (x) all bidders in attendance shall sign an attendance sheet evidencing their attendance; (xi) upon completion of the tender opening, all members of the PC shall sign the bid opening sheet; (xii) where tender openings for more than one tendering process are conducted at the same time, they must be conducted consecutively, with one opening completed, recorded and tenders removed, before the next opening commences.

carried out the post-qualification procedure in a manner prescribed in the NIT to determine the eligible and responsive bidder/ lowest evaluated bidder in terms of Clause-7.9.1 of the Authority's Procurement Regulations (Works)<sup>18</sup> whereof both the appellants were found as ineligible/ non-responsive on account of non-conformance to the mandatory eligibility criteria viz. (i) average annual financial turnover of PKR (35 to 70)<sup>19</sup> million duly supported by the bank statement and audit report (last three years each), which also shows the salaries of the employees; and (ii) the firm should maintain an account balance of at least 25% of the tender/ bid cost] – and same can be verified by this forum through the original proposals/ record submitted by the appellants<sup>20</sup>. The procuring agency's representative further contended that the appellants, later on, approached the CRC, which announced its decision in due course of time by upholding the PC's recommendations and also submitted a copy of the decision to this Authority in terms of Rule-31(5) of SPP Rules, 2010<sup>21</sup>. Thereafter, the procurement contracts were awarded among the lowest evaluated bidders and the same (contract documents) were made public through posting on the PPMS website<sup>22</sup> as per Rules-31(6), 50 & 10 of SPP Rules, 2010<sup>23</sup>.

- Syed Adil Gilani and Engineer Munir A. Shaikh (Members of Review Committee) asked the procuring agency's representative as to why the condition for bidders to maintain an account balance worth 25% of the bid cost was incorporated/ formulated under the eligibility criteria?
  - ◆ The procuring agency's representative stated that they follow the general criteria from the last couple of years to safeguard the risks against delay in completion of works due to the liquidity issues and in this regard, the procuring agency did not receive any query or complaint from the bidders. Furthermore, the procuring agency floated tenders against various works in parallel manner; therefore, this time it was mandatory for bidders to have a certain amount in hand for timely completion of these works and sufficient bidders qualified the criterion that validates competitive bidding process.

#### REVIEW COMMITTEE'S FINDINGS

9. After hearing the parties at length and scrutiny of the procurement record, the Review Committee observed that the procuring agency in the present cases solicited bids for works through

<sup>17</sup> Rule-47(1) provides that Single Stage One Envelope bidding procedure shall be used as a standard bidding procedure for procurement of goods, works and services of simple and routine nature and where no technical complexity or innovation is involved.

<sup>18</sup> Clause-7.9.1 provides that (a) each bid shall comprise one single envelope containing the financial proposal only and company profile containing proof of relevant experience, annual turnover of last three years, and registration with PEC or other authorities wherever applicable and information regarding litigation with government agencies, affidavit of not being blacklisted. Information regarding company/ firm/ bidder's provided with financial bid will not be treated as *Technical Proposal*. The requirement of company profile is very essential; when bidders are not pre-qualified. In this method, the relevant information or details required from interested bidders are mentioned in the advertisement/ notice inviting tender and bidding document. Non-serious bidders are screened out from the bidding process; (b) all bids received shall be opened and evaluated in the manner/criteria prescribed in the NIT or bidding document. Post qualification of the lowest bidder is carried out to determine his responsiveness as per information or documents required and so provided as mentioned at clause (a) above; if he fails to be responsive, then the same exercise is repeated for 2<sup>nd</sup> lowest bidder and so on till responsive bidder or lowest evaluated bid is determined; (c) verification and up-to-date information: Procuring agency can verify the previous working, experience and financial statements made by the bidders in their bids.

<sup>19</sup> Requirement for average annual financial turnover varied for each tender as PKR 35, 50, 50, 45, 70 & 50 M, respectively

<sup>20</sup> The procuring agency's representative submitted original copies of the bids/ proposals submitted by the appellants and same were examined with findings reflected under the heading – review committee's findings.

<sup>21</sup> Ibid.

<sup>22</sup> Contract Documents at IDs # C01612-19-0002-1 C01612-19-0004-1 C01612-19-0005-1 C01612-19-0006-1 C001612-19-0007-1 [[https://ppms.pprasinidh.gov.pk/PPMS/public/portal/contract\\_list](https://ppms.pprasinidh.gov.pk/PPMS/public/portal/contract_list)]

<sup>23</sup> Rules-31(6), 10 & 50 provide that the procuring agency shall award the contract after the decision of the complaint redressal committee. The procuring agency shall, immediately upon award of contract, make the evaluation report of the bid, and the contract agreement public through hoisting on the Authority's website as well as on procuring agency's website, if the procuring agency has such a website; provided where the procuring agency is convinced that disclosure of any information related to the award of a contract shall be against the public interest or may jeopardize national security, it can withhold only such information from public disclosure, subject to the prior approval of the Chief Minister. Within fifteen (15) days of signing of contract, procuring agency shall publish on the website of the Authority and on its own website, if such website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and the [following information]: (1) Contract Evaluation Report; (2) Form of Contract and Letter of Award; (3) Bill of Quantities or Schedule of Requirement.

different NITs in open competitive bidding by following Single Stage – One Envelope Procedure that were received and opened by the PC on the scheduled dates mentioned in the NIT/ bid documents as per Rule-46(1) read with Clause-aa of Sub rule-2(1) of SPP Rules, 2010<sup>24</sup>. The referred rule allows the procuring agencies to formulate the evaluation criteria containing the conditions (legally required) as well as those deemed appropriate to the specific type, nature, market conditions and complexity of what is being procured, provided that such condition(s) does not fall under discriminatory and difficult nature conditions as restricted under Rule-44 of SPP Rules, 2010<sup>25</sup>. Following the submission/ opening of the bids, the procuring agency is required to undertake an evaluation of the bids in accordance with the notified evaluation criteria, without further addition or subtraction, for the award of procurement contract(s) to the lowest evaluated bidder(s), but not the lowest submitted bidder(s), in terms of Rules-42(1) & 49 read with Clauses-v & w of Sub rule-2(1) of SPP Rules, 2010<sup>26</sup>. Reliance in this behalf also placed on the judgment passed by the Honorable High Court of Sindh, Karachi, and another judgment passed by the Honorable High Court, Sukkur Bench, reported as 2020 MLD 185<sup>27</sup> and 2020 CLC 323<sup>28</sup>, respectively.

SUMMARY OF THE PROCUREMENT WORKS IN QUESTION (PKR IN MILLION)							
NIT ID #	Work #	Estimated Cost	Received Bids #	Eligible Bids	Appellant(s) Bid	Lowest Submit Bid	Lowest Evaluate Bid
T00586-19-0011	I.	36.89	08	05	N/P <sup>29</sup>	23.283	25.998
	II.	36.25	18	11	N/P	M/s ZBA 17.518	M/s Adeel 25.375
T01612-19-0002	II.	55.00	09	04	35.799 M/s Shehzad	31.165	32.052
T01612-19-0004	II.	55.00	17	10	32.749 M/s Shehzad	25.375	31.876
					31.722 M/s S. Zaman	M/s S.M.S	M/s Kamran
T01612-19-0005	I.	50.00	20	10	38.223 M/s Shehzad	30.695	37.027
					32.770 M/s S. Zaman	M/s Atlas	M/s ZBA
T01612-19-0006	II.	75.79	11	06	48.584 M/s Shehzad	42.014	44.284
						M/s Kamran	M/s Hanl
T01612-19-0007	II.	58.64	10	06	N/P <sup>30</sup>	33.545	34.172
						M/s Azeem	M/s Rescon

<sup>24</sup> Rules-46(1) & 2(1)(aa) provide that (a) notice inviting tenders and bidding documents of this method shall contain the [following] eligibility criteria: (i) relevant experience, (ii) turn-over of at least three years, (iii) registration with Federal Board of Revenue, for Income Tax, Sales Tax in case of procurement of goods, registration with the Sindh Revenue Board in case of procurement of work and services, and registration with Pakistan Engineering Council, where applicable, (iv) any other factor deemed to be relevant by the procuring agency subject to provision of Rule 44; (b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at clause-a above; (c) all bids received shall be opened and evaluated in the manner prescribed in the Notice Inviting Tenders or bidding documents. Open competitive bidding means a fair and transparent specified procedure defined under these rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both national and international competitive biddings.

<sup>25</sup> Rules-44 provides that save as otherwise provided, no procuring agency shall introduce any condition which discriminates among bidders. In ascertaining the discriminatory nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

<sup>26</sup> Rules-42(1), 49, 2(1)(v) & (w) provide that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity. Lowest evaluated bid means a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost; and lowest submitted price means the lowest price quoted in bid, which is otherwise not substantially responsive.

<sup>27</sup> C.Ps. NOs. 881 and 882 of 2019 (M/s Otsuka Pakistan Limited v. Province of Sindh through Secretary Health and 6 others)

<sup>28</sup> C.P. No. D-842 and C.M.A No. 3230 of 2019 (M/s AM & MJ Brothers Pvt. Ltd. v. Province of Sindh)

<sup>29</sup> Not participated/ shown in the bid evaluation reports

<sup>30</sup> The appellant's bid was not shown in the bid evaluation reports – bidders' attendance sheet signed by the appellant

10. For the sake of convenience, it would be relevant to have a glance at the relevant clauses, as reproduced herein-below, available in the bid document which stipulates conditions to be complied with for qualifying the criteria:

ELIGIBILITY CRITERIA	
a.	NTN certificate
b.	SRB registration certificate
c.	Average annual financial turnover of at least (PKR 35 – 70 million) <sup>31</sup> duly supported by the bank statement and audit report (last three years each), which also shows the salaries of employees
d.	The firm should maintain an account balance of at least 25% of the tender/ bid cost
e.	Proof of relevant experience and details of at least three works executed/ being executed since last three years indicating the name of project/ scheme/ works with cost, date of commencement and completion
f.	Valid PEC 2020 Category in relevant field of specialization (codes where applicable)
g.	Affidavit/ undertaking regarding firm never been blacklisted or not involved in any court case
h.	Copy of CNIC
i.	All original documents must be shown upon request of the PC for verification

11. Upon perusal of the brief facts presented by the parties concerned and other documents placed on the record<sup>32</sup>, it appears that the appellants submitted bids against procurement works in question that were declared as non-responsive/ disqualified by the PC mainly on non-complying with two condition # c & d as mentioned above. Subsequently, the appellants challenged the PC decision before the CRC (responsible for deciding the matters judiciously by affording an opportunity to the appellants and also examining essential conditions were complied with) which unanimously upheld the PC's decision<sup>33</sup>. The Review Committee after considering the rival contentions advanced by the parties, scrutinizing the available procurement record, and discerning the applicable rules, discussed each issue/ impugned conditions, against which the appellants were disqualified, and concluded as follows:

- Average annual financial turnover of at least (PKR 35 – 70 million)<sup>34</sup> duly supported by the bank statement and audit report (last three years each), which also shows the salaries of the employees: The procuring agency's representative established contention that both the appellants submitted audit reports that reflected their financial turnover below the required limit. The Committee examined the appellants' record, proposal/ audit reports as submitted by the procuring agency, and found both the appellants as qualified (as detailed below) to the extent of the criterion listed at Sr. # c of the NIT:

AUDIT REPORTS (ANNUAL FINANCIAL TURNOVER - PKR IN MILLION)						
Sr. #	Appellant's Name	2017	2018	2019	Total	Average
1.	M/s Shehzad Yousuf Zai	131.3415	149.8572	161.5248	442.7235	147.57
2.	M/s S. Zaman & Brothers	118.8386	150.9683	174.0418	443.8487	147.94

- The firm should maintain an account balance of at least 25% of the tender/ bid cost: The procuring agency's representative highlighted the second reason for the disqualification of the appellants' bid on account of their bank statement below the required amount. The procuring agency's representative maintained plea that this requirement was incorporated to ensure the qualified bidders must possess adequate cash flow to overcome the liquidity issues that could lead delays in the completion of parallel works. On the other hand, the appellants established contention that they submitted accounts maintenance/ surety certificates issued by their bank ensuring the appellant's credit line facility up to the required amount that sufficed to qualify the criterion. The Committee examined the appellants' record, bank statements/ accounts maintenance certificate as submitted by the procuring agency, and observed the appellants'

<sup>31</sup> Ibid.

<sup>32</sup> Including the copies of original proposals submitted by the appellants to the procuring agency

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.



bank statements reflected their closing balance below the required amount (percentage of the estimated cost as detailed below) and secondly, it was observed that the appellants' credit line facility was subject to the bank's internal credit department approval and prevalent loss that was construed as a conditional/ un-qualified and cannot be accepted to qualify the criterion; hence, the Committee endorsed the procuring agency's decision to disqualify the appellants against the works in question based on this sole reason:

BANK STATEMENTS (CLOSING BALANCE IN PKR)					
Sr. #	Appellant's Name	I	II	III	Total Balance
1.	M/s Shehzad Yousuf Zai	4,582.7	50,265.9	124,171.8	179,020.4
2.	M/s S. Zaman & Brothers	5,509,481.8	-	-	5,509,481.8

- A key concern was raised by the appellants that the condition imposed on the bidders by the procuring agency to maintain an account balance of at least 25% of the tender cost/ bid cost falls under the discriminatory and difficult conditions as restricted under the procurement rules. The Committee examined the appellant's concern (referred criterion) by using the standard test based on these principles (a) did the criterion restrict the entry of sufficient bidders? (b) did the criterion reasonably incorporate to favor 1-2 bidders thus creating a monopoly? (c) did any aggrieved bidder(s) approach the procuring agency for seeking clarification within the response time in terms of Rule-23(1) read with Rules-18 & Clause-eee of Sub rule-2(1) of SPP Rules, 2010<sup>35</sup>? The available record shows (refer to the summary as at page # 6) that the sufficient number of bidders entered into the competitive bidding process and also qualified the referred criterion. The procurement record further reveals that none of the bidders (including the appellants) approached the procuring agency for seeking clarification in this regard within the response time (as prescribed under Rule-23 *ibid*). One of the key objectives for ensuring the mandatory response time under the law is to ensure that the bidders may obtain the bid documents, revise the content including terms and conditions accordingly, and then approach the procuring agency for seeking clarification on the queries/ concerns, if exist there.

12. It is also apparent that the appellants, apart of the submission as discussed above, leveled various allegations – neither part of the complaint nor appeal – against the procuring agency that include: issuing different/ incomplete bid documents against the same works; favoring specific bidders on mala fide intentions; and disclosing PC-I to the specific bidders. The Review Committee examined the allegations within the spectrum of the available record and applicable rules and concluded as follows:

- Issuing different/ incomplete bid documents against the same work: The procuring agency is responsible for issuance of the bid documents to all the interested bidders after charging/ collecting a fee following the procedures and requirements specified in the NIT in terms of Rule-20 of SPP Rules, 2010<sup>36</sup>. The appellants have leveled an allegation against the procuring agency for issuance of different bid documents to favor particular bidders. The Committee is of view that such allegation at this point does not stand and cannot be given any evidentiary value

<sup>35</sup> Rules-23(1), 18, 2(1)(eee) provide that any interested bidder, who has obtained bidding document, may request for clarification of contents of the bidding document in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bids; provided that any clarification in response to a query by any bidder shall be communicated to all parties who have obtained bidding documents. The procuring agency shall give due consideration to the scope, magnitude and nature of procurement, while deciding the response time, which shall not be less than fifteen calendar days in case of National Competitive Bidding, and thirty calendar days in case of International Competitive Bidding; provided that the NIT shall be hoisted on Authority's website in case of procurements up to rupees two million and published in newspapers in case of over rupees two million on or before the date of issuance of bidding documents. Response time means the period starting from the first date of issuance of bidding documents or shortlisting documents or prequalification documents, as the case may be, up to last date of issuance of such documents.

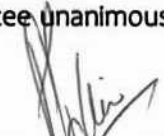
<sup>36</sup> Rule-20 provides that the procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the NIT; the procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

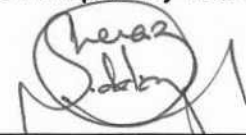
when an alternative option for the bidders was available to submit bids on the bidding documents downloaded from the Authority's website in terms of Rule-24(2) of SPP Rules, 2010<sup>37</sup>;


- Favoring specific bidders on mala fide intentions: The appellants leveled another allegation against the procuring agency's mala fide intentions to award procurement contract(s) to the specific bidders. The Committee is of view that the appellants while leveling such allegation should specify as to how their rights were affected and how mala fide intentions of the procuring agency were involved in these procurement cases. It is pivotal to note that merely vague and indefinite allegation of mala fide does not require any action until the person alleging mala fide establishes the case with onus probandi;
- Disclosing PC-I to the specific bidders: The appellants leveled the allegation that the procuring agency disclosed PC-I of the project/ works to specific bidders, resultantly such document as per appellants favored to those bidders for winning the procurement contracts. The committee is of view that the PC-I is a project document that covers almost all aspects of the specific project and this document is prepared for seeking approval of the competent forum before the execution of any project and its ancillary work. There is not any causation between this document and the bid which may lead to favor a particular bidder(s) and impact the procurement principles as envisaged under Rule-4 of SPP Rules, 2010<sup>38</sup>. All the information required to bidders for submitting a bid is entirely (and required to be) covered within the bid document as per Rule-21(1) of SPP Rules, 2010<sup>39</sup>.

#### REVIEW COMMITTEE'S DECISION

13. Given the foregoing findings, as mentioned under Paras # 9-12, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeals in light of Rule-32(7)(a) of SPP Rules, 2010<sup>40</sup>.

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

  
\_\_\_\_\_  
(Member)  
Sheeraz Siddiqui  
Director (Audit)  
Nominee of Director General Audit Sindh

  
\_\_\_\_\_  
(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

<sup>37</sup> Ibid.

<sup>38</sup> Rule-4 provides that while procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

<sup>39</sup> Rule-21(1) provides that the bidding document shall include the [following] information: (a) a letter of invitation for bid; (b) data sheet containing information about the assignment; (c) instructions for preparing bids; (d) amount and manner of payment of bid security and performance guarantee (if applicable); (e) manner and place, date and time for submission of bidding documents; (f) manner, place, date and time of opening of bids; (g) method of procurement used; (h) a detailed and unambiguous evaluation criteria; (i) terms and conditions of the contract agreement, as far as already known by the procuring agency; (j) terms of references and technical specification of goods, works or services to be procured, subject to Rule-13; (k) manner in which tender price is to be assessed and computed, including information about tax liability; (l) currency in which tender price is to be formulated and expressed; (m) bid validity period; (n) a copy of integrity pact to be signed by the parties; (o) any other information which is specified in regulations to be issued by the Authority.

<sup>40</sup> 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