



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1421(1422)/2019-20/10475 Karachi, dated the 20th August 2020

To,

The Chairman Municipal Committee,  
Nawabshah.

**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 Fatima & Co. and M/s Reliant Trade Link v. Municipal Committee Nawabshah*) held on 11<sup>th</sup> August 2020, for your information and further necessary action, under intimation to this Authority, at the earliest.

20/08/2020  
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 Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Chief Municipal Officer, Municipal Committee Nawabshah.
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 Fatima & Co. H. No. A-493/1, Shahi Bazar Old Sukkur.
7. M/s Reliant Trade Link, C-441/2C/1 Shaikh Luxury Apartment Queen's Road, Sukkur.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1421(1422)/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 Fatima & Co. and M/s Reliant Trade Link*

v.

*Municipal Committee Nawabshah*

NIT ID Number

T00581-19-0002 dated 01.06.2020

**FACTS AND BACKGROUND**

The appellants<sup>1</sup> M/s Fatima & Co. and M/s Reliant Trade Link, Government Contractors Sukkur, lodged individual complaints (vide letters dated 13 & 11.07.2020, respectively) addressed to the Complaints Redressal Committee (CRC)<sup>2</sup> as well as this Authority against the NIT No.EB/MCN/270 dated 29.05.2020 floated by Chief Municipal Officer, Municipal Committee Nawabshah *'the procuring agency'* for procurement of various works related to the *'sanitation of roads, streets, drainage lines, surface drains and fixing of paver blocks, etc.'*<sup>3</sup> whereby the appellants raised averments by claiming that they visited the procuring agency's office on 22.06.2020 for issuance of bidding documents in terms of Rule-20 of SPP Rules, 2010<sup>4</sup> but the Tender Clerk refused to issue the documents by expressly saying that these documents are available on the Authority's website. The appellants further claimed that they downloaded bidding documents from the Authority's website and subsequently approached the procuring agency on 23.06.2020 at 12.15 p.m.<sup>5</sup> to submit bids along with the supporting documents – including tender documents issuance fee and bid securities – and/ or to witness the opening of bids but they could find neither the tender box nor the Procurement Committee's (PC)<sup>6</sup> members. The appellants alleged that the procuring agency intended to award the procurement works on favoritism basis while defeating the object of open competitive bidding and bypassing the procurement principles as reflected under Rules-4 & 15(1) of SPP Rules, 2010<sup>7</sup>; hence, requested the authorities concerned to take

<sup>1</sup> Appellant # I: Fatima & Co.; and Appellant # II: M/s Reliant Trade Link

<sup>2</sup> Constituted under the chairmanship of Chairman Municipal Committee Nawabshah vide notification No.EB/MCN/4084/2018 dated 05.10.2018 Issued by the Municipal Committee Nawabshah

<sup>3</sup> Detailed description/ nature of procurement works can be accessed via instant procurement's NIT available on the PPMS website at ID # T00581-19-0002 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>4</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.

<sup>5</sup> The deadline for submission and opening of bids was 23.06.2020 at 01.00 p.m. and 0145 p.m., respectively – as per Corrigendum issued vide procuring agency's letter No.EB/MCN/285 dated 05.06.2020 also posted on the PPMS website [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>6</sup> Constituted under the chairmanship of Chief Municipal Officer, Municipal Committee Nawabshah vide notification No.SOI/LG/01-06/2017/S.B.A Issued by the Local Government Department

<sup>7</sup> Rules-4 & 15(1) provide 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. Open competitive bidding shall be the principal method of procurement, save as otherwise provided. Clause-aa of Sub section-2(1) defines the open competitive bidding as a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the

legal action against the PC Chairman for non-compliance with the rules and also issue directions for cancellation of the bidding process in terms of Rule-25 of SPP Rules, 2010<sup>8</sup>. In turn, this Authority (vide letters dated 24.07.2020) forwarded the appellants matter to the CRC with advice to redress the grievances and then furnish the decision to the appellants as well as this Authority within the stipulated period as specified under Rule-31(5) of SPP Rules, 2010<sup>9</sup>.

2. Subsequently, the appellants (vide letters dated 21 & 23.07.2020, respectively) preferred separate appeals, along with supporting documents<sup>10</sup> and review appeal fee<sup>11</sup>, by stating that the CRC had failed to decide their matter – complaints as referred above – within the stipulated time period; hence, the appellants requested the Authority to place their cases before the Review Committee<sup>12</sup> in terms of Rule-31(5) read with Rule-32(5) of SPP Rules, 2010<sup>13</sup>. In turn, the Authority (vide letter dated 30.07.2020) advised the appellant # II to clarify the specific number of work(s), against which the bid(s) was submitted or intended to be submitted to the procuring agency, for ensuring the maintainability of the case/ appeal before hearing by the Review Committee in terms of Rules-32(5) & (6) of SPP Rules, 2010<sup>14</sup>. In response, the appellant # II (vide letter dated 05.08.2020) confirmed his participation/ bid against the NIT's work listed at Sr. # 3 'providing & fixing steel iron shade for fish market M.C. Nawabshah having estimated cost of PKR 1.9 million'.

3. Accordingly, these cases/ appeals were taken up by the Review Committee for hearing in its meeting scheduled on 11.08.2020 at 11.30 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letters dated 28.07.2020 & 06.08.2020) to appear before the Committee on the scheduled date, time, and venue in terms of Rule-32(8) & (10) of SPP Rules, 2010<sup>15</sup>. In compliance, Mr. Zulfiqar Ali (Municipal Engineer) Mr. Abdul Razzak Shaikh (Chief Municipal Officer) Municipal Committee Nawabshah 'representatives of the procuring agency' and Mr. Kamran Ali Shaikh (Proprietor M/s Fatima & Co.) Mr. Muhammad Ali (M/s Reliant Trade Link) 'representatives of the appellants' appeared before the Committee.

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award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Bidding

<sup>8</sup> Rule-25 provides that (1) a procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal; (2) the procuring agency shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule(1); (3) 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; (4) the procuring agency shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds.

<sup>9</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>10</sup> The supporting documents received along with the appeals reflected the appellant # I bid against the NIT's work listed at Sr. # 15 'providing & fixing paver block from Hanif Arain House to Shafi-u-Rehman Jadoon House Farsi Bagah M.C. Nawabshah' as PKR 2.186 million, whereas the appellant # II, who preferred appeal through Advocate Shahabuddin A. Shaikh, did not clearly mention the number of work(s) against which the bid(s) was submitted.

<sup>11</sup> This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinidh.gov.pk/PPMS/>]

<sup>12</sup> The Review Committee shall comprise the [following]: (a) Managing Director; (b) Director General Audit Sindh or his nominee not below the rank of BS-19; (c) Two private members represented on the SPPRA Board; (d) An independent professional having expertise of relevant field concerning the procurement in question.

<sup>13</sup> Rule-32(5) provides that the bidder shall submit [following documents] to the Review Committee:- (a) a letter stating his wish to appeal to the Review Committee and the nature of the complaint; (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents; (c) copy of the decision of procuring agency/ complaint redressal committee, if any.

<sup>14</sup> Rule-32(6) provides that on receipt of appeal, along with all requisite information & documents, the Chairperson shall convene a meeting of the Review Committee within seven working days.

<sup>15</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.

## 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, over the instant procurements issues/ grievances.

### APPELLANTS' VERSION

5. Mr. Kamran Ali Shaikh '*the appellant # I*' apprised the Committee of his intention to submit bids, along with the requisite/ supported documents, against seven (7) works under procurement in question and in this regard, he approached the procuring agency's office on 23.06.2020 at 12.15 p.m. where he could find neither the tender box nor the PC members (except the Chairman); resultantly the entire bidding process needs to be canceled and re-invited in a transparent manner as per rules. The appellant contended that he lodged a complaint about this matter to the procuring agency's CRC, which called the meeting on 27.07.2020 after lapse of the specified time i.e. when the matter stood transferred and the appellant also preferred an appeal before this forum in terms of Rule-31(5) of SPP Rules, 2010<sup>16</sup>; hence, the appellant, meanwhile intimating the CRC, did not attend the meeting. The appellant further contended that he possesses probable evidence (a video recorded in the procuring agency's office on the scheduled date for submission and opening of the bids) showing his presence along with the bids and other contractors; however, such recording could not be viewed due to the appellant's USB device technical fault.

6. Mr. Muhammad Ali '*representative of the appellant # II*' apprised the Committee of his submission of the bid, along with the requisite/ supporting documents as per criteria, against the NIT's work listed at Sr. # 3 through courier service on 22.06.2020 that was received by the procuring agency on 23.06.2020 at 09.38 am<sup>17</sup> (before the deadline for submission of bids) in terms of Rule-24(2) of SPP Rules, 2010<sup>18</sup>. The appellant contended that he visited the procuring agency's office on 23.06.2020 at 12 noon to witness the opening of the bids where he could find neither tender box nor the PC members whose presence was mandatory as per law. The appellant further contended that he witnessed the availability/ receipt of his sealed envelope/ bid by the procuring agency's Tender Clerk who opened the sealed envelope in his (the appellant) presence before the scheduled time for the opening of the bids while blatantly violating the rules. The appellant also highlighted that he attended the CRC meeting in the procuring agency's office on 27.07.2020 where the CRC did not hold any proceedings to redress the grievances; therefore, he had to leave the office without any fruitful result.

### PROCURING AGENCY'S VERSION

7. Mr. Zulfiqar Ali and Mr. Abdul Razzak Shaikh '*representatives of the procuring agency*' at the outset denied all the allegations leveled by the appellants and stated that they are totally false in nature. The representatives contended that the PC quorum/ members were present in the procuring agency's office on the scheduled date and time, as specified in the bidding documents<sup>19</sup>, for submission and opening of the bids where all firms were served equal opportunity and resultantly thirty-eight (38) firms/ contractors participated among different works and also witnessed the opening of bids as per Rule-41(3) to (9) read together with Rule-7(2) of

<sup>16</sup> Ibid.

<sup>17</sup> TCS Tracking ID # 55002610282 reveals the appellant's envelope (bid) was received by Mr. Ghulam Muhammad on 23.06.2020 at 09.38 a.m. [<https://www.tcsexpress.com/Tracking>]

<sup>18</sup> Rule-24(2) provides that the bidders may submit bids on the bidding documents downloaded issued by the procuring agency or downloaded from the Authority's website along with tender fee, if any, by mail or by hand.

<sup>19</sup> Ibid.



SPP Rules, 2010<sup>20</sup>. As such, the PC carried out entire bidding process in a transparent manner that can be verified from the bidders' attendance sheet (including bidders' complete contact details) as posted along with the evaluation reports<sup>21</sup> on the Authority's website in terms of Rule-45 of SPP Rules, 2010<sup>22</sup>.

8. The procuring agency's representatives further contended that it is a general practice of the appellants to lodge complaints, leveling baseless allegations at various forums, to sabotage the procurement process in order to seek monetary benefits and injunction relief that can be traced from their instant complaints launched to authorities concerned (including the CRC) after passing more than twenty (20) days of the bids' opening. The representatives alleged that one of the appellants made contacts with the procuring agency to settle the matter otherwise he would approach the next forum for cancellation of the entire procurement process and the procuring agency, in response to it, advised him to follow the redressal procedure as laid down under the rules. The representatives further highlighted that the CRC (vide letter dated 22.07.2020) called its meeting for redressal of the aggrieved bidders' (M/s Noor Enterprises; M/s Siddique Engineering Works; and the appellants) grievances that was attended by two out of four complainants whose grievances were redressed.

- Engineer Munir Ahmed Shaikh (Member of Review Committee) pointed out that the appellant # II submitted his bid through mail that was also received by the procuring agency on time, then why the referred bid was not opened/ accepted by the PC?
  - ◆ The procuring agency's representatives in the first instance acknowledged and then refuted receipt of the appellant's mail (completed bid) through TCS. Simultaneously, the representative raised series of queries/ concerns over the appellant's submission of the bid through the mail due to various reasons viz. i. *how did the appellant come to know for the opening of the bids by the procuring agency on 23.06.2020?* ii. *why did the appellant submit his bid to the procuring agency through mail on 22.06.2020 (exactly a day before the deadline for submission of the bids)?* iii. *if the appellant had to submit the bid to the procuring agency through mail then it had to be submitted in the concerned wing (engineering wing) of the procuring agency;* iv. *why did the appellant (in person or through his representative) not attend the bids submission/ opening meeting to drop the bid into the tender box?*
- Syed Adil Gilani (Member of Review Committee) noted that the appellants (vide letters dated 11 & 13.07.2020) submitted their complaints to the CRC that could not decide the matters within seven days (latest by 21.07.2020); ultimately the matter stood transferred to the Review Committee and the appellants preferred an appeal before this forum in a

<sup>20</sup> Rules-7(2) & 41(3) to (9) provide that the procurement committee(s) comprising three members: all members shall form quorum. The bids shall be opened within one hour of the deadline for submission of bids. 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. The procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been permitted, shall be read aloud and recorded when opened. All bidders in attendance shall sign an attendance sheet. All bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened. The official chairing procurement committee shall encircle the rates and all the members of procurement committee shall each and every page of financial proposal. The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

<sup>21</sup> Bid Evaluation Reports at IDs # BE00581-19-0002-1 to 64 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

<sup>22</sup> Rule-45 provides that the 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's 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.

timely manner as prescribed under Rule-31(5) of SPP Rules, 2010<sup>23</sup>. Subsequently, he asked the procuring agency's representatives to confirm the current status of the procurement works;

- ◆ The procuring agency's representatives confirmed that they have not awarded any procurement contract yet as per rules.

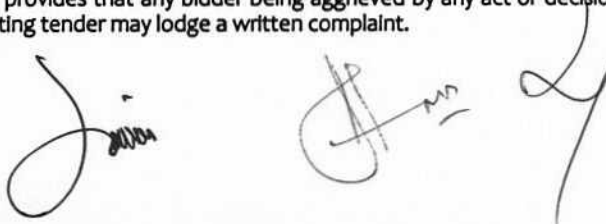
## REVIEW COMMITTEE'S FINDINGS

9. After hearing the parties at length, scrutiny of the procurement record, and discerning the applicable rules, the Review Committee observed that the procuring agency purportedly received and opened the bids against the NIT's sixty-two (62) works on 23.06.2020 and then posted the bid evaluation reports on the Authority's website on 09.07.2020. Subsequently, both the appellants (vide letters dated 13 & 11.07.2020, respectively) lodged individual complaints, with divergent matters as discussed/ examined herein-below, to the CRC that failed to redress/ decide the matter within the prescribed period i.e. latest by 21.07.2020 and ultimately these complaints stood transferred to this forum, which is responsible to judiciously decide the matter, when the appellants filed individual appeals along with requisite information/documents (vide letters dated 03 & 05.08.2020, respectively) in terms of Rules-31(3) & (5) of SPP Rules, 2010<sup>24</sup>:-

- **Appellant # I (M/s Fatima & Co.):** The appellant established contentions that he was present in the procuring agency's office on the scheduled date for submission/ opening of bids to submit bids along with the requisite documents against the NIT's seven (7) works that were not received/ accepted by the procuring agency and secondly, he could find neither tender box nor the PC members who had the primary responsibility to conduct the bidding process (bids opening and evaluation) as per rules. Per contra, the procuring agency's representatives denied the appellant's allegations by stating that there were thirty-eight (38) contractors who participated/ submitted bids, against the NIT's various works, that were publicly opened by the PC members on 23.06.2020. *The Review Committee after considering the rival contentions of the parties concluded that it is difficult to conclusively ascertain whether the appellant attended the procuring agency's office on 23.06.2020 to submit bid(s) or not as such allegation requires evidence and onus probandi, in this case, is on the appellant labeling the allegations. The Committee noted that merely submission of photocopies of the bid securities/ call deposits and bid documents along with an appeal does not warrant presence of the appellant in the procuring agency's office. The Committee further noted that if the appellant's bid was not received by the procuring agency on 23.06.2020 then he had to Instantaneously approach, along with the supporting documents/ evidence, to the CRC rather than waiting for anything else to get redressal of grievances; however, the appellant failed to opt such remedial step in a timely manner.*
- **Appellant # II (M/s Reliant Trade Link):** The appellant maintained that he submitted the bid against the NIT's work listed at Sr. # 3 through the mail (received by the procuring agency before the deadline for submission of the bids) that was not incorporated in the bid evaluation report. Per contra, the procuring agency's representative acknowledged and then refuted the receipt of the appellant's bid and also raised unjustified queries as to why did the appellant submit bid through courier service? Why did the appellant not attend the bid opening meeting? *The Review Committee after examining the contentions and concluded that it is the statutory right of bidders to submit bid(s) by hand or through mail to the*

<sup>23</sup> Ibid.


<sup>24</sup> Rule-31(3) provides that any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint.




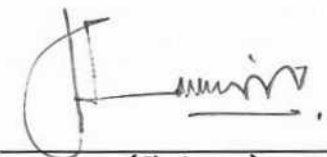
procuring agency; secondly, It is not obligatory for the bidder to make ensure his or his representative presence while opening of the bids as provided under the Rules-24(2) & 41(4) of SPP Rules, 2010<sup>25</sup>. The Committee noted that the appellant, in this case, submitted his bid through mail on 22.06.2020 that was received by the procuring agency on 23.06.2020 at 09.38 a.m. i.e. before the deadline for submission of the bids as per tracking history record accessible via the TCS website<sup>26</sup>, which cannot be rebutted until contrary evidence is provided by the procuring agency. Specifically, it was responsibility of the procuring agency to entertain the appellant's bid for opening and further evaluation as per parameters and essential conditions laid down in the bid document<sup>27</sup>.

## REVIEW COMMITTEE'S DECISION

10. Given the foregoing position/ findings, as mentioned under para-9, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeal lodged by the appellant # I in terms of Rule-32(7)(a) of SPP Rules, 2010<sup>28</sup>, and upheld the appeal lodged by the appellant # II. The Review Committee further decides that since the procuring agency has not awarded or signed the procurement contract for the NIT's work listed at Sr. # 3 'providing & fixing steel iron shade for fish market M.C Nawabshah' – against which the appellant # II quoted/ submitted bid – therefore, the procurement proceedings specific to that work shall be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010<sup>29</sup>, and fresh tenders be floated in terms of Rule-26 of SPP Rules, 2010<sup>30</sup>. Compliance of the 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/ 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>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Also refer to the Review Committee's findings under para # 13 bidders' presence/ bids submission (M/s F.B. Enterprises and Anors v. Provincial Highways Division Hyderabad accessible via <http://www.pprasindh.gov.pk/rpdecisions/80RCPHDHyd23072020.pdf>)

<sup>28</sup> Rule-32(7)(a) 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

<sup>29</sup> Rule-32(7)(f) provides that [the Review Committee may] direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.

<sup>30</sup> Rule-23 provides that the procuring agency may re-issue tenders in case, the bidding process has been canceled...