



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1345/2019-20 /0583

Karachi, dated the 02nd September, 2020

To,

The Secretary to Government of Sindh,
Works & Services Department,
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 Abdul Hafeez Kolachi v. Provincial Highway Division Sukkur*) held on 11th August 2020, for your information and further necessary action, under intimation to this Authority, at the earliest.


02/09/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Chief Engineer Highways, Sukkur.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Superintending Engineer Provincial Highways Circle, Sukkur.
4. The Executive Engineer Provincial Highway Division, Sukkur.
5. 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.***]
6. The Staff Officer to the Chairman/ Members Review Committee.
7. M/s Abdul Hafeez Kolachi, Office # 21, Kareem Plaza, Block-8, Sector-3, Sukkur Township.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1345/2019-20 /0583 Karachi, dated the 02nd September 2020

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

REVIEW APPEAL

Between:

M/s Abdul Hafeez Kolachi

v.

Provincial Highway Division Sukkur

NIT ID Number

T00588-19-0006 dated 21.05.2020

FACTS AND BACKGROUND

The appellant, M/s Abdul Hafeez Kolachi, Government Contractor Sukkur, lodged a complaint (vide letter dated 08.06.2020¹) addressed to the Complaints Redressal Committee (CRC)² – and copy endorsed to this Authority and others – against the NIT No.TC/G-55/323/2020 dated 15.05.2020 floated by Executive Engineer, Provincial Highway Division Sukkur ‘the procuring agency’ for procurement of eight (8) works related to the ‘widening/ reconditioning/ rehabilitation/ improvement/ construction of roads’³ whereby the appellant claimed that he downloaded bid documents against the NIT’s two works as listed at Sr. # 1 & 8 from the Authority’s website and then visited the procuring agency’s office to submit the bids along with supported/ requisite documents on 08.06.2020⁴ in terms of Rule-24(2) of SPP Rules, 2010⁵. The appellant raised averments that the Chairman Procurement Committee (PC)⁶, in absence of the other members, insisted the appellant as well as other contractors to submit blank tender documents for the award of procurement contracts on favoritism basis, failing which the bidders would be marked as absent and/ or rejected and as such, the bids submission/ opening process did not take place without issuing any notice for next schedule. Therefore, the appellant prayed before the CRC for issuing directions to the procuring agency to cancel and re-invite the bids by strictly ensuring adherence to the procurement principles (transparency and fairness, etc.) and also complying with the procurement rules and regulations. In turn, this Authority (vide letter dated 07.07.2020) 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) *ibid*⁷.

¹ The complaint received to this Authority on 24.06.2020

² Constituted under the chairmanship of Superintending Engineer, Highway Circle Sukkur vide notification No.E&A(W&S)3-9/2014 dated 16.05.2019 issued by the Works & Services Department

³ Detailed description/ nature of procurement works can be accessed via instant procurement’s NIT available on the PPMS website at ID # T00588-19-0006 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁴ Bids were scheduled to be received and opened on 08.06.2020 at 10.30 a.m. and 11.00 a.m., respectively, as per bid docs.

⁵ 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.

⁶ Constituted under the chairmanship of Executive Engineer, Provincial Highway Division Sukkur vide notification No.E&A(W&S)3-9/2013 dated 10.08.2018 issued by the Works & Services Department

⁷ 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

2. Subsequently, the CRC (vide letter dated 09.07.2020) furnished its decision concerning the grievances raised by the appellant whereby the CRC unanimously held as under⁸:

'The complainant is found absent without any intimation, which shows that he has lost his interest in the matter. However, in the larger interest of justice, it has been unanimously decided to decide the complaint as per its merit. The perusal of NIT produced by the Executive Engineer Provincial Highway Division Sukkur shows that requirement for submission of CDR for work mentioned at Sr. # was PKR 2.621 million, whereas the CDR for work mentioned at Sr. # 8 was PKR 2.723 million. The photocopies of both CDRs produced with the complaint show that in all complainants has deposited PKR 2.5 million instead of PKR 5.344 million, therefore, the complainant was not fulfilling the requirements to participate in the bidding process for works mentioned in Sr. # 1 & 8, hence it appears that complainant finding his CDRs lowest from the required amount intentionally did not drop tenders in the box and he instead of waiting for the scheduled time i.e. 10.30 a.m. & 11.00 a.m. left office at 10.00 a.m. i.e. half an hour before the scheduled time. The complainant in the third paragraph of the complaint has mentioned time as 10.00 a.m. and in whole the complaint, he has not mentioned that at the time of receiving tenders viz. 10.30 a.m. and time of opening viz. 11.00 a.m. he was present in the office. The complainant has also failed to nominate any other contractor who was asked for submission of blank tenders duly signed by the Executive Engineer Provincial Highway. Looking into the above facts and circumstances, the Complaints Redressal Committee is of the unanimous view that complainant was not fulfilling the required criteria for participation in the bidding process, admittedly he was not present at the office at the scheduled time of receiving the tenders and the opening of the same, hence the complaint has been filed without any justification and proof, therefore, the complaint does not merit any consideration, which stands dismissed.'

3. Given the CRC's decision, the appellant preferred an appeal, along with review appeal fee⁹ (vide letters dated 10 & 16.07.2020), to this Authority whereby the appellant submitted that the CRC called its meeting on 30.06.2020 for redressal of grievances and simultaneously the procuring agency's Tender Clerk registered an FIR against the appellant; therefore, the appellant could not appear before the CRC. The appellant further submitted that the procuring agency represented false facts before the CRC about the appellant's bid securities/ call deposits amounts when the bids' submission/ opening process was not ensured; hence, the appellant requested the Authority to place the matter before the Review Committee and also restrain the procuring agency from awarding procurement contracts in terms of Rule-32(1) *ibid*¹⁰.

4. Accordingly, the appellant's case, after initial scrutiny/ examination by the Authority, was taken up by the Review Committee for hearing in its meeting scheduled on 28.07.2020 at 12 p.m. and in this regard, the Authority (vide letter dated 21.07.2020) issued summons to the parties concerned to appear in person or depute an authorized representative(s) along with relevant documents and evidence before the Committee on the scheduled date, time, and venue in terms of Rule-32(8) & (10) *ibid*¹¹. In response, the Chairman CRC requested the Authority to reschedule

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.

⁸ Refer to the CRC's decision accessible via the web <http://www.pprasindh.gov.pk/committee/75CRCHDCSuk15072020.pdf>

⁹ This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

¹⁰ 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.

¹¹ 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

the meeting until the posting of an officer against the vacant position of Executive Engineer, Provincial Highway Division Sukkur¹². Due to which, this Authority (vide letter dated 27.07.2020) rescheduled the hearing on 11.08.2020 by issuing another summons to the parties concerned. In compliance, the following representatives appeared before the forum:

Table-1

Name of Representative	Designation/ Organization
Procuring Agency	
Syed Muzamil Muzafar Musavi	Superintending Engineer, Provincial Highway Circle Sukkur
Mr. Muzafar Ali Seelro	Executive Engineer, Provincial Highway Division Sukkur
Mr. Muhammad Aslam	Tender Clerk, Provincial Highway Division Sukkur
Appellant	
Mr. Abdul Hafeez Brohi	Proprietor, M/s Abdul Hafeez Brohi

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 appellant to present the case/ version over the instant procurement issues/ grievances.

APPELLANTS' VERSION

6. Mr. Abdul Hafeez Kolachi, Proprietor M/s Abdul Hafeez Kolachi '*the appellant*' apprised the Committee of his intention to submit bids against the NIT's works listed at Sr. # 1 & 8 '*widening/ reconditioning of the road from Ghotki to Qadirpur mile 0/0-3/6 (6.00 Kms) and construction/ widening/ reconstruction of the road from Bhiro Bridge to village Trighatl mile 0/0-4/5 (7.5 Kms) having an estimated cost of PKR 52.42 and 54.45 million, respectively*' and in this regard, he approached the procuring agency's office on 08.06.2020 at 10.00 a.m. to submit bids, along with the requisite/ supported documents, where he could find neither the tender box nor the PC members (except the Chairman). The appellant contended that the Chairman PC insisted the appellant to submit blank tender documents (duly signed and stamped) for the award of procurement contracts on favoritism basis and reciprocally, the Chairman PC offered the appellant to avail financial benefits; however, the appellant denied doing so and thereafter the Chairman PC without receiving/ opening the bids/ any verbal or written intimation left his office¹³; resultantly the entire bidding process needs to be canceled and re-invited in an open and transparent manner as per rules.

7. The appellant further contended that he, being aggrieved by the procuring agency's act, lodged a written complaint to the CRC in terms of Rule-31(3) *ibid*¹⁴ that called its meeting on 30.06.2020. Meanwhile, the procuring agency's Tender Clerk registered an official FIR¹⁵ against the appellant on 26.06.2020 to restrict the appellant from appearing before the CRC to contest/ defend the case. The appellant raised an averment that the procuring agency announced/ posted the bid evaluation results on the PPMS website¹⁶ whereby various participated bidders were

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.

¹² The Chairman CRC informed that the services of Executive Engineer Provincial Highway Division Sukkur/ Chairman Procurement Committee have been placed under suspension vide Services General Administration & Coordination Department's notification No.SOIII(S&GAD)3-46/2020 dated 21.07.2020 and at present, the said post is lying vacant.

¹³ The appellant submitted copies of captured pictures showing the procuring agency and its staff.

¹⁴ Rules-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.

¹⁵ The FIR registered by Muhammad Aslam (Tender Clerk) on 26.06.2020 at 05.00 p.m. reflects that Mr. Abdul Kareem S/o Abdul Hafeez Kolachi and other accused persons visited the procuring agency's office on 26.06.2020 at 03.00 p.m. and assaulted the office staff and also created hurdles in the office work etc.

¹⁶ Bid Evaluation Reports at IDs # BE00588-19-0006-1 to 8 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

declared as qualified who even through did not fulfill the essential criterion of PEC registration under the relevant category as outlined in bidding documents that need to be verified/ cross-examined and meanwhile the procuring agency be directed to cancel all the works under instant procurement.

- Syed Adil Gilani (Member of Review Committee) asked the appellant about his completed and/ or on-going projects under similar nature of procurement works;
 - ◆ The appellant stated that his firm has undertaken various procurement works under similar nature of works and some projects (construction/ rehabilitation of roads) are currently on-going in Districts Ghotki and Sukkur etc.

PROCURING AGENCY'S VERSION

8. Mr. Muzafar Ali Seelro, Executive Engineer, Provincial Highway Division Sukkur 'representative of the procuring agency' submitted that the instant bidding process was undertaken under the chairmanship of Mr. Masroor Hassan Solangi (the then Executive Engineer Provincial Highway Division Sukkur) and he opposed the appellant's allegations by raising various points which may be summarized/ reproduced hereunder¹⁷:

Table-2

Sr. #	Allegation raised by the appellant ¹⁸	Reply by the procuring agency
I.	That, I downloaded the bidding documents from the website of SPPRA and filled my rates, but on dropping and opening date 08.06.2020, Executive Engineer Provincial Highway Division Sukkur did not conduct dropping and opening process and his committee members were also not present.	<p>Vehemently denied. It is stated that the bids were invited through wide publicity in this regard all SPP Rules were fulfilled.</p> <p>On 08.06.2020 deadline of receiving and opening of bids, all the interested contractors were present and dropped their sealed bids in the tender box available before the procurement committee. The Chairman and members of the procurement committee were present on the scheduled time and place for the opening of bids. The attached copy of the attendance sheet of participated contractors as well as the procurement committee members is evidence (copy enclosed)¹⁹.</p> <p>As per the deadline, the drop box was opened. Each and every bid was announced loudly and encircled the lowest rates by the Chairman of the Committee. After the announcement of results, the bid evaluation report was prepared by the procurement committee and hoisted the same on the PPMS website²⁰.</p> <p>The allegations leveled by the contractor are baseless and beyond the facts.</p> <p>The factual position is that the contractor neither participated till the deadline nor dropped his bids in the tender box; however,</p>

¹⁷ The Executive Engineer Provincial Highway Division Sukkur submitted this statement vide letter bearing No.TC/G-55/565/2020 dated 06.08.2020 – a copy of the referred letter is available on the Authority's record

¹⁸ As per appeal preferred by the appellant before the Review Committee

¹⁹ The documents including attendance sheets and minutes of the meeting are accessible along with the evaluation reports

²⁰ Ibid.

		false allegations have been framed against the procurement process of this Division for gaining undue favor from undersigned and trying to sabotage the fair and transparent bidding procurement of NIT in question.
ii.	That I made a complaint before the CRC and they called us on 30.06.2020 for hearing of the case, but on the other side they filed FIR against us on 26.06.2020 by their Tender Clerk so could not appear before the CRC.	<p>It is apprised that the contractor neither participated till the deadline of receiving and opening of bids nor dropped his bids in the tender box; however, he had made false and baseless allegations against this procurement process and made many complaints against this office for unfair preferences. As such complaint is a habitual complainant.</p> <p>The complainant approached the CRC for which he was called by the Chairman CRC on 30.06.2020 through his office letter No.BB(1)/560 dated 24.06.2020.</p> <p>Prior to the CRC meeting on 26.06.2020, the complainant's sons and other relatives/ friends attended the office of the undersigned and started shouting and threatening to Tender Clerk for their illegal demand. Due to their intolerance behavior, such an incident report was reported immediately in the Police Station A-Section Sukkur and lodged FIR against them (copy of FIR is attached for perusal).</p>
iii.	That, in CRC meeting the Executive Engineer Provincial Highway Division Sukkur has raised false allegations against us that our CDR amount was less.	Vehemently denied. No any document/ call deposits received from complainant in NIT in question.
iv.	Then required, but in real there was not any bids' dropping and opening process then how did the Executive Engineer Provincial Highway Division Sukkur can say claim the CDR amount was short (copy of CRC meeting enclosed).	On 08.06.2020, the sealed bids were opened before the procurement committee; hence no any anomaly or deviation regarding opening and dropping process was made by this procuring agency.
v.	That, I am also attaching the copy of CDRs and pay order as proof (copy enclosed).	It is submitted that neither contractor participated nor dropped his bids in the tender box. However, such documents do not prove that he participated in the bidding process.
vi.	It is, therefore, requested to kindly constitute Review Committee as defined in Rule-32 of SPPRA for redressal of the complaint and direct the XEN Provincial Highway Division Sukkur not to issue work order till decision by Review Committee.	It is stated that the bids were already hoisted by following all SPPRA rules and work orders in this regard have been issued after due time to the lowest bidders.

9. Syed Muzamil Muzafar Musavi, Superintending Engineer, Provincial Highway Circle Sukkur '*representative of the procuring agency*' argued with emphasis that the CRC (vide letter dated 24.06.2020) convened a meeting on 30.06.2020 whereby the appellant was afforded an opportunity to appear along with relevant documents (including call deposits) for redressal of grievances in a judicious manner; however, the appellant intentionally did not attend the meeting despite getting protective bail on 29.06.2020 by the Honorable High Court of Sindh²¹. The procuring agency's representative asserted that the appellant's case needs to be dismissed on the grounds of non-submission of original copies of call deposits/ bid securities '*must condition*' having proportionate amount equivalent to PKR 5.344 million as required for the NIT's works listed at Sr. # 1 & 8 against which the appellant has approached this forum. Besides that, the appellant's other concern relating to the bidders' qualification, based on the essential conditions of the bid documents, under instant procurement should not be given any considerable weight as it was not part of the complaint submitted earlier by the appellant before the CRC.

10. Muhammad Aslam, Tender Clerk, Provincial Highway Division Sukkur '*representative of the procuring agency*' submitted that the appellant along with other individuals visited the procuring agency's office on 26.06.2020 and assaulted him to gain undue financial benefits. Resultantly, he registered report in the police station, after seeking permission from the then Executive Engineer who was absent when the incident occurred, for taking action against the accused individuals.

- Syed Adil Gilani and Engineer Munir A. Shaikh (Members of Review Committee) asked the procuring agency's representatives about the current status of procurement works;
 - ◆ The procuring agency's representatives confirmed that the awards of procurement contracts were made on 17.07.2020 but the contract documents have not been posted on the Authority's website due to the pendency of case before this forum.
- Subsequently, the committee members asked the procuring agency's representatives to submit copies of the proposals along with supporting documents, as submitted by the bidders along with the bids, to this Authority for assessing and verifying an averment raised by the appellant concerning the qualification of bidders despite non-conformance with the essential criterion – PEC registration under the relevant category – given in the bidding documents. Simultaneously, the Authority (vide letter dated 13.08.2020) advised the appellant to submit the record (complete set of original documents) prepared with the intention to submit bids to the procuring agency for the examination of the case as per rules or supporting evidence.
 - ◆ The procuring agency's representatives submitted the procurement record to this Authority on 12.08.2020 that was examined to the extent of an averment raised by the appellant (please refer to the paras # 16 & 17).

REVIEW COMMITTEE'S FINDINGS

11. After hearing the parties at length, scrutiny of the available procurement record, and discerning the applicable rules, we have observed that the PC purportedly received and opened the bids against the NIT's works on 08.06.2020 at 10.30 a.m. and 11.00 a.m., respectively, and

²¹ The Superintending Engineer Provincial Highway Circle submitted a letter bearing No.BB(1)774/2020 dated 24.07.2020 with a request to dismiss the appellant's case on account of no-submission of original copies of call deposits – a copy of the referred letter is available on the Authority's record

after undertaking the bidders' post-qualification, the procuring agency announced the bid evaluation reports in terms of Rule-45 ibid²² – summary of the evaluation reports reads as under:

Table-3

SUMMARY OF THE NIT's WORKS (PKR IN MILLION) ²³						
NIT's work #	Estimated cost	Bids results announcement date	Total bids received	Lowest submitted bidder ²⁴	Lowest evaluated bidder ²⁵	Contract Awarding date
i.	52.4226	27.06.2020	5	52.0686 M/s ZMH Construction Ltd.	52.0686	01.07.2020
ii.	92.6802	12.06.2020	6	98.0768 M/s Naseem Ahmed Shah	97.0768	17.06.2020
iii.	77.2200	15.06.2020	3	76.1876 M/s Ali Builders	76.1876	19.06.2020
iv.	88.3246	19.06.2020	6	86.9151 M/s Niaz Ali	86.9151	24.06.2020
v.	237.7468	12.06.2020	6	221.8252 M/s Naseem Ahmed Shah	221.8252	15.06.2020
vi.	179.1260	12.06.2020	6	178.0347 M/s Al-Muzamil Shaikh Co.	178.0347	17.06.2020
vii.	140.0000	04.07.2020	4	124.9051 M/s ZMH Construction Ltd.	124.9051	21.07.2020
viii.	54.4597	15.06.2020	5	53.8764 M/s Hassan Enterprises	53.8764	17.07.2020

12. In this case, the appellant has challenged the entire procurement process mainly on the grounds that he was deprived of his right by the procuring agency to submit bids on the pretext to favor specific bidders for the award of procurement contracts while defeating the purpose and objectivity of open competitive bidding. Secondly, the PC marked various bidders as qualified who even did not fulfill the essential condition of the PEC registration under relevant category.

13. Turning to each specific issue raised in this case, the appellant contended that he was present there in the procuring agency's office on 08.06.2020 at 10.00 a.m. to submit bids against the NIT's two works as listed at Sr. # 1 & 8 where he could find neither the tender box nor the PC members, except the Chairman who insisted to submit blank tender documents that were denied by the appellant. The appellant in support of his contention submitted copies of various photographs. Per contra, the procuring agency's representatives vehemently denied the allegations leveled by the appellant by submitting that all the contractors/ bidders who intended to submit bids were allowed to participate and drop their bids in the tender box within the scheduled date and time (08.06.2020 at 10.30 a.m.) and subsequently the PC opened the tender box where each bid was announced loudly and encircled by the Chairman of the committee. The Chairman CRC contended that the appellant was afforded an opportunity to appear along with relevant documents before the CRC on 30.06.2020 where the appellant and/ or his representative failed to appear. The Chairman CRC further contended that the appellant's case needs to be

²² 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 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.

²³ The data is based on the procurement record available via the PPMS website and also submitted by the procuring agency
²⁴ Clause-w of Sub rule-2(1) ibid defines the lowest submitted price as the lowest price quoted in a bid, which is otherwise not substantially responsive.

²⁵ Clause-v of Sub rule-2(1) ibid defines the lowest evaluated bid as a bid most closely conforming to the evaluation criteria and other terms and conditions specified in the bidding document, having lowest evaluated cost.

dismissed on the grounds of non-submission of original copies of call deposits/ bid securities having proportionate amount equivalent to PKR 5.344 million as required for the NIT's works listed at Sr. # 1 & 8 against which the appellant has approached this forum. *The Review Committee after considering the rival contentions of the parties examined the issue and concluded that it is difficult to conclusively ascertain whether the appellant attended by the procuring agency's office on 08.06.2020 to submit bids or not. Mere submission of photographs does not establish the appellant's claim as it raises a series of questions for instance – When these photographs were captured? Who did capture these photographs? Was the appellant present in the procuring agency's office along with his bids on the scheduled date and time for submission of the bids? Did the appellant submit bids but not received by the procuring agency? The coda of the questions renders the evidence unreasonable and improper to rely on it for deciding the issue in hand. On the other hand, the Review Committee endorses the Chairman CRC version to some extent for checking the appellant's call deposits having proportionate amount equivalent to PKR 2.621 and 2.723 million as required for the NIT's impugned works and in this regard, the Review Committee (vide letter dated 13.08.2020) afforded another opportunity to the appellant to submit the record – complete set of original documents prepared with the intention to submit bids to the procuring agency for further examination/ decision.*

14. The appellant, in compliance of the aforementioned directions, submitted copies of the original record to this Authority on 18.08.2020 that was examined and entirely found relating with the NIT's one work as listed at Sr. # 1, whereas, he claimed for preparation/ intention to submit bids against the NIT's two works listed at Sr. # 1 & 8. *It raises a key question as to why the appellant submitted the documents against the NIT's one work when he claimed, from the infancy stage, for his intention to submit bids along with the supporting documents against the NIT's two works. A close scrutiny of the appellant's record (as enclosed along with the bid) further reflects that:*

- The appellant enclosed copy of a bank certificate, issued by the Bank Islami on 17.06.2020, an excerpt of which is reproduced herewith 'we further certify that the balance in the subject account at close of business on 16.06.2020 stood as PKR 20,903,929.26 only.' The Review Committee noted that the referred certificate was a mandatory requirement for bidders' eligibility as mentioned at Sr. # 10 of the NIT²⁶ and the appellant enclosed a copy of the certificate to qualify the mandatory criteria. However, a basic question arises as to how the appellant could enclose the certificate, issued by the bank on 17.06.2020, along with his bids that were claimed for submission to the procuring agency on 08.06.2020;
- Secondly, the appellant enclosed copy of annual audit report, which shows annual turnover for the financial years 2017-18 & 2018-19 as PKR 8.261 & 6.197 million, respectively, whereas the mandatory conditions # 6 & 7 mentioned under the NIT's eligibility criteria²⁷ (work # 1) required the bidders to have annual turnover as PKR 108.8452 million in last three years;
- Thirdly, the appellant enclosed copies of the work orders with various costs (as tabulated hereunder), whereas, the mandatory condition # 2 mentioned under the NIT's eligibility criteria²⁸ required the bidders to have completed at least three (3) works of the same specification and cost during past three (3) years.

²⁶ Certificate of the bank showing creditworthiness at least 25% of the estimated cost of work applied along with bank statements.

²⁷ Annual turnover at least twice per annum, the estimated cost of work applied in last three years. Annual audited reports of last three years from registered audit firm.

²⁸ At least three (3) works of same specifications and nature of equivalent or more cost completed during past three years duly supported with completion certificates.

APPELLANT'S WORK ORDERS (PKR IN MILLION) ²⁹			
Sr. #	Issued by	Issued on	Amount
I.	Provincial Buildings Division Sukkur	27.11.2019	**30
II.	Provincial Buildings Division Sukkur	21.11.2019	7.300
III.	Provincial Buildings Division Sukkur	21.11.2019	9.609
IV.	Provincial Buildings Division Sukkur	21.22.2019	4.916
V.	Provincial Buildings Division Sukkur	21.11.2019	4.998
VI.	Provincial Buildings Division Sukkur	21.11.2019	5.802
VII.	Provincial Buildings Division Sukkur	21.11.2019	4.927
VIII.	Provincial Buildings Division Sukkur	21.11.2019	5.718
IX.	Provincial Buildings Division Sukkur	21.11.2019	5.787
X.	Buildings (Works & Services) Department Khairpur	02.05.2018	3.718
XI.	Provincial Highways Division Sukkur	21.03.2018	2.909
XII.	Highways Division Sukkur	20.03.2018	2.909
XIII.	Buildings Division Sukkur	12.03.2018	2.959
XIV.	Provincial Buildings Division Sukkur	27.04.2015	4.056
XV.	Provincial Buildings Division Sukkur	27.04.2015	4.060
XVI.	Education Works Division Sukkur	02.04.2014	9.345
XVII.	Buildings Division Sukkur	17.04.2014	5.528
XVIII.	Public Health Engineering Division Sukkur	06.02.2013	10.772
XIX.	Provincial Buildings Division Sukkur	29.12.2012	3.869
XX.	Sukkur Electric Power Company	23.12.2012	7.605
XXI.	Sukkur Electric Power Company	29.11.2012	7.605
XXII.	Provincial Buildings Division Sukkur	19.03.2012	22.437
XXIII.	Provincial Buildings Division Sukkur	18.03.2012	22.437
XXIV.	Buildings Division Sukkur	17.02.2012	17.200
XXV.	Provincial Buildings Division Sukkur	07.11.2011	2.923
XXVI.	Provincial Buildings Division Sukkur	18.01.2011	22.664
XXVII.	Provincial Buildings Division Sukkur	04.03.2010	2.499
XXVIII.	Provincial Buildings Division Sukkur	29.06.2009	16.571
XXIX.	Provincial Buildings Division Sukkur	29.06.2009	7.136
XXX.	Provincial Buildings Division Sukkur	29.06.2009	10.384
XXXI.	Provincial Buildings Division Sukkur	20.06.2009	5.250
XXXII.	Provincial Highway Division Sukkur	21.04.2009	6.327
XXXIII.	Education Works Sukkur	23.10.2007	4.189
XXXIV.	Provincial Buildings Division Sukkur	20.10.2007	3.694
XXXV.	Public Health Engineering Division Jacobabad	20.01.2000	0.889
XXXVI.	Public Health Engineering Division Shikarpur	10.12.1999	1.414
XXXVII.	Public Health Engineering Division No. I Larkana	02.12.1999	0.767
XXXVIII.	Public Health Engineering Division No. I Khairpur	01.12.1999	0.920

15. It is significant to note that every bidder has a statutory right to participate in the bidding process regardless of its conformance with the eligibility criteria and assessment of which is the core responsibility of the procurement committee as provided under Rule-8 read with Rule-42(1) *ibid*³¹. However, *the objective of findings (as under para-14 above) by this forum is to decide the*

²⁹ The data is based on the record submitted by the appellant

³⁰ Quoted rates = PKR 0.462 million – partial amount is mentioned

³¹ Rules-8 & 42(1) provide that the procurement committee(s) shall be responsible for; (1) preparing and/ or reviewing the bidding documents; (2) carrying out technical as well as financial evaluation of the bids; (3) preparing evaluation report as

matter holistically by taking into account all the legal and factual aspects of case, which does to seem to support the appellant to the extent of depriving of his right to participate.

16. The appellant's second issue, in this case, relates to the qualification of various bidders who even did not fulfill the mandatory criterion of the PEC registration as required under the eligibility/ evaluation set forth in the bidding documents. Looking into the gravity of the matter, the Review Committee examined the bidders PEC registration' certificates and concluded as under:

Table-5

BIDDERS' PEC REGISTRATION STATUS ³² (PKR IN MILLION)				
NIT's work #	Estimated cost	Required PEC registration category ³³	Name of Bidder	Bidder's PEC registration ³⁴ category/ number
i.	54.4226	C-5	M/s ZMH Construction Pvt. Ltd.	C3/ 5972
			M/s Nawab Khan & Brothers Construction	C3/ 5601
			M/s Soomar Khan Mahar	C3/ 5517
			M/s Jeelani Construction Company	C4/ 9860
			M/s Ashique Ali Abbasi	C4/ 11426
ii.	92.6802	C-4	M/s Naseem Ahmed Shah	C1/ 1331
			M/s Ashique Ali Abbasi	C4/ 11426
			M/s Muhammad Zafar Mirani	C4/ 11385
			M/s Wazir Ali Mahar	C3/ 5238
			M/s Nawab Khan & Brothers Construction	C3/ 5601
			M/s Soomar Khan Mahar	C3/ 5517
iii.	77.2200	C-4	M/s Ali Builders	C2/ 1432
			M/s Nawab Khan & Brothers Construction	C3/ 5601
			M/s Ghulam Murtaza Ghumro	C3/ 5149
iv.	88.3246	C-4	M/s Niaz Ali	C3/ 4932
			M/s Nawab Khan & Brothers Construction	C3/ 5601
			M/s Jalil Ahmed Mahar	C3/ 4563
			M/s Al-Ameer Enterprises	C4/ 3456
			M/s Reliant Trade Link	C3/ 3349
			M/s Ashique Ali Abbasi	C4/ 11426
v.	237.7468	C-3	M/s Naseem Ahmed Shah	C1/ 1331
			M/s Nawab Khan & Brothers Construction	C3/ 5601
			M/s Muhammad Zaffar Mirani	C4/ 11385*
			M/s Wazir Ali Mahar	C3/ 5238
			M/s Shaikh Abdul Qayyum	C2/ 2558
			M/s Ashique Ali Abbasi	C4/ 11426*
vi.	179.1260	C-4	M/s Al-Muzamil Shaikh Construction Co.	C4/ 13089
			M/s Wazir Ali Mahar	C3/ 5238
			M/s Ashique Ali Abbasi	C4/ 11426
			M/s Waqar Traders	C5/ 15994*
			M/s Ghulam Murtaza Ghumro	C3/ 5149
			M/s Nawab Khan & Brothers Construction	C3/ 5601
vii.	140.0000	C-4	M/s ZMH Construction Pvt. Ltd.	C3/ 5972

provided in Rule-45; (4) making recommendations for the award of contract to the competent authority; (5) perform any other function ancillary and incidental to the above. All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.

³² https://www.pec.org.pk/fee_Pakistani.aspx

³³ Refer to the column-III of the NIT's table

³⁴ <https://verification.pec.org.pk/vf/index.aspx>

			M/s Wazir Ali Mahar	C3/ 5238
			M/s Al-Muzamil Shaikh Construction Co.	C4/ 13089
			M/s Nawab Khan & Brothers Construction	C3/ 5601
viii.	54.4597	C-5	M/s Hassan Enterprises	C4/ 5397
			M/s Nawab Khan & Brothers Construction	C3/ 5601
			M/s Lutufullah Bhanbhro	C4/ 13138
			M/s Jalil Ahmed Mahar	C3/ 4563
			M/s Hamadullah Abbasi	C5/ 13545

The lowest evaluated bidder as per bid evaluation reports

- * PEC registration below the required category/ limit

17. It is significant to note that the standard operating procedure of single stage one envelope bidding procedure required the PC to undertake the post-qualification/ evaluation of the lowest submitted bidder(s) to determine his responsiveness as per information or documents required and so provided; if the lowest submitted bidder failed to be responsive then the similar exercise was required to be repeated for the second lowest bidder and so on till responsive bidder or the lowest evaluated bidder was not determined as per Clauses-7.9.1 & 1.17 of the Authority's Procurement Regulations³⁵ read with Rules-42(1) & 49 *ibid*³⁶ (refer to para # 18 for procurement observations).

REVIEW COMMITTEE'S OBSERVATIONS

18. The Review Committee, apart from the appellant's contention, examined the procurement documents and observed that the procuring agency failed to comply with the following rules and policy instructions while undertaking the instant procurement process:-

- The procuring agency was required to furnish compliance or proceed accordingly to the NIT and BERs' observations as conveyed by this Authority through PPMS website on 22.05.2020 & 30.06.2020³⁷; however, the procuring agency did not pay any heed towards rectification of these observations on time and awarded the procurement contracts;
- The procuring agency was required to verify the bid securities/ call deposits, submitted by the bidders along with their bids, in terms of Rule-38(3) *ibid*³⁸ read with this Authority's policy instructions circulated vide letters 23.07.2019 and 15.06.2020³⁹. It was noted that the lowest evaluated bidder M/s Ali Builders submitted the bid security/ call deposit having CDR Number 105116/0 issued by the Sindh Bank on 12.03.2020 i.e. even before floating the NIT in question, which raises a question whether the instrument covered the required bid validity period or not;

³⁵ Clauses-7.9.1(b) & 1.17 provide that all bids received shall be opened and evaluated in the manner/ criteria specified 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 same exercise is repeated for 2nd lowest bidder and so on till responsive bidder or lowest evaluated bidder is determined. Responsive bid means a bid that contains no material deviation from, or reservation to, the terms, conditions and specifications given in the bidding document. In case bids are technically non-responsive bids, financial bids are not opened and returned to the bidders.

³⁶ Rule-49 provides that 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.

³⁷ The NIT and BERs' observations can be accessed along with the NIT's comments section [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender/T00588-19-0006&BE00588-19-0006-1to8>]

³⁸ Rule-38(3) provides that the procuring agency shall get the bid security verified in the [following] form or manner: (a) all bid securities of contracts with estimated cost up to Rs. 50.00 million (rupees fifty million) shall be verified by the issuing agency; (b) all bid securities of contracts with estimated cost above Rs. 50.00 million shall be verified by the Head Office of the issuing agency.

³⁹ <http://www.pprasinhd.gov.pk/policies/PolicyLetter230719.PDF>
<http://www.pprasinhd.gov.pk/policies/PolicyLetter15062020.pdf>

- The PC's members were required to sign each page of financial proposals, submitted by the bidders, in terms of Rule-41(8) *ibid*⁴⁰. *An objective to ensure compliance with the referred rule is to ensure that bids once opened do not get any alteration or modification in contravention with the procurement principles (fairness and transparency etc.);*
- The PC's members were required to evaluate the bids as per evaluation criteria and other terms and conditions outlined in the bidding documents in terms of Rules-8 & 42(1) *ibid*⁴¹. It is apparent from bidders qualification reports⁴² that the PC did not take into account whether the bidders (the lowest evaluated) fulfilled the requirements as listed in the NIT at Sr. # 2, 4, 5, 7, 9 & 12, etc. (eligibility/ mandatory) or not. These essential conditions were required to be adhered to with the principle of strict compliance as provided under the referred rules; however, the PC failed to observe the same. It is also noted that a bidder M/s ZMH Construction Pvt. Ltd. that got registered/ incorporated on 28.02.2019⁴³ and did not fulfill the mandatory requirements of a minimum three years' experience – when reckoned with effect from its registration – was awarded two procurement contracts against the NIT's works listed at Sr. # 1 & 7 in violation of Rule-46(1)(a)(ii) *ibid*.⁴⁴ read with Clause-2 of the NIT's eligibility criteria⁴⁵;
- The procuring agency was required to post the bid evaluation reports on the Authority's website at least three (3) working days prior to the award of contracts in terms of Rule-45 *ibid*⁴⁶; however, in the instant case, the procuring agency posted a bid evaluation report (NIT's works # 5) on 12.06.2020 (Friday) and awarded the procurement contract on 15.06.2020 (Monday) i.e. on the next working date of posting the report;
- The procuring agency's representatives confirmed before this forum for the award of contracts under procurements in question; however, the procuring agency so far has not posted the contract documents – contract evaluation report; form of contract and letter of award; and bill of quantities or schedule of requirement – on the Authority's website that were required to be posted within fifteen (15) of the signing of contracts in terms of Rule-50 read in conjunction with Rule-10 *ibid*⁴⁷.

REVIEW COMMITTEE'S DECISION

19. In view of the foregoing procurement related observations, as mentioned under para-18, and after due deliberation, the Review Committee unanimously declares the instant procurement as Mis-Procurement in light of Rule-32(7)(g) *ibid*⁴⁸ read with Section-2(i) of SPP Act, 2009⁴⁹ and

⁴⁰ Rule-41(8) provides that the official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal.

⁴¹ *Ibid*.

⁴² As posted along with the bid evaluation reports

⁴³ <https://e.fbr.gov.pk/esbn/Service.aspx?PID=AyX3FROw9HWU5dQshruAw%3d%3d> (NTN No. 5287445)

⁴⁴ Rule-46(1)(a)(ii) provides that [Notice Inviting Tenders and bidding documents of single stage one envelope procedure shall contain the following eligibility criteria] turnover of at least three years.

⁴⁵ *Ibid*.

⁴⁶ *Ibid*.

⁴⁷ Rule-50 & 10 provide that 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. 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.

⁴⁸ Rule-32(7)(g) provides that [unless the Review Committee recommends dismissal of an appeal being frivolous, in which case the bidder may lose the bid security deposited with the procuring agency, the Review Committee may] declare the

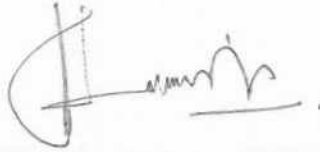
decides to refer the matter to the Competent Authority for taking necessary action in terms of Rule-32(A)(2) *ibid*⁵⁰.



(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

case to be one of mis-procurement if material violation of Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement, has been established.

⁴⁹ Section-2(i) provides that mis-procurement means public procurement in contravention of any provision of this Act, any rule, regulation, order or instruction made thereunder or any other law in respect of, or relating to, public procurement.

⁵⁰ Rule-32(A)(2) provides that on declaration of mis-procurement; the head of the procuring agency, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis-procurement and may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials.