



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-146(0-1-2-7)/2019-20 /0717 Karachi, dated the 8th September 2020

To,

The Chief Municipal Officer,
Municipal Committee Mirpur Mathelo,
District Ghotki.

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 Noor Enterprises and Anors v. Municipal Committee Mirpur Mathelo*) held on 02nd September 2020, for your information and further necessary action, under intimation to this Authority, at the earliest.

08/09/2020
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 Commissioner Ghotki.
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. The appellants/ complainants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-146(0-1-2-7)/2019-20/0717 Karachi, dated the 08th September 2020

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

REVIEW APPEALS

Between:

M/s Noor Enterprises and Anors

v.

Municipal Committee Mirpur Mathelo

NIT ID Number

T01520-19-0002 dated 21.06.2020

FACTS AND BACKGROUND

The appellants¹ M/s Noor Enterprises, M/s Fatima & Co Works & Service, M/s Sufi Enterprises, and M/s Asif Raza Contractor, Government Contractors Sukkur/ Hyderabad, lodged individual complaints (vide letters dated 27, 26 & 24.07.2020, respectively) addressed to the Complaints Redressal Committee (CRC)² – copies endorsed to this Authority and others – against the NIT No.MC/MPM/662/2020 dated 19.06.2020 floated by the Municipal Committee Mirpur Mathelo District Ghotki ‘the procuring agency’ for procurement of twenty-two (22) works related to the construction of drains and concrete pavers³. The appellants therein claimed that they downloaded bid documents from the Authority’s website and submitted bids through the mail⁴ received by the procuring agency before the deadline for submission of bids in terms of Rule-24(2) of SPP Rules, 2010⁵. The appellants raised averments that when they approached the procuring agency on 07.07.2020⁶ to submit the bids⁷ and also to witness the opening of bids, they found the Procurement Committee’s (PC)⁸ members absent and, as such, the bidding process (submission/ opening of bids) did not take place despite waiting there for more than two (2) hours. Subsequently, the procuring agency announced the bid evaluation reports via the Authority’s website⁹ on 23 & 24.07.2020 without even opening the bids publicly and incorporating the appellants’ proposals received/ acknowledged by the procuring agency; hence, the appellants requested the CRC to take action against the procuring agency’s officers and also restrain them from extending further bidding process. In turn, this Authority (vide letters dated 29.07.2020) forwarded the appellants’ complaints to the CRC with advice to redress the grievances and then

¹ Appellant # I: M/s Noor Enterprises; Appellant # II: M/s Fatima & Co Works & Service; Appellant # III: M/s Sufi Enterprises; and Appellant # IV: M/s Asif Raza Contractor

² Constituted under the chairmanship of Chairman Municipal Committee Mirpur Mathelo vide notification No.MC/MPM/1004/2019 dated 21.08.2020 issued by the Municipal Committee Mirpur Mathelo

³ Detailed description/ nature of procurement works is accessible via instant procurement’s NIT available on the PPMS website at ID # T01520-19-0002 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁴ The appellants # I & II claimed for their submission of bids to the procuring agency through the mail (LCS / M&P)

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 The deadline for submission and opening of bids as per NIT was 07.07.2020 at 01.00 p.m. & 03.00 p.m., respectively

⁷ The appellants # III & IV claimed for submission of their bids by hand that were not received by the procuring agency

⁸ Constituted under the chairmanship of Chairman Municipal Committee Mirpur Mathelo vide notification No.MC/MPM/1004/2019 dated 21.08.2020 issued by the Municipal Committee Mirpur Mathelo

⁹ Bid Evaluation Reports at IDs # BE01520-19-0002-1 to 22 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

furnish the decision to the appellant as well as this Authority within the stipulated period as specified under Rules-31(3) & (5) *ibid*¹⁰.

2. Subsequently, the CRC (vide letter dated 04.08.2020)¹¹ furnished its decision concerning the grievances raised by the complainants/ appellants¹², an excerpt of which reads as under¹³:

MINUTES OF THE CRC MEETING

The following contractors lodged their complaints before SPPRA and subsequently received by CRC:

- | | |
|--|---------------------------------------|
| i. M/s Mushtaq Ahmed | ii. M/s Muhammad Siddique Engineering |
| iii. M/s Fatima & Co. Works & Services | iv. M/s Reliant Trade Link Sukkur |
| v. M/s Asif Raza Contractor | vi. M/s Muhammad Haroon Bhutto |
| vii. M/s Aijaz Ahmed Soomro | viii. M/s Noor Enterprises |
| ix. M/s Sufi Enterprises | x. M/s Ayan-e-Noor Engineers |

The meeting started with the approval of the Chairman of the CRC. The District Accounts Officer/ CRC member read all the complaints before the CRC and found all these identical nature complaints that PC members were not present on the last date for submission/ opening of bids held on 07.07.2020. The District Accounts Officer showed the entire record/ proceedings of 07.07.2020 to the Chairman CRC and member, including the attendance sheet of the participants who have succeeded in getting the contract being the lowest bidders as per rules.

The CRC considered the entire record of 07.07.2020 and found that various contractors participated in the procurement proceedings, and the lowest bidders have succeeded in awarding the contracts. The Accounts Officer/ CRC member also produced the attendance sheet of the contractors who participated in the procurement process on 07.07.2020 that showed the complainants' allegations over the absence of the PC members on 07.07.2020 as baseless and have no substance at all.

One contractor, M/s Muhammad Siddique Engineering alleged in his complaint that the Engineer MC Mirpur Mathelo was busy in the meeting of Commissioner Sukkur Division on 07.07.2020, which is a sheer lie as the Engineer was present in his office and attended the procurement proceedings, which is evidence of the fact that the contents of the complainant are baseless. It is evident that the PC held its meeting on 07.07.2020, and the lowest bidders became liable to award contracts under SPPRA Rules and uploaded the BER and other relevant documents on the SPPRA website.

The Proprietor of Al-Noor Enterprises/ Professional Contractor – CRC member – informed that it is the group of blackmailers who do not intend to participate in the open bidding proceedings but try to blackmail to get gratifications. The CRC Chairman agreed with the facts narrated by members.

Given the above facts, the CRC unanimously rejects all the complaints received through SPPRA and in other ways as those complaints are managed and not considered to entertain furthermore and not required to take further necessary action under SPPRA Rules, as the complainant's objections based on malice and mala fide intentions.

¹⁰ Rules-31(3) & (5) provide 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. 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.

¹¹ The CRC decision received to this Authority on 11.08.2020 and in turn, the Authority (vide letter dated 11.08.2020) communicated the decision to all the complainants. However, it was the CRC's statutory duty to intimate the decision to the complainants as laid down under Rule-31(5) *ibid*.

¹² This Authority received a total number of eleven (11) complaints from various contractors, including the appellants under the instant procurement, that were instantaneously forwarded to the CRC vide this Authority's letter dated 29.07.2020.

¹³ The CRC's decision is accessible via <http://www.pprasindh.gov.pk/committee/95CRCMCMirpurmathelo13082020.PDF>

3. Meanwhile, the appellants preferred individual appeals, along with review appeal fee¹⁴ (vide letters dated 05, 18 & 10.08.2020, respectively), to this Authority whereby the appellants stated that the CRC had failed to decide the matter – complaints as referred above – within the prescribed period; hence, the appellants requested the Authority to place their cases before the Review Committee in terms of Rule-31(5) read with Rule-32(5) *ibid*¹⁵.

4. Accordingly, after conducting an initial scrutiny/ examination of the documents, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 25.08.2020 at 12 p.m. In this regard, the Authority (vide letters dated 12, 20, 19 & 13.08.2020) 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 Rules-32(6), (8) & (10) *ibid*¹⁶. *Simultaneously, the Authority restrained the procuring agency from issuing the procurement contracts until the final decision of the Review committee in terms of Rule-32 read together with the proviso of Rule-(7) *ibid**¹⁷.

5. In compliance, M/s Noor Enterprises (representative of the appellant # 1) appeared before the forum¹⁸ who was afforded an opportunity by the Committee to present the case; whereas, the representative(s) of the procuring agency and other appellants got late because of heavy rain that flooded the roads and caused a traffic jam. Due to which, the Review Committee unanimously decided to provide an opportunity to the parties concerned to appear in the next meeting scheduled on 02.09.2020 at 11.45 a.m.; resultantly, this Authority (vide letter dated 26.08.2020) issued another summons to the parties concerned. In compliance, the following representatives appeared before the forum:

Name of Representative	Designation/ Organization
Procuring Agency	
Mr. Mazhar Ali Chachar	Assistant Engineer, Municipal Committee Mirpur Mathelo
Appellants	
Mr. Salal Khan	Proprietor, M/s Noor Enterprises
Mr. Kamran Ali Shaikh	Proprietor, M/s Fatima & Co Works & Services
Mr. Safiullah	Proprietor, M/s Sufi Enterprises
Mr. Asif Raza	Proprietor, M/s Asif Raza Contractor

REVIEW COMMITTEE PROCEEDINGS

6. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellants to present their cases/ versions, one by one, over the instant procurement issues/ grievances.

¹⁴ This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

¹⁵ 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.

¹⁶ Rules-32(6), (8) & (10) provide that on receipt of appeal, along with all requisite information and documents, the Chairperson shall convene a meeting of the Review Committee within seven working days. 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.

¹⁷ Proviso of Rule-31(7) provides that in case of failure of the Complaints Redressal Committee to decide the complaint; the procuring agency shall not award the contract, until expiry of appeal period or the final adjudication by the Review Committee.

¹⁸ The Review Committee members [a private member represented on the SPPRA Board, and an independent professional having an expertise of relevant field concerning the procurement in question in terms of Rules-32(2)(c) & (d) *ibid*.] attended the meeting/ heard the appellant via Zoom video conference

APPELLANTS' VERSION

7. Mr. Salal Khan 'the appellant # 1' apprised the Committee of his submission of a bid, along with the requisite/ supporting documents as per criteria, against the NIT's work listed at Sr. # 5 through the mail on 04.06.2020 received by the procuring agency on 06.07.2020 at 11.20 a.m.¹⁹ (a day before the deadline for submission of bids) in terms of Rule-24(2) of SPP Rules, 2010²⁰. The appellant submitted that he visited the procuring agency's office on 07.07.2020 to witness the opening of bids; however, he could find neither tender box nor the PC members – whose presence was mandatory as per law – and as such, the bidding process per se did not take place publicly on the given date. Nevertheless, the procuring agency posted the bid evaluation reports, showing therein the opening of bids on 07.07.2020, on the Authority's website even without incorporating the appellant's received bid, which sufficed to relate the so-called bidding process as a sham act to award the procurement contracts on favoritism basis without observing the procurement principles as enumerated under Rule-4 *ibid.* & Clause-2.2 of the Authority's Procurement Regulation (Works)²¹.

8. Advocate Syed Zaeem Hyder²², who appeared on behalf of the appellant # 1, submitted that his client, being an aggrieved bidder, lodged a written complaint through the mail that was refused by the CRC²³; meanwhile, this Authority forwarded a copy of the complaint to the CRC with advice to redress the matter as per mechanism laid down under Rule-31 *ibid.*²⁴ The CRC, in turn, convened a meeting and arbitrarily decided the complaints without affording an opportunity of hearing to the aggrieved bidders (refer to paragraph # 2). The appellant's counsel further submitted that the CRC, in its decision, termed all the complainants as blackmailers without ascertaining the cases' merits/ credentials; hence, he prayed for issuing directions to re-invite the bids against all the works and to take action against the CRC for using impolite words.

9. Mr. Kamran Ali Shaikh 'the appellant # II' apprised the Committee of his submission of a bid, along with the requisite/ supporting documents as per criteria, against the NIT's work listed at Sr. # 17 through the mail on 03.07.2020 received by the procuring agency on 06.07.2020 at 12.40 p.m.²⁵ (a day before the deadline for submission of bids) in terms of Rule-24(2) of SPP Rules, 2010²⁶. The appellant submitted that he personally visited the procuring agency's office on 07.07.2020 to witness the opening of bids; however, he could find neither tender box nor the PC members and as such, the bidding process per se did not take place publicly on the given date. The appellant further submitted that various contractors/ firms were present in the procuring agency's office to submit bids that can be viewed from the video recording captured on the scheduled date/ time for submission of the bids and these contractors subsequently approached the CRC, which

¹⁹ Leopard Tracking ID # SZ584575997 reveals the appellant's mail/ bid was delivered to Hafiz Ateeq of the procuring agency on 06.07.2020 at 11.20 a.m. [<http://leopardscourier.com/pk/tracking/>]

²⁰ *Ibid.*

²¹ Rule-4 & Clause-2.2 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. The public procurement has a number of objectives which are enumerated herewith:- (a) economy and efficiency in the implementation of the project/scheme including the procurement of the works and related services thereof, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations; (b) provide equal opportunity and information to all eligible and interested bidders to compete in the procurement process; (c) ensure transparency and fairness in the process; (d) obtaining works and services of the appropriate quality; (e) avoid cost and time over run; and (f) best value for money.

²² Presented the case before the Review Committee's meeting held on 25.08.2020

²³ Leopard Tracking ID # SZ584895512 reveals the appellant's mail/ complaint was refused (untraceable address, contact number required) [<http://leopardscourier.com/pk/tracking/>]

²⁴ *Ibid.*

²⁵ M&P Tracking ID # 322000220415 reveals the appellant's mail/ bid was delivered to Mr. Dilber of the procuring agency on 06.07.2020 at 12.40 p.m. [<http://mulphilog.com/tracking-detail.php>]

²⁶ *Ibid.*

decided the matter in an injudicious manner without affording an opportunity to the complainants/ appellants. The appellant prayed that the entire procurement process needs to be floated afresh in an open manner as per rules.

10. Mr. Safiullah *'the appellant # III'* apprised the Committee of his intention to submit bids against the NIT's works listed at Sr. # 12 & 16. In this regard, he approached the procuring agency on 07.07.2020 at 11.05 a.m. to submit bids along with the supporting documents. The appellant submitted that the procuring agency did not hold the meeting for submission/ opening of the bids and issued a cancellation notice; therefore, he left the office.

11. Mr. Asif Raza *'the appellant # IV'* apprised the Committee of his intention to submit bids against the NIT's works listed at Sr. # 8 & 17 and in this regard, he deputed his representative, who reached in the procuring agency's office on 07.07.2020 at 11.05 a.m., to submit bids along with the supporting documents. The appellant submitted that his representative, along with other contractors, was waiting in the procuring agency's office till official closing hours; however, the process for submission and opening of bids did not take place, and the procuring agency's Tender Clerk informed of rescheduling the bidding process due to the PC members/ quorum's unavailability. He (Tender Clerk) further assured that the next schedule for submission and opening of bids would be communicated shortly. The appellant further contended that the bid evaluation reports announced via the Authority's website show the participation of only six (6) bidders to whom the PC has recommended for award of the procurement contracts in contravention of an open competitive bidding process that required the procuring agency to provide an equal opportunity to all the bidders for the sake of wider competition as spelled out under Clause-aa of Sub.Rule-1 of Rule-2 *ibid*²⁷.

PROCURING AGENCY'S VERSION

12. Mr. Mazhar Ali Chachar, Assistant Engineer Municipal Committee Mirpur Mathelo *'representative of the procuring agency'* admitted at length that the procuring agency's office peon received the appellants' mail/ bids on 06.07.2020 that were not handed over to the procurement committee while the opening of the bids/ proposals. The procuring agency's representative contended that the cancellation notice, claimed by the appellants, pertains to another tender floated by the procuring agency in last financial year.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative to confirm the current status of the instant procurement works;
 - ◆ The procuring agency's representatives confirmed that they have not awarded any procurement contract so far as per rules/ instructions communicated by this Authority. The procuring agency's representative also submitted a written statement that is reproduced verbatim herewith *'I Mazhar Ali Chachar, Assistant Executive Engineer MC Mirpur Mathelo and Member of the PC MC Mirpur Mathelo having CNIC No. 45102-2860281-7 state that the NIT # MC/MPM/662/2020 dated 19.06.2020 posted on the PPMS website at ID # T01520-19-0002 issued by the Chairman Municipal Committee Mirpur Mathelo and BERs posted on the PPMS website at ID # BE01520-19-0002-1 to 22 dated 24.07.2020. On dated 02.09.2020, I have attended the Review Committee's meeting, and I have informed that still work orders*

²⁷ Clause-aa defines the open competitive bidding as a fair and transparent specific procedure defined under the Rules, advertised in 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 Bidding.



are not issued by this office [Sd.- Mazhar All Chachar, Assistant Engineer Municipal Committee Mirpur Mathelo (CNIC No. 45102-2860281-7)]'

REVIEW COMMITTEE'S FINDINGS

13. The Review Committee, after hearing the parties at length and upon going through the available procurement record, observed that the procuring agency solicited bids for impugned procurement works under Single Stage One Envelope bidding procedure that were purportedly received and opened on 07.07.2020 at 01.00 p.m. and 03.00 p.m., respectively. Subsequently, the procuring agency announced the bid evaluation reports via the PPMS website on 23 & 24.07.2020 in terms of Rule-45 ibid²⁸ – summary of the reports with a unique data pattern reads as under:

SUMMARY OF THE NIT's WORKS (PKR IN MILLION) ²⁹				
NIT's work #	Estimated cost	Total bids received	Lowest evaluated bid ³⁰	Lowest evaluated bidder
i.	2.00	3	1.95	M/s Raza & Company
ii.	2.00	3	1.94	M/s Raza & Company
iii.	2.00	3	1.93	M/s Al-Sardar Construction Company
iv.	2.00	3	1.93	M/s Al-Sardar Construction Company
v.	2.00	3	1.92	M/s Al-Arbab Construction Company
vi.	2.00	3	1.95	M/s Al-Arbab Construction Company
vii.	2.00	3	1.94	M/s Al-Zafar Construction Company
viii.	2.00	3	1.93	M/s Al-Zafar Construction Company
ix.	2.00	3	1.93	M/s Al-Zafar Construction Company
x.	2.00	3	1.91	M/s Al-Sardar Construction Company
xi.	2.00	3	1.93	M/s Raza & Company
xii.	2.00	3	1.91	M/s Raza & Company
xiii.	2.00	3	1.93	M/s Raza & Company
xiv.	2.00	3	1.89	M/s Raza & Company
xv.	2.00	3	1.90	M/s Raza & Company
xvi.	2.00	3	1.91	M/s Raza & Company
xvii.	2.00	3	1.93	M/s Raza & Company
xviii.	2.00	3	1.91	M/s Haji Sons & Co.
xix.	1.50	3	1.46	M/s Raza & Company
xx.	1.50	3	1.46	M/s Raza & Company
xxi.	2.00	3	1.94	M/s Haji Sons & Company
xxii.	2.00	3	1.91	M/s Al-Arbab Construction Company

14. Upon announcement of the reports, various firms/ contractors, including the appellants, directly and/ or through this Authority, approached the CRC with the central issue of non-holding the bidding process for submission/ opening of bids already submitted/ intended to be submitted to the procuring agency. In turn, the CRC held its decision by concluding that a group of

²⁸ 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.

²⁹ The data is based on the procurement record made available by the procuring agency on the PPMS website

³⁰ 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.

blackmailers, on malice and mala fide intentions, has lodged these complaints to seek gratification from the procuring agency; hence, the CRC rejected all the complaints (refer to paragraph # 2).

15. It is apparent from the conjoint perusal of the appellants' complaints, CRC decision, and procuring agency (representatives) pleading that the CRC held its arbitrary decision without looking into the merits of the cases and also without affording any opportunity of hearing to the appellants as required under the principle of natural justice system. The Review Committee, in view of the violation of the principles of natural justice, holds the CRC decision as void. In holding so, reliance is placed on the judgment in the case of *Gemalto Middle East FZ-LLC v. Federation of Pakistan through Secretary Finance Division and others* (2020 CLD 151) whereby the Honorable High Court of Islamabad held as follows:-

"In all proceedings by whomsoever held, whether judicial or administrative, the principle of natural justice has to be observed if the proceedings resulted in consequences affecting the person or property or other rights of the parties concerned. Without participation of a party affected by an order or a decision amounts to an action without lawful authority. The requirement of audi alteram partem is not confined to proceedings before Courts but extends to all proceedings by whomsoever held which may affect a person or property or other rights of the parties concerned in the dispute. The principles of natural justice must be read into each and every statute unless and until it is prohibited by the statute itself. In the case of Commissioner of Income Tax East Pakistan v. Fazal ur Rehman (PLD 1964 SC 410), it has been held inter alia that even if there is no provision as to notice in a statute, it cannot override the principle of natural justice and an opportunity of a hearing has to be given... if the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of departure from the essential principles of justice. A decision taken in violation of the principles of natural justice must be declared to be no decision..."

16. The appellants through instant appeals have challenged the entire bidding process needs to be floated afresh in a transparent manner on account of the multiple reasons mainly including (i) the appellants possess documentary evidence for receipt/ acknowledgement of their bids by the procuring agency before the deadline for submission of the bids; however, such bids were not considered as depicted through the bid evaluation reports; (ii) the appellants were present in the procuring agency's office to submit and/ or to witness the opening of bids that was cancelled by the procuring agency through issuing/ pasting a cancellation letter on the notice board; (iii) the procuring agency failed to rectify the material infirmities as highlighted by the Authority.

17. Turning to each specific issue at hand, two appellants³¹ contended that they submitted bids through the mail received by the procuring agency on 06.07.2020 – a day before the deadline for submission of the bids – and this can also be verified/ tracked via independent third party organizations portals (M&P/ LCS). The procuring agency's representative also admitted and supported the plea that the appellants' bids were received by the procuring agency's office peon who missed to hand over the same to the PC. *The Review Committee noted that it is a statutory right of a bidder to submit bids through the mail or by hand as provided under Rule-24(2) ibid read with Clause-7.1(c)(c) of the Authority's Procurement Regulation (Works)*³². *The appellants using their right preferred to submit bids through the mails that were received by the procuring agency as also admitted none other than an officer who was also the PC's member. A bid(s) received in a timely manner but not considered while opening/ evaluation of the bids due to any reason whatsoever*

³¹ The appellants # I & II

³² Clause-7.1(c)(c) provides that bidders shall be permitted to submit bids by mail or by hand.



amounts to an infraction of open competitive bidding process and directly leads to raise questions over the sanctity of the bidding process that cannot be ruled out in this case.

18. The appellants' second issue relates to their presence in the procuring agency's office to submit and/ or to witness the opening of the bids that did not occur on the scheduled date given in the bidding documents. The appellants³³ contended that the procuring agency pasted a letter on the notice board for cancellation of instant bidding process. Per contra, the procuring agency's representative asserted that the cancellation notice, claimed/ submitted by the appellants, pertains to another NIT floated by the procuring agency in last financial year. *The review committee after considering the rival contentions advanced by the parties and going through the content of the cancellation notice, which read verbatim as follows, noted that the procuring agency has only single (existing procurement) NIT that is currently active and it shows the receiving and opening of the bids on 14.07.2020 under second attempt/ schedule as per Clause-4 of the NIT³⁴. Therefore, it cannot be entirely rebutted the cancellation notice was relating to the last year's NIT.*

“OFFICE OF THE MUNICIPAL COMMITTEE MIRPUR MATHELO – CANCELLATION OF NEWLY INVITED TENDERS FOR THE YEAR 2020-21: It is for the information of all interested parties and general public that NIT displayed on SPPRA website to be opened on 14.07.2020 for the financial year 2020-21 is hereby cancelled due to some reasons [Sd. Chief Municipal Officer Municipal Committee Mirpur Mathelo].”

REVIEW COMMITTEE'S OBSERVATIONS

19. The Review Committee observed that this Authority conveyed various infirmities/ observations to the procuring agency through the PPMS website³⁵ on 27.06.2020 and 29.07.2020 with the instruction to rectify the same on time; however, the procuring agency failed to proceed accordingly to the given instructions. The main observations leading to violation of the referred rules under instant procurement are as follows:-

- The procuring agency was required to open the bids within an hour of submission/ receipt of bids as required under Rule-41(3) *ibid.*³⁶;
- The procuring agency was required to mention relevant experience (minimum number of years/ projects completed) and a minimum amount of turnover of last three (3) years in the NIT or bidding documents terms of Rules-46(1)(a)(i) & (ii) read with Rules-21(A), 42(1) & 46(1)(c) *ibid.*³⁷;
- The procuring agency was required to include the integrity pact along with the bid documents in terms of Rules-21(1)(n) & 89 *ibid.*³⁸.

³³ The appellants # II, III & IV

³⁴ Un-responded: Tender in case of non-responsive the tender will be issued till 08.07.2020 at 11.00 a.m. and will be received and opened on same date at 01.00 p.m. and opened 03.00 p.m. on day 14.07.2020.

³⁵ The NIT and BERS' observations can be accessed along with the NIT's comments section [<https://ppms.pprasinidh.gov.pk/PPMS/public/portal/notice-inviting-tender/T01520-19-0002 & BE01520-19-0002-1 to 22>]

³⁶ Rule-41(3) provides that the bids shall be opened within one hour of the deadline for submission of bids.

³⁷ Rule-46(1)(a)(i) & (ii) provide that notice inviting tender and bidding documents of this method [Single Stage One Envelope Procedure] shall contain the [following] eligibility criteria: (i) relevant experience; (ii) turnover of at least last three years. Rule-21(A) provides that the procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide a clear and unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement. Rules-42 & 46(1)(c) provide that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. All bids shall be opened and evaluated in the manner prescribed in the notice inviting tender or bidding document.

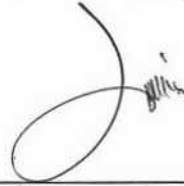
³⁸ Rules-21(1)(n) & 89 provide that the bidding document shall include the [following information]: a copy of integrity pact to be signed by the parties (where applicable). All contract agreements of goods, works and services shall include integrity pact, as specified by the regulations.

REVIEW COMMITTEE'S DECISION


20. In view of the foregoing procurement related observations/ findings, as mentioned under paras-17 to 19, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed the procurement contracts against the impugned NIT's works (as confirmed by the procuring agency's representative); therefore, the procurement proceedings against all the works shall be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010³⁹, and fresh tenders be floated in terms of Rule-26 of SPP Rules, 2010⁴⁰. 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
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Engr. Munir Ahmed Shaikh
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Public Health Engineering Department
Government of Sindh



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

³⁹ 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.

⁴⁰ Rule-26 provides that the procuring agency may re-issue tenders in case, the bidding process has been cancelled, as provided in Rule-25 or one of the following conditions exists: (1) Such an infirmity in the bidding documents has surfaced that the procuring committee recommends to the competent authority that the bids have to be invited afresh; (2) The case has been declared as one of mis-procurement in pursuance of Rule-32 and 32-A.