



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1411(1430)/2019-20/1075


Karachi, dated the 09th October, 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 Khaliq Bhutto and Anor v. Machinery Maintenance Division Khairpur at Shikarpur*) held on 25th August 2020, for information and further necessary action, under intimation to this Authority, at the earliest.


09/10/2020
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, Larkano.
4. The Executive Engineer Machinery Maintenance Division Khairpur at Shikarpur.
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 Khaliq Bhutto and M/s Tarique Mustafa Malano.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1411(1430)/2019-20/

Karachi, dated the 09th October 2020

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

REVIEW APPEALS

Between:

M/s Abdul Khaliq Bhutto and Anor
v.

Machinery Maintenance Division
Khairpur at Shikarpur

NIT ID Number

T00138-19-0005 dated 28.02.2020

FACTS AND BACKGROUND

The appellants¹ M/s Abdul Khaliq Bhutto and M/s Tarique Mustafa Malano, Government Contractors Shikarpur, lodged individual complaints (vide letters dated 08 & 15.07.2020, respectively) addressed to the Complaints Redressal Committee (CRC)², the Procurement Committee (PC)³, and this Authority against the NIT No.TC/G-55/168/2020 dated 25.02.2020 floated by the Executive Engineer Machinery Maintenance Division Khairpur at Shikarpur 'the procuring agency', for procurement of nine (09) works related to the 'improvement/ reconditioning/ construction of roads'⁴ as per SPP Rules, 2010.

2. The appellants therein raised averments to have submitted their lowest bids – along with the supporting documents as per criteria available in the bid documents – against the NIT's works listed at Sr. # 4 & 9 on the scheduled date for submission of the bids⁵, whereof the procuring agency maneuvered the rates upward, after the opening of bids, with ulterior motives to award procurement contracts on favoritism basis thus defeating the objective of open competitive bidding and also violating Rule-43 *ibid*⁶. Consequently, the appellants requested the authorities concerned to take legal action while conducting an impartial inquiry for redressal of the genuine grievances. *In turn, this Authority (vide letters dated 24.07.2020) forwarded the appellants' matter to the CRC with advice to redress the grievances and furnish the decision to the appellants and the Authority within the stipulated period as prescribed under Rule-31(5) ibid*⁷.

3. Subsequently, the appellants (vide letters dated 21.07.2020) preferred appeals, along with supporting documents and review appeal fee⁸, before this Authority by stating that the CRC had failed

¹ Appellant # I: Abdul Khaliq Bhutto; and Appellant # II: M/s Tarique Mustafa Malano

² Constituted under the chairmanship of Chief Engineer (Highways) Sukkur as per corrigendum issued by the Works & Services Department vide letter No.E&A(W&S)3-9/91(PT-V) dated 01st April 2019

³ Constituted under the chairmanship of Executive Engineer Machinery Maintenance Division Khairpur at Shikarpur as per corrigendum issued by the Works & Services Department vide letter No.E&A(W&S)3-9/91-2013(Shikarpur) dated 11.6.2019

⁴ Detailed description/ nature of procurement works can be accessed via Instant procurement's NIT available on the PPMS website at ID # T00138-19-0005 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

⁵ The deadline for submission/ opening of bids as per bid documents was 16.03.2020 11.30 a.m. and 12.30 p.m., respectively

⁶ No bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bid; provided that the procuring agency may ask the bidders for clarification needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid. Any request for clarification in the bid, made by the procuring agency, shall invariably be in writing. The response to such request shall also be in writing.

⁷ 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.

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

to fulfill the statutory obligations on deciding the matters – complaints as referred earlier – within the stipulated time; hence, the appellants requested to place their cases before the Review Committee in terms of Rule-31(5) read with Rule-32(5) *ibid*⁹. In turn, the Authority (*vide letter dated 27.07.2020*) forwarded an appeal (M/s Abdul Khaliq Bhutto)¹⁰ to the procuring agency with advice to update the bid security status, latest by 03.08.2020, for ascertaining the maintainability of the case in terms of Rule-32(1) *ibid*¹¹; however, the procuring agency failed to furnish any response.

4. Accordingly, the appellants' cases were taken up by the Review Committee for hearing in its meeting scheduled on 11.08.2020 at 11.30 a.m. In this regard, the Authority (*vide letters dated 28.07.2020 & 06.08.2020*) issued summons to the parties concerned to appear in person or depute authorized representatives along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time, and venue in terms of Rules-32(6), (8) & (10) *ibid*¹². Simultaneously, the Authority restrained the procuring agency from issuing the procurement contracts until final decision in terms of Rule-32 read together with the proviso of Rule-31(7) *ibid*.

5. In compliance, Mr. Abdul Khaliq Bhutto (Proprietor M/s Abdul Khaliq Bhutto) and Mr. Tarique Mustafa Malano (Proprietor M/s Tarique Mustafa Malano) 'the appellants' appeared before the Committee; whereas, the procuring agency's representatives did not attend the meeting while submitting a written intimation, received to this Authority on 11.08.2020, wherein the Executive Engineer made a request for rescheduling the hearing on account of his appearance before the Honorable High Court Sukkur in connection with C.P. No.D-1404/2018 filed by *Shamshad Ali Junejo v. Province of Sindh and others* and also opening of bids against another NIT¹³.

6. The Committee at first heard the appellants' cases and then decided to afford another opportunity to the procuring agency's representatives to appear/ contest the appellants' allegations in the next hearing scheduled on 25.08.2020 at 11.30 a.m. for deciding the cases in a fair manner while observing the principles of audi alteram partem and natural justice system as required under the law.

7. Resultantly, the Authority (*vide letter dated 20.08.2020*) issued another summons to the parties concerned to appear along with the document record in terms of Rules-32(6), (8) & (10) *ibid*, and in compliance to it, Mr. Rafique Ahmed Shaikh (Executive Engineer), Mr. Irshad Mahar (Tender Clerk), Machinery & Maintenance Division Khairpur at Shikarpur 'the procuring agency's representatives' and Mr. Abdul Khaliq Bhutto, Mr. Tarique Mustafa Malano 'the appellants representatives' appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

8. 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.

⁹ 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.

¹⁰ The Authority did not seek confirmation about the appellant's (M/s Tarique Mustafa Malano) bid security due to his disqualification on account of non-submission of the bid security as per the stance of the procuring agency given in bidders' qualification report (refer to the bid evaluation reports)

¹¹ 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.

¹² 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.

¹³ NIT ID # T00138-20-0001 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]



APPELLANTS' VERSION

9. Mr. Abdul Khaliq Bhutto 'the appellant # I' apprised the Committee of his submission of bids, along with the requisite documents, against the NIT's two works as listed at Sr. # 4 & 9 '*reconditioning of road from Yaseen Wah to Marri Pur Hajjan Shah Road (7 Kms) and reconditioning of road from Garhi Yasin Indus Highway to village Jado Kalhoro via village Mohil Hameed Jageer Marri road mile 0/7-4/2 (5.43 Kms) having an estimated cost of PKR 48.494 and 42.978 million, respectively*' where the procuring agency intentionally disqualified the appellant on the sole reason, i.e. the Sindh Revenue Board (SRB) registration with active status. The appellant contended that he submitted the competitive bids as PKR 34.173 and 31.559 million, respectively, along with the SRB registration certificate and call deposits/ bid securities against the impugned works that are still available with the procuring agency. However, the procuring agency awarded the procurement contracts to the bidders having financial rank exceeding the appellant's quoted bid, which was not even incorporated within the evaluation report as required under the procurement procedure followed under instant procurement. The appellant further contended that the procuring agency disqualified the appellant without asking any clarification concerning the SRB status as suspended that was due to non-filing of tax returns by the procuring agencies on behalf of the appellant.

10. Mr. Tarique Mustafa Malano 'the appellant # II' apprised the Committee of his submission of the bid, with the supporting documents as well as bid security/ call deposit, against the NIT's work listed at Sr. # 9 where the procuring agency disqualified the appellant based on non-submission of the bid security/ call deposit along with the bid. The appellant contended that he submitted the original call deposit along with the bid that was released – duly signed and stamped (*may be refunded*) by the procuring agency¹⁴ – through the mail after three (3) months on the pretext of cancelling the bidding process and subsequently the procuring agency fraudulently posted the bid evaluation reports on the Authority's website¹⁵ whereby it was mentioned that the appellant did not submit the call deposit along with bid. The appellant further contended that he submitted bid for the work in question as PKR 31.30 million, nevertheless, the procuring agency awarded the procurement contract to M/s Makhi Jani Construction Company, which offered bid as PKR 40.42 million (29% above the appellant's bid).

PROCURING AGENCY'S VERSION

11. Mr. Rafique Ahmed Shaikh, Executive Engineer, Machinery & Maintenance Division Khairpur at Shikarpur '*representative of the procuring agency*' submitted that the procuring agency invited the bids under instant procurement works based on the following eligibility criteria (*the essential conditions as mentioned under Clause-1 of the NIT*) formulated in accordance with the single stage one envelope bidding procedure, as specified under Rule-46(1) *ibid*¹⁶:

Eligibility Criteria

- Earnest money (5% of the estimated cost of work against which bid submitted)
- I. Valid registration certificate up to June 2020 and onwards with Pakistan Engineering Council in relevant category and specialized codes as mentioned against each other;
- II. At least three (3) works of same specification and nature of equivalent or more cost completed during last three years, duly supported with completion certificates;
- III. List of Four (4) on-going works (road works schemes and copies of awarded letters);

¹⁴ The appellant shared copy of the bid security/ call deposit released by the procuring agency and also presented copy of the bank statement verifying the issuance of the referred financial instrument in favor of the procuring agency

¹⁵ Bid Evaluation Reports at IDs # BE00138-19-0005-1 to 8 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber>]

¹⁶ (a) notice inviting tenders and bidding documents of this method shall contain [the following] eligibility criteria; i. relevant experience; ii. turnover of at least three years; iii. registration with Federal Board of Revenue (FBR) for income tax, sales tax in case of procurement of goods, registration with the Sindh Revenue Board (SRB) in case of procurement of work and services, and registration with Pakistan Engineering Council (where applicable); iv. any other factor deemed to be relevant by the procuring agency subject to provision of Rule-44; (b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at clause (a) above; (c) all bids received shall be opened and evaluated in the manner prescribed in the notice inviting tenders or bidding document.



- IV. Four (4) asphalt wearing course works, at least two (2) works completed of equivalent or more cost during past three years duly supported with completion certificates;
- V. Bio-data of engineers and technical staff working with the firm;
- VI. Annual turnover of at least twice per annum against the estimated cost of work(s) applied in last three years;
- VII. Annual audited reports of last three years from registered audited firms;
- VIII. List of machinery and equipment available with documentary evidence of its ownership;
- IX. Documentary evidence showing the contractor owns/ rented an asphalt plant along with its related machinery as tandem, PTR, paver machine (applicable only on asphalt related works);
- X. Certificate of bank showing credit worthiness at least 15% of the estimated cost of work applied along with bank statement;
- XI. Registration with Income Tax Department as active status with Federal Board of Revenue;
- XII. Annual income tax returns of last three (3) years; and
- XIII. Registration certificate with Sindh Revenue Board, Govt. of Sindh, as active status SRB certificate.

12. The procuring agency's representative further submitted that all the bids were opened publicly in the presence of bidders/ appellants' representatives on the scheduled time and venue mentioned in the NIT where each bid read aloud and subsequently the post-qualification of the lowest submitted bidders were carried out to determine the responsive/ lowest evaluated bidders in terms of Rule-41(4) to (6) *ibid*¹⁷ read with Clause-7.9.1 of the Authority's Procurement Regulation (Works)¹⁸.

13. The procuring agency's representative contended that both the appellants participated in the bidding process and were found as 'non-responsive/ ineligible' due to non-conformance with the NIT's essential criteria. The appellant M/s Abdul Khaliq submitted a photocopy of the SRB registration certificate that was cross-verified from the SRB website¹⁹, from where the PC found the appellant's SRB registration status as '*operational status suspended*'²⁰. Resultantly, the PC announced the appellant's bid as 'non-responsive' due to non-conformance with the NIT's eligibility criterion as mentioned under the Clause-1(XIII) in terms of Rule-42(1) & 46(1)(c) *ibid*²¹. The PC expressly reiterated the similar reason for declaring the bids as non-responsive under the Clause-3(vi) of the minutes of bid opening meeting, held on 16.03.2020, which states that '*the SRB certificates were strictly verified and suspended certificates were declared as non-responsive*'²².

14. The procuring agency's representative further contended that the appellant M/s Tariq Mustafa Malano submitted the bid against the NIT's work listed at Sr. # 9. The PC opened the proposal in the appellant's presence and found the same without original copy of the pay order (earnest money/ bid security). The procuring agency's representative vehemently denied the allegation leveled

¹⁷ All bids shall be opened publicly in the presence of all the bidders, or their authorized 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.

¹⁸ Each bid shall comprise one single envelope containing the financial proposal only and company profile containing proof of relevant experience, annual turn-over of last three years, and registration with PEC or other authorities wherever applicable and information regarding litigation with government agencies, affidavit of not being black listed. Information regarding company/ firm/ bidder's provided with financial bid will not be treated as Technical Proposal. Requirement of company profile is very essential; when bidders are not pre-qualified. In this method the relevant information or details required from interested bidders are mentioned in the advertisement/ notice inviting tender and bidding document. Non-serious bidders are screened out from bidding process. All bids received shall be opened and evaluated in the manner/ criteria prescribed in the NIT or bidding document. Post qualification of 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 bid is determined. Verification and up-to-date information: Procuring agency can verify the previous working, experience and financial statements made by the bidders in their bids.

¹⁹ <https://e.srb.gos.pk/Registration/onlineSearchTaxpayer.aspx> (SNTN No. 3154846-6)

²⁰ The procuring agency's representative submitted photocopies of the record – taxpayer online verification – showing the appellant firm's operational status as suspended.

²¹ 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.

²² Minutes of the meetings can be accessed along with the bid evaluation reports posted/ available on the PPMS website

the appellant to release/ return the original copy of pay order/ earnest money through the mail when the PC could not find such instrument along with the appellant's proposal. Mr Irshad Mahar, Tender Clerk 'the procuring agency's another representative' also refused to receive or release or endorse to refund the appellant's pay order/ earnest money.

REVIEW COMMITTEE'S FINDINGS

15. The chronology of the procurement process/ record shows that the procuring agency received and opened the bids against the impugned works on 16.03.2020 and subsequently announced/ posted the bid evaluation reports²³ and contract documents²⁴ on the Authority's PPMS website on 10.07.2020 and 25.08.2020, respectively - Summary of the impugned works reports read as follow:

SUMMARY OF THE NIT's IMPUGNED WORKS (PKR IN MILLION)²⁵			
Sr. #	Bidder's name	Quoted bid	Remarks
Work # 4: Reconditioning of road from Yaseen Wah to Marri Pur Hajjan Shah road (7.0 KMs)²⁶			
I.	M/s Shahzaman Brohi Construction Co.	27.865	1 st lowest submit price ²⁷ (SRB suspended)
II.	M/s Abdul Rasheed Bhutto	32.754	2 nd (the lowest evaluated bid ²⁸)
III.	M/s Nawab Khan & Brothers	33.304	3 rd
IV.	M/s Sherbaz Banglani	33.628	4 th
V.	M/s Abdul Khaliq Bhutto	34.173	5 th
VI.	M/s New Javed Ahmed Lashari	35.379	6 th
VII.	M/s Kamran Yaseen Malano	35.778	7 th
VIII.	M/s Soomar Khan Mahar	37.024	8 th
IX.	M/s WSKB & Company	40.728	9 th
X.	M/s Amanullah Brohi	40.728	10 th
XI.	M/s Kamran Yaseen Malano	41.981	11 th
XII.	M/s Makhi Jani Construction Co.	44.809	12 th
XIII.	M/s Agha Muhammad Khan & Co.	49.499	13 th
XIV.	M/s Geo Macca Construction Co	—	—
Work # 9: Reconditioning of road from Garhi Yasin Indus Highway to Village Jado Kalhoro via village Mohil Hameed Jageer Marri road mile 0/7-4/2 (5.43 KMs)²⁹			
I.	M/s Shahzaman Brohi Construction Co.	29.720	1 st Lowest submit price (SRB suspended)
II.	M/s Abdul Rasheed Bhutto	29.828	2 nd (CDR missing)
III.	M/s Nawab Khan & Brothers	30.035	3 rd (SRB suspended)
IV.	M/s Sikandar Ali Katoo & Sons	30.190	4 th (CDR missing)
V.	M/s Tarique Mustafa Malano	31.378	5 th (CDR missing)
VI.	M/s Abdul Khaliq Bhutto	31.559	6 th (SRB suspended)
VII.	M/s Geo Macca Construction Co	32.980	7 th (CDR missing)
VIII.	M/s Saif Enterprises	33.863	8 th (CDR missing)
IX.	M/s WSKB & Company	36.093	9 th (CDR missing)
X.	M/s Bukhari Engineer	38.422	10 th (SRB suspended)
XI.	M/s Makhi Jani Construction Co.	39.996	11 th (the lowest evaluated bid)

²³ Bid Evaluation Reports at IDs # BE00138-19-0005-3 & 8 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber>]

²⁴ Contract Documents at ID # C00138-19-0005-3 & 8 [https://ppms.pprasinhd.gov.pk/PPMS/public/portal/contract_list]

²⁵ The data is based on the procurement record made available by the procuring agency

²⁶ The bidders listed at Sr. # 3, 6, 7, 10, 11 & 14 did not quote total amount of the bid in a proper manner.

²⁷ Lowest submitted price means the lowest price quoted in a bid, which is otherwise not substantially responsive

²⁸ Lowest evaluated bid means a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost

²⁹ The bidders listed at Sr. # 4, 7, 8 & 10 did not quote total amount of the bid in a proper manner.

XII.	M/s Soomar Khan Mahar	40.594	12 th
XIII.	M/s Agha Muhammad Khan & Co	43.050	13 th
XIV.	M/s Sikandar Ali Junejo	N/Q	14 th

16. The available procurement record, as summarized above, reveals the participation of nineteen (19) bidders under the NIT's impugned works, against which two (2) bidders 'the appellants' raised their concerns before the CRC that failed to discharge its statutory obligation for deciding the cases within the prescribed time. Resultantly, the appellants preferred individual appeals before this forum in which the appellants raised averments for maneuvering the bids' quoted amount, after opening of the bids, to favor specific bidders in violation of the rules.

17. After hearing the parties at length and scrutiny of the procurement record, it is apparent that the nature of the aforementioned complaints/ appeals received to this Authority is entirely different from the appellants' cases presented before this forum and as such, the appellants could not establish their primary case with concrete evidence as to how the bids' quoted amounts were maneuvered to favor the particular bidders against the NIT's impugned works. Nevertheless, the Review Committee examined the appellants' cases while taking into account the arguments adduced and additional documents supplied by both the parties and concluded the findings as under:

- **Appellant # 1 (M/s Abdul Khaliq Bhutto):** The procuring agency's representative highlighted that the appellant submitted bids whose financial ranking stood as the 5th & 6th lowest submitted bids among others against the NIT's impugned works. Besides, the appellant's SRB status found as suspended when cross-verified via the SRB website; hence, the appellant failed to conform to the NIT's essential criterion (as listed under eligibility criteria Condition # XIII) and was not entitled to an award of a procurement contract in any case. Per contra, the appellant raised a plea that the procuring agency had not afforded him an opportunity or sought any clarification before announcing the bid as non-responsive based on the referred criterion. *The Review Committee noted that the procuring agency is bound to evaluate the bids in accordance with the evaluation criteria and other terms and conditions outlined in the bid documents in terms of Rules-42(1) & 46(1)(c) Ibid and the SRB registration certificate with active status was a mandatory part of the criteria, against which the appellant failed to comply with. The key objective to disclose the eligibility/ evaluation criteria through NIT and bid document in terms of Rules-21(1)(h) & 21(A) Ibid³⁰ is to enable the bidders to have the prescribed understanding as to how the procuring agency would assess the bids and award the contracts for the sake of ensuring the transparency and fairness. The procurement process is a time constraint activity that needs to be completed within a period of bid validity period. It is not obligatory for the procuring agency to seek clarification, subject to exceptional circumstances, from each bidder in terms of Rule-43(2) Ibid. read with the bid document ITB Clauses-25.1 & 26.3³¹; hence, the appellant's disqualification based on given reason/ criterion seems plausible as the appellant has not challenged or denied his SRB suspended status that was a mandatory part of the criteria.*

³⁰ The bidding documents shall include the [following information] a detailed and unambiguous evaluation criteria. 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 clear and unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.

³¹ Any request for clarification in the bid, made by the procuring agency, shall invariably be in writing. The response to such request shall also be in writing. To assist in the examination, evaluation and comparison of bids, the procuring agency may, at its discretion, ask any bidder for clarification of the bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the procuring agency in the evaluation of the bids in accordance with clause IB 28. A bid will be considered technically responsive if it (i) has been properly signed; (ii) is accompanied by the required bid security; and (iii) conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (i) which affect in any substantial way the scope, quality or performance of the works; (ii) which limits in any substantial way, inconsistent with the bidding documents, the procuring agency's rights or the bidder's obligations under the contract; or (iii) adoption/rectification whereof would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

- Appellant # II (M/s Tarique Mustafa Malano): The procuring agency's representative highlighted that the appellant submitted a bid against the NIT's single work that stood/ financial ranked as the 5th lowest submitted bid among other bidders. The PC found the appellant's bid as 'non-responsive' due to non-submission of the original copy of the pay order (earnest money/ bid security) as required under the NIT's Clause-4(a)(ii)³² read with bid document ITB Clause-26.3. Per contra, the appellant argued that he submitted the original pay order along with the bid submitted to the procuring agency, which later on released the appellant's pay order through the mail on the pretext for cancellation of the bidding process. Subsequently, the procuring agency fraudulently extended the bidding process while disqualifying the appellant to favor a particular bidder for award of the procurement contract on higher rates. *The Review Committee examined the issue in detail and concluded that the appellant in such a case was required to instantaneously approach, along with the original copy of the pay order/ bid security received through the mail, the procuring agency's CRC rather than encashing the pay order while destroying the original evidence. In the current circumstances, it is possible that the appellant might have failed to include the original pay order along with the bid; or somehow the procuring agency might have released the pay order after the opening of bids. However, it is difficult, if not impossible, process for this administrative forum to determine which option is the truth as neither the procuring agency nor the appellant is able to substantially prove directly one option or other.*

REVIEW COMMITTEE'S OBSERVATIONS

18. The Review Committee observed that the procuring agency, while undertaking the instant bidding process, failed to comply with the following procurement rules:

- The procuring agency was required to award the procurement contracts after the announcement of CRC decision in terms of Rules-31(5) & (7) *ibid*.;
- The PC's members were required to sign each page of financial proposals, submitted by the bidders, in terms of Rule-41(8) *ibid*³³. *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 procuring agency posted the bid evaluation reports on the Authority's PPMS website on 10.07.2020 and issued the letters for acceptance of bids on 29.06.2020 asking the lowest evaluated bidders to furnish the performance security, before announcing the bid evaluation results in violation of the Rule-45 *ibid*³⁴. *It may be noted that the procuring agency cannot recall or cancel the letter of acceptance once a bidder(s) submits performance security within time in terms of Rule-25(1) *ibid*³⁵; and*
- The procuring agency signed/ entered into agreements with the lowest evaluated bidders on 13.07.2020, whereas, the contract documents (*without contract agreement*) were posted on the Authority's website on 25.08.2020 i.e. after a lapse of fifteen days for the signing of the contracts; thus, violating the Rule-50 read with Rule-10 *ibid*³⁶.

³² Bids not accompanied by bid security of required amount and firm.

³³ 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.


³⁴ 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.

³⁵ A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal.

³⁶ 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 a website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and [the following information]: (1) Contract Evaluation Form; (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

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* read with Section-2(i) of SPP Act, 2009³⁷ and decides to refer the matter to the Competent Authority for taking necessary action in terms of Rule-32(A)(2) *ibid*³⁸.



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

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.

³⁷ [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 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. 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.

³⁸ 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.