



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1709/2020-21/1310

Karachi, dated the 29th October, 2020

To,

The Managing Director,
Water & Sanitation Agency,
Hyderabad Development Authority,
Hyderabad.

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 Modern Technology & Traders v. Water & Sanitation Agency*) for taking further necessary action, under intimation to this Authority, at the earliest.


29/10/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Local Government Department, Karachi.
2. The Director General, Hyderabad Development Authority, Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Assistant Director (I.T), SPPRA [*with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010*].
5. The Staff Officer to the Chairman/ Members Review Committee.
6. M/s Modern Technology & Traders, Plot # 36-C, 3rd & 4th Floor, Lane-11, Bukhari Commercial Phase-6, DHA Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1709/2020-21/1310

Karachi, dated the 29th October 2020

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

REVIEW APPEAL

Between:

M/s Modern Technology & Traders

v.

Water & Sanitation Agency

NIT ID Number

Too861-20-0003 dated 04.07.2020

DATE OF HEARING

21.10.2020

FACTS AND BACKGROUNDS

The appellant, M/s Modern Technology & Traders¹ lodged a complaint (vide letter dated 23.09.2020) addressed to this Authority as well as the Complaints Redressal Committee (CRC)² – copy endorsed to the Secretary Local Government Department and others for taking necessary action – against the NIT No.DB/WASA/HDA/1344/HYD dated 24.06.2020 floated by the Managing Director Water & Sanitation Agency, Hyderabad Development Authority ‘procuring agency’ for procurement of work ‘providing, laying, jointing & testing 20” PE rising main from LD-1 pumping station to SSTP construction of sump well providing fixing pump set at LD-1 pumping station Unit No. 4 Latifabad³ as per SPP Rules, 2010.

2. The appellant therein claimed for submission of a sealed bid with supporting documents, as per the criteria available in the bid document, to the procuring agency within the scheduled date/ time⁴ and the Procurement Committee (PC)⁵ opened the same, along with the bids submitted by the other bidders, on 22.07.2020 at 02.00 p.m., whereupon the appellant’s submitted bid stood as third lowest in terms of financial ranking. As per the appellant, the procuring agency after that announced the bid evaluation results on 22.09.2020⁶, whereof the PC intentionally maneuvered the submitted bids, as tabulated below⁷, with ulterior motives to award procurement contract on a favoritism basis:

Sr. #	Name of Bidder	Bid (PKR in Million)		Remarks
		Announced	Manipulated	
I.	M/s Al-Rehman Waheed Co.	57.619	57.763	Rejected
II.	M/s Gul Construction Co.	71.034	58.720	Rejected
III.	M/s Tamzeer Construction Co.	75.310	73.931	Changed the bid price and announced beneficiary
IV.	M/s Iqbal Shaikh & Co.	86.207	74.124	4 th
V.	M/s Modern Technology & Traders	75.001	76.081	5 th
VI.	M/s Madni Engineering Construction	77.920	79.239	6 th
VII.	M/s Manjhi Construction Pvt. Ltd.	83.153	83.153	7 th
VIII.	M/s Abdul Nizam Govt. Contractor	89.290	89.284	8 th
IX.	M/s Saeed Khan Construction Co.	93.328	97.025	9 th

¹ Having its office located at Plot # 36-C, 3rd & 4th Floor, Lane-11, Bukhari Commercial Phase-6, DHA, Karachi

² Constituted under the chairmanship of Managing Director Water & Sanitation Agency vide notification No.LG/Dir/PM&EC/AD-II/704(5-Hyd)/2019 dated 08.08.2020 issued by the Local Government Department

³ Detailed description/ nature of the procurement work can be accessed via instant procurement’s NIT available on the PPMS website at ID # Too861-20-0003 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

⁴ The deadline for submission/ opening of bids as per NIT was 22.07.2020 at 01.00 p.m. and 02.00 p.m., respectively

⁵ Constituted under the chairmanship of Additional Managing Director Water & Sanitation Agency vide notification No.HDA/C.E/Misc:MD/912/2020 dated 02.07.2020 issued by Chief Engineer Hyderabad Development Authority Hyderabad

⁶ Bid Evaluation Report at ID # BE00861-20-0003-1 dated 22.9.2020 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber]

⁷ The tabulated record consists of the information as provided/ claimed by the appellant.

3. The appellant raised an averment in the course of the complaint that the procuring agency, following the previous exercise, is engaged in corrupt and fraudulent practices through changing the substance or price of the bid after opening the bids for wrongful gains to award the contract on a favoritism basis. Consequently, the appellant requested the authorities concerned to redress their concerns in accordance with the rules. *In turn, this Authority (vide letter dated 24.09.2020) forwarded the appellant's matter to the CRC with advice to redress the grievances and furnish the decision to the appellant and the Authority within the stipulated period as prescribed under Rules-31(3) & (5) ibid⁸. Besides, the Authority restrained the procuring agency from issuing procurement contract till the CRC decision or expiry of the review appeal period in terms of Rule-31(6) read with Proviso of Rule-31(7) ibid⁹.*

4. Subsequently, the appellant (vide letter dated 05.10.2020) preferred an appeal, along with the supporting documents and review appeal fee¹⁰, before this Authority, whereby the appellant stated that the CRC failed to decide the matter within the stipulated time; hence, the appellant requested to place the case before the Review Committee in terms of Rule-31(5) read with Rule-32(5) ibid¹¹. *In turn, the Authority (vide letter dated 08.10.2020) forwarded the appeal to the procuring agency with advice to confirm the appellant's bid security status, latest by 12.10.2020, for ascertaining maintainability of the case in terms of Rule-32(1) ibid¹²; however, the procuring agency failed to respond within the specified time¹³.*

5. In the meantime, the Chairman CRC (vide letter dated 09.10.2020) requested the Authority to convene the Review Committee meeting to decide the aggrieved bidders' complaints, thus enabling the procuring agency to issue the work order and execute the work. The relevant extract of the response is reproduced below for the sake of convenience:

Subject: Convening of Review Committee (Reference: PPMS ID # T00861-20-0002 & T00861-20-0003)

It is submitted that this office invited two notice inviting tenders through leading newspapers and the same were uploaded in the database of PPMS/ SPPRA vide ID numbers cited above with closing and opening dates as 21.07.2020 & 22.07.2020, respectively.

After opening of the said bid(s), the Procurement Committee WASA thoroughly examined the bids and prepared the bid evaluation reports. Later on the said BERs were also hoisted on the database of PPMS/ SPPRA web portal vide BER # BE00861-20-0002-1 & BE00861-20-0003-1, respectively. Thereafter various complaints have been received with this office regarding mis-procurement of above NITs. On receipt of complaints from various contractors, the undersigned convened a Complaints Redressal Committee meeting on 29.09.2020 & 06.10.2020 in the office of the undersigned to discuss and redress the grievances of contractors, but due to unknown circumstances the members of the committee could not attend the said meeting.

In this connection, you are requested to please convene a Review Committee at your office to redress the grievances of contractors so that the work order may be issued and execution of the work may be carried out as per scope during current financial year.

Sd/
(Muzafer Hussain Memon)
Managing Director Water & Sanitation Agency (WASA)/
Chairman Complaints Redressal Committee

⁸ 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.

⁹ The procuring agency shall award the contract after the decision of the complaints redressal committee; provided that in case of failure of the complaints redressal committee to decide the complaint; the procuring agency shall not award the contract, until the expiry of appeal period or the final adjudication by the Review Committee.

¹⁰ This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

¹¹ 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.

¹² 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.

¹³ The Chairman CRC vide letter dated 13.10.2020 stated that the appellant's bid security is intact with the procuring agency.

6. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 21.10.2020 at 11.45 a.m. In this regard, the Authority (vide letter dated 13.10.2020) issued summon to the parties concerned to appear in person, or depute authorized representatives, well conversant with the procurement in question, 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*¹⁴. Simultaneously, the Authority restrained the procuring agency from issuing contract until the final decision in terms of Rule-32 read with the proviso of Rule-31(7) *ibid*.

7. In compliance, Mr. Muzafer Hussain Memon (Managing Director), Mr. Saleemuddin (Additional Managing Director), Water & Sanitation Agency 'the procuring agency's representatives' and Mr. Abdul Qayoom Shaikh (Managing Director), Muhammad Nawaz Soomro (Director), M/s Modern Technology & Traders 'the appellant's 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 appellant to present the case/ version over the instant procurement issues/ grievances.

APPELLANT'S VERSION

9. Mr. Abdul Qayoom Shaikh and Muhammad Nawaz Soomro 'the appellant's representatives' apprised the forum about the submission of bid against the NIT's impugned work as PKR 75.310 million that stood as third lowest bid, among all the submitted bids, in terms of financial ranking when opened/ read aloud by the PC on 22.07.2020. After that, the procuring agency announced the bid evaluation results with the corrected bid amount (checking arithmetic errors) on 22.09.2020 in terms of the Instruction to Bidders (IB) Clause-27 of the bid document¹⁵. The appellant submitted that they do not have any reservation over the procuring agency's act towards checking the arithmetic errors and adjusting the bid amounts; albeit, the corrected figures were required to be incorporated/ announced after seeking bidders' concurrence as required under IB Clause-27.2 of the bid document¹⁶ that was equally binding and enforceable upon the procuring agency and the bidders.

10. The appellant contended that the bidders quote their bids based on the estimated cost available in the NIT or bid document. However, in this case, the procuring agency also changed the impugned work's estimated cost as PKR 82.085 million in the NIT and then PKR 82.725 million in the BER without assigning any reason and circumventing the rules. The appellant further contended that the procuring agency required the prospective bidders to have mandatory registration with the Pakistan Engineering Council (PEC) under category C-3, which is applicable where the estimated cost of procurement work ranges between PKR 200 to 500 million as per PEC Guidelines¹⁷.

¹⁴ 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.

¹⁵ Bids determined to be substantially responsive will be checked by the procuring agency for any arithmetic errors. Errors will be corrected by the procuring agency as follows: (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the procuring agency there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected. The amount stated in the Form of Bid will be adjusted by the procuring agency in accordance with the above procedure for the correction of errors and with the concurrence of the bidders. The amount thus corrected shall be considered as binding upon the bidder. If the bidder does not accept the corrected bid price, his bid will be rejected, and the bid security shall be forfeited in accordance with sub-clause IB 15.6(b) hereof.

¹⁶ *Ibid*.

¹⁷ <https://www.pec.org.pk/downloads/supervision/guidelines.pdf>
https://www.pec.org.pk/fee_Pakistan.aspx

PROCURING AGENCY'S VERSION

11. Mr. Muzafer Hussain Memon, Managing Director, Water & Sanitation Agency/ Chairman CRC 'the procuring agency's representative' submitted that the actual dispute under this case relates to the correction of arithmetic errors undertaken by the PC that resulted in a change of total bid quoted/ submitted bid and also the financial ranking of the bidders/ appellant. These arithmetic errors under the bidders' quoted rates were rectified in a fair and transparent manner as per rules as well as terms & conditions of the bid document and this forum may cross-check the bidders' financial proposals for ascertaining the correction of the arithmetic errors.

12. Mr. Saleemuddin, Additional Managing Director, Water & Sanitation Agency/ Chairman PC 'the procuring agency's representatives', while clarifying a query raised by the forum, confirmed that the PC could not seek any concurrence from bidders for correction of arithmetic errors under the quoted bids before finalizing/ announcing the bid evaluation results via the PPMS website on 22.09.2020¹⁸. The procuring agency's representative admitted that the referred mistake occurred due to the office workload; however, the procuring agency can rectify the error as the procurement contract, even so, has not been awarded. *The Review Committee, during proceedings, raised the procurement related queries that were clarified by the procuring agency's representative as under¹⁹:*

Sr. #	Queries	Clarifications
I.	The estimated cost of the procurement's work was PKR 82.085 million that required the bidders to have registration with the PEC under Category C-4 (> PKR 65 to 200 M); then why did the procuring agency impose the condition upon bidders to have the PEC registration under category C-3 (> PKR 200 to 500 M)?	The condition was mentioned in the NIT and bid document due to a clerical mistake.
II.	The procuring agency mentioned the estimated cost of the procurement's work in the annual procurement plan/ notice inviting tender/ bid document as PKR 82.08 M. Why did the procuring agency change the cost as PKR 82.72 M while the evaluation of the financial bids?	The estimated cost mentioned in NIT and BER is different due to adjustment (at the financial bids evaluation) of cartage/ transportation cost.

CHRONOLOGY OF THE BIDDING PROCESS²⁰

13. The chronology of the procurement process/ record shows that the procuring agency in the present case invited bids under open competitive bidding while formulating/ incorporating the bidder's eligibility criteria, as tabulated below, in accordance with the Single Stage one envelope bidding procedure laid down under Rule-46(1) read with Rules-47(1) & Clause-aa of Sub rule-2(1) *ibid*²¹:

ELIGIBILITY CRITERIA	
I.	Registration certificate from Pakistan Engineering Council – Valid up to June 2020 with the Category C-3 or above

¹⁸ Ibid.

¹⁹ Mr. Saleemuddin clarified these queries while submitting a written statement dated 27.10.2020, which further confirmed that the procuring agency has neither extended the bid validity period (the original bid validity period expired on 19.10.2020) nor awarded the procurement contract yet.

²⁰ Bidding process means the procurement procedure under which sealed bids invited, received, opened, examined and evaluated for the purpose of awarding a contract.

²¹ Notice inviting tenders and bidding documents of this method shall contain the [following] eligibility criteria: (i) relevant experience, (ii) turn-over of at least three years, (iii) registration with Federal Board of Revenue, for Income Tax, Sales Tax in case of procurement of goods, registration with the Sindh Revenue Board in case of procurement of work and services, and registration with Pakistan Engineering Council, where applicable, (iv) any other factor deemed to be relevant by the procuring agency subject to provision of Rule 44; (b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at clause-a above; (c) all bids received shall be opened and evaluated in the matter prescribed in the Notice Inviting Tenders or bidding documents. Single Stage One Envelope bidding procedure shall be used as a standard bidding procedure for procurement of goods, works and services of simple and routine nature and where no technical complexity or innovation is involved. Open competitive bidding means a fair and transparent specified procedure defined under these rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both national and international competitive biddings.

- II. Registration with Sindh Revenue Board
- III. Registration with Federal Board of Revenue
- IV. Company Profile
- V. Details of similar nature of work with cost undertaken in last three years with copy of letter of award works
- VI. Qualification and experience of technical personal and key site management (attach CVs of engineers)
- VII. Annual audit report conducted by certified Chartered Accountant for last three years (2017-18 to 2019-20)
- VIII. Account maintenance certificate
- IX. Income tax return for last three years (2017-18 to 2019-20)
- X. Affidavit from the owner that the firm is not blacklisted in past by any procuring agency and the firm is not indulged in litigations and abandoned any work.

14. In response to the NIT, The procuring agency received nine (9) timely proposals/ bids that were publicly opened, with financial bids read aloud, on 22.07.2020 by following the mechanism laid down under Clause-7.5 & of the Authority's Procurement Regulation (Works)²². Later on, the PC undertook the bidders' post-qualification and then announced the bid evaluation results (as summarized below) via the PPMS website on 22.09.2020 in terms of Rule-45 ibid²³ read with Clause-7.9.1 of the Authority's Procurement Regulation (Works)²⁴:

SUMMARY OF THE BIDS EVALUATION (PKR IN MILLION) ²⁵					
Sr. #	Bidder's Name	Quoted Bid	Rank	Post Qualification	Remarks
I.	M/s Al-Rehman Waheed Co.	57.763	1 st	Qualified	Bid rejected in light of SPPRA Notification No.17-18/22 dated 15.07.2017 ²⁶ -

²² All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person at the time and place announced in the invitation to bid and the bid opening is not delayed on the plea of absence of bidders or their representatives, as their presence is optional. The public tender opening is an important step in the tendering process as opening of tenders publicly helps to demonstrate that the tendering process is transparent and increases bidders' confidence in the public procurement process. [steps to be followed are stated as under:-] (i) the tender box should be opened and all tenders removed and counted; (ii) first envelopes marked "Withdrawal" should be read out and the envelope containing the corresponding tender shall be returned without being opened. The withdrawal must be noted on the record of the tender opening; (iii) next, envelopes marked "Modification" should be opened one at a time and the envelope containing the corresponding tender located and opened. Details of the modified tender should be read out and recorded, ensuring that the details relate to the modified, not the original tender. Both the original tender and modification should be stamped on key pages and signed by the chairperson of procurement committee and by all members of the procurement committee, if demanded; (iv) after counting the remaining tenders, each tender envelope should be identified by giving it a serial number divided by total number of tenders received. When 5 bids are received then bids will be identified by marking them in following manner; 1/5, 2/5, 3/5, 4/5, 5/5; (v) bid opening sheet (BOS) is prepared containing the information relating to bids announced at the opening; (vi) tenders should then be opened, one at a time, and the relevant details i.e. the name of the bidder, total amount of each bid, alternative bids discount amount/percentage, and amount of call deposit and name of bank should be read out aloud and recorded as a line item against each serial number in the bid opening sheet. Reading out prices should avoid any disputes regarding price changes at a later date; (vii) officer/official chairing procurement committee shall encircle the rates and total bid price and all the members of PC shall sign each and every page of financial proposal; (viii) minutes of the opening of the tenders/bids shall be issued and shall also mention over writing or cutting if any; (ix) tender/bid with any condition or where the conditions mentioned in the NIT have been allured or omitted will not be entertained, will be declared non-responsive and shall stand rejected; (x) all bidders in attendance shall sign an attendance sheet evidencing their attendance; (xi) upon completion of the tender opening, all members of the PC shall sign the bid opening sheet; (xii) where tender openings for more than one tendering process are conducted at the same time, they must be conducted consecutively, with one opening completed, recorded and tenders removed, before the next opening commences.

²³ 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.

²⁴ 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.

²⁵ The data is based on the record as made available by the procuring agency via the PPMS website.

²⁶ <http://www.pprasindh.gov.pk/policies/PolicyCircular280819.PDF>

					due to quoted rates more than 30% below the estimated cost.
II.	M/s Gul Construction Co.	58.720	2 nd	Disqualified	Bid rejected due to submission of bid security of a non-scheduled bank...
III.	M/s Tamzeer Construction	73.931	3 rd	Qualified	Bid accepted of 3 rd lowest, being beneficiary after rejection of 1 st & 2 nd lowest
IV.	M/s M. Iqbal Shaikh & Co.	74.124	4 th	Qualified	Highest bid
V.	M/s Modern Technology & Traders	76.081	5 th	Disqualified	Highest bid
VI.	M/s Madni Engineering Construction	79.239	6 th	Qualified	Highest bid
VII.	M/s Manjhi Construction Pvt. Ltd.	83.153	7 th	Disqualified	Highest bid
VIII.	M/s Abdul Nizam Govt. Contractor	89.284	8 th	Disqualified	Highest bid
IX.	M/s Saeed Khan Construction Co.	97.025	9 th	Disqualified	Highest bid

15. After the announcement of these results, the appellant preferred a complaint before the CRC, which could not decide the matter. Resultantly, the appellant preferred an appeal before the Review Committee, which afforded the opportunities to the rival parties to present/ defend the case, thus enabling this forum to decide the matter in a fair and impartial manner.

REVIEW COMMITTEE'S FINDINGS/ OBSERVATIONS

16. After hearing the parties at length, the Review Committee observed that the appellant's case revolves around three important issues that include: *the procuring agency failed to seek the bidders' concurrence after checking the arithmetic errors for correcting the bidders quoted amount and before announcing the bid evaluation results; the procuring agency changed the estimated cost of work at the time of the financial evaluation bids; and the procuring agency restricted the competition while inviting bids from bidders having the PEC registration under category C-3 rather than C-4 as applicable under the instant procurement work.* After considering the rival contentions advanced by the parties, scrutinizing the available procurement record, and discerning the applicable rules & regulations, the Review Committee discussed these issues one by one and concluded its findings in the following paragraphs.

17. The first issue relates to the arithmetic correction made within the bidders' quoted bid, against which the appellant contended that the procuring agency was required to seek all bidders' concurrence after correction of arithmetic errors/ adjusting the bids before announcing the bid evaluation results as required under IB Clause-27 of the bid document²⁷. In support of it, the procuring agency's representatives admitted that the arithmetic errors' correction surfaced as a key factor of changes in bidders' total quoted amounts/ bidders' financial ranking and bidders' concurrence, in this regard, was not sought from any bidder, before the announcement of the bid results, due to the office workload. The procuring agency's representatives confirmed that this mistake could be rectified before the award of procurement contract. *After going through the referred Clause of bid document along with Clauses- 1.17 & 7.6(B)(c) of the Authority's Procurement Regulation (Works)²⁸, the Review*

²⁷ Ibid.

²⁸ 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. **Correction of Arithmetical Checking:** Bids determined to be substantially responsive shall be checked by the procuring agency for arithmetical errors and any such errors will be rectified [as follows]:- (i) where there is a discrepancy between the extended amount entered against an item in the bill of quantities and the amount obtained by multiplying the unit rate and the quantity, then the latter amount shall prevail and the extended amount entered in the bill of quantities shall be amended accordingly; (ii) if discrepancy is the misplacement of a decimal place in the unit rate, the unit rate shall be amended and the extended amount entered as aforesaid shall be taken as correct; (iii) if there is a discrepancy in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and (iv) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures

Committee noted that the concurrence for arithmetically corrected bids was required from only those bidders whose bids found as substantially responsive. In this case, the appellant was declared as disqualified due to non-conformance with the essential conditions/ eligibility criteria, and the appellant has not challenged such decision of the PC; hence, the appellant's concurrence for correction in his bid was not necessary in this case. On the other hand, it is apparent that the arithmetic corrections took place against all the bids quoted/ submitted by the bidders, and their (substantially responsive bids) concurrence was mandatory within the bid validity period that expired on 19.10.2020 and then not extended as confirmed by the procuring agency in terms of Rule-38 read with Rule-49 *ibid*²⁹. The Committee, in view of the given position/ examination with supported rules, is of view that the procuring agency neither can seek the concurrence of bidders over bids correction nor can award the procurement contract at this stage.

18. The next issue relates to the change in the estimated cost, against which the appellant established contention that the procuring agency mentioned the estimated cost against the impugned work in the NIT/ bid document as PKR 82.085 million and subsequently changed the cost as PKR 82.725 million while evaluation of the financial bids. The procuring agency's representative also confirmed that the change in the estimated cost took place during the bids evaluation stage due to the adjustment of an additional component 'cartage/ transportation'. *The Review Committee noted that the change under the estimated cost or any other factor leading to the evaluation of bids is not allowed once the procuring agency receives and opens the bids to ensure procurement's transparency and fairness as further specified under Rule-42(1) & 46(1)(c) ibid*³⁰. It is *prima facie* evidence that variation under the estimated cost alone has proven as a source of change in selecting the lowest evaluated bidder by incorrectly invoking Clause-11.3.4 of the Procurement Regulation (Works)³¹ that does not seem to apply³².

19. The final issue relates to the PEC condition, against which the appellant maintained a plea that the procuring required the bidders to have mandatory registration with the PEC under category C-3 that is applicable for procurement of work having estimated cost between PKR 200 to 500 million as per PEC Guidelines. Per contra, the procuring agency's representative submitted that the PEC referred category mentioned in the NIT and bid document due to a clerk mistake. *The Review Committee is of view that the estimated cost of the procurement's work unquestionably falls under the PEC category C-4 that could have attracted broader competition and also required in terms of Rule-46(1)(a)(iii) read*

shall prevail subject to the notes above. Bidders shall be notified in writing of any arithmetic corrections made and requested to agree to the corrections in writing.

²⁹ All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. All bids received shall be opened and evaluated in the manner prescribed in the notice inviting tender or bidding document.

³⁰ The procuring agency, keeping in view nature of procurement, shall subject the bid to a validity period, which shall be specified in the bidding document and shall not be more than 90 days in case of National Competitive Bidding and 120 days in case of International Competitive Bidding. The bid validity period will start from the date of opening of technical or financial bids, whichever is earlier. Extension of bid validity may be allowed subject to approval by the competent authority of the procuring agency, and with reasons to be recorded in writing; provided that if validity period has to be extended due to some slackness on the part of procuring agency, the competent authority shall fix responsibility and take appropriate disciplinary action. After obtaining such approval, the procuring agency, shall request in writing all bidders to extend the bid validity period. Such a request shall be made before the expiry of the original bid validity period. Such an extension shall not be for more than of the original period of bid validity. In case the procuring agency fails to finalize the bid evaluation with the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated. Whenever an extension of bid validity period is requested, a bidder shall have the right to refuse to grant such an extension and withdraw his bid and bid security shall be returned forthwith. Bidder who; (a) agree to extension of the bid validity period shall also extend validity of the bid security for the agreed extended period of the bid validity; (b) agree to the procuring agency's request for extension of bid validity period shall neither be requested nor permitted to change the price or other conditions of their bids. The bidder with the lowest evaluated cost, but not necessarily the lowest evaluated price, shall be awarded the procurement contract, within the original or extended period of bid validity.

³¹ In case a procuring agency receives a bid, which is more than 30% below the engineer's estimate or composite schedule rate, the procuring agency can reject that particular bid(s) or float tender afresh, if deemed appropriate...

³² Lowest submitted price means the lowest price quoted in a bid, which is otherwise not substantially responsive. Lowest evaluated bid means a bid most closely conforming to evaluation criteria and other terms and conditions specified in the bidding document, having lowest evaluated cost.

together with Clauses-2.12 & 7.6(B)(1)(1)(A) of the Authority's Procurement Regulation (Works)³³. Omission to act so, due to a clerical mistake and so on as clarified by the procuring agency, resulted in material violation of the procurement rules and cannot be bypassed in any case in terms of Clause-1 of Section-2 of SPP Act, 2009³⁴.

REVIEW COMMITTEE'S DECISION

20. Given the preceding findings and observations, as at paras-17 to 19, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed any contract (as confirmed by the procuring agency's representative); therefore, the procurement proceedings against instant procurement shall be terminated in terms of Rule-32(7)(f) *ibid*.³⁵, and fresh tenders be floated in terms of Rule-26 *ibid*.³⁶. Compliance of the decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.



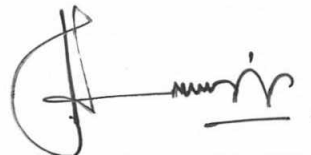
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Manzoor Ahmed Memon
Private Member SPPRA Board



(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

³³ Registration with Pakistan Engineer Council... firms/individuals registered with PEC are allowed to participate in tenders/ bids, whose amount does not exceed the limit of the category in which it is registered...the bidder is of valid license holder of PEC and falls within the category are allowed to participate [https://www.pec.org.pk/fee_Pakistani.aspx]

³⁴ Mis-procurement means public procurement in contravention of any provision of this Act, any rule, regulation, order or instruction made there under or any other law in respect of, or relating to, public procurement.

³⁵ The Review Committee may direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.

³⁶ 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.