



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1996/2019-20/1413

Karachi, dated the 11<sup>th</sup> November, 2020

To,

The Secretary to Government of Sindh,  
Universities & Boards 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 Ali Dino & Co. v. Benazir Bhutto Shaheed University of Technology & Skill Development Khairpur Mirs*) held on 21<sup>st</sup> October 2020, for taking further necessary action in pursuance of the referred decision, under intimation to this Authority, at the earliest.

  
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Vice Chancellor Benazir Bhutto Shaheed University of Technology & Skill Development (BBSUTSD), Khairpur Mirs.
2. The Dean Faculty of Engineering Technology BBSUTSD, Khairpur Mirs.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Director (P&D) BBSUTSD, Khairpur Mirs.
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 of the Review Committee.
7. M/s Ali Dino & Co., 41-A, Ali Akbar Jalbani Road, Sachal Sarmast Township, Larkana.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1696/2020-21/1413

Karachi, dated the 11<sup>th</sup> November 2020

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

**REVIEW APPEAL**

Between:

M/s Ali Dino & Co

v.

Benazir Bhutto Shaheed University of  
Technology & Skill Development Khairpur Mirs

NIT ID Number

To0972-20-0004 dated 31.07.2020

**DATE OF HEARING**

21.10.2020

**FACTS AND BACKGROUND**

The appellant, M/s Ali Dino & Co, Government Contractor Larkana<sup>1</sup>, lodged a complaint (vide letter dated 17.09.2020) addressed to the Chairman Complaints Redressal Committee (CRC)<sup>2</sup> – copy endorsed to this Authority and others for necessary action – against the NIT No.BBSUTSD/PD/KHP/195 dated 25.07.2020 floated by the Project Director, Benazir Bhutto Shaheed University of Technology & Skills Development (BBSUTSD) Khairpur Mirs ‘procuring agency’ for procurement of work ‘construction of academic block with an estimated cost of PKR 358.357 million’<sup>3</sup>. In accordance with the SPP Rules, 2010.

2. The appellant therein claimed for submission of a sealed bid along with requisite documents, following the criteria available with the bid document, to the procuring agency within the scheduled date/ time<sup>4</sup>. The Procurement Committee (PC)<sup>5</sup> opened the same, along with the bids submitted by other bidders, then read aloud the financial bids on 19.08.2020 at 01.30 p.m. As per the appellant, the procuring agency after that announced the bid evaluation results on 15.09.2020<sup>6</sup>, whereof the PC disqualified the appellant’s bid based on the reason ‘the form of bid and cost offered by the contractor has been found as cancelled with his own signature and handwriting’ and recommended for award of procurement contract to M/s Umer Jan & Co. who could not submit a copy of the electrical license at the time of submission of the bids as required under Clause-3(d) of eligibility criteria mentioned in the NIT<sup>7</sup>. The appellant alleged that the procuring agency managed the bid process to award the procurement contract on a favoritism basis while circumventing procurement principles (fairness and transparency). Consequently, the appellant being an aggrieved bidder, requested the CRC to accept his bid being qualified against essential criteria otherwise, pass appropriate orders for cancellation and re-invitation of the bids as per rules. In turn, this Authority (vide letter dated 22.09.2020) also forwarded the appellant’s matter to the CRC with advice to take necessary action in terms of Rules-31(3) & (5) *ibid*<sup>8</sup>.

<sup>1</sup> Having its office located at 41-A, Ali Akbar Jalbani Road, Sachal Sarmast Township, Larkana

<sup>2</sup> Constituted under the chairmanship of Dean Faculty of Engineering Technology BBSUTSD vide notification No.BBSUTSD/ADMN/KHP/657 dated 17.07.2020 issued by the Assistant Registrar (Admin) BBSUTSD Khairpur Mirs

<sup>3</sup> Detailed description/ nature of the procurement work can be accessed via the instant procurement’s NIT available on the PPMS website at ID # To0972-20-0004 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]

<sup>4</sup> The deadline for submission/ opening of bids as per NIT was 19.08.2020 at 01.00 p.m. and 01.30 p.m., respectively

<sup>5</sup> Constituted under the chairmanship of Director (P&D) BBSUTSD vide notification No.BBSUTSD/ADMN/KHP/656 dated 17.07.2020 issued by the Assistant Registrar (Admin) BBSUTSD Khairpur Mirs

<sup>6</sup> Bid Evaluation Report at ID # BE00972-20-0004-1 dated 15.9.2020 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber]

<sup>7</sup> Having a valid license of electrical inspector

<sup>8</sup> 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

3. Upon receiving the complaint, the Chairman CRC (vide letters dated 18.09.2020) called the meeting on 22.09.2020 to redress the grievances by affording an opportunity to the complainant/appellant. Subsequently, the Chairman CRC (vide letter dated 23.09.2020) furnished the CRC's decision based on specific findings that are reproduced herein-below for better appreciation<sup>9</sup>:

**Findings:** The CRC, after reviewing the complaint and hearing the parties, i.e., Director (P&D) BBSUTSD (the PC Chairman)/ Project Director BBSUTSD (Member PC) and the complainant Engr. Ali Dino Khokhar (M/s Ali Dino & Co.) and after reviewing/ verifying the available record found as under:

- i. It has been noted at para # 1 of the complaint dated 17.09.2020 that the complainant mentioned the procuring agency used single stage two envelope bidding procedure as per Rule-46(2) ibid. In contrast, procuring agency used single stage one envelope bidding procedure as per Rule-46(1) ibid.;
- ii. The eligibility criteria available in the NIT required the bidders to have a valid license issued by the Electrical Inspector with five (5) years relevant experience; however, M/s Ali Dino & Co. provided the electrical license of another contractor instead of a participated contractor; hence, the complainant's claim was found incorrect as the bidding documents submitted by the bidder containing all the attested documents;
- iii. That the queries raised by complainant in his complaint at para # 7, the complainant admitted and conceded before the CRC that filled bid/ form of the bid was cancelled by himself with his handwriting i.e., Engr. Ali Dino Khokhar of M/s Ali Dino & Co. When the bidder already cancelled his filled bid/ form of the bid with his handwriting, therefore, his grievances of the elimination of M/s Ali Dino & Co proved baseless and false. In such a case, procuring agency can exercise powers to forfeit bid security in terms of Rule-37(5)(a) ibid.
- iv. The bid of M/s Ali Dino & Co. was eliminated from the further process based on the already cancellation of bid and form of the bid by Engr. Ali Dino Khokhar (bidder) himself with his handwriting that was admitted by the complainant before the CRC, and same was proved from available record.

**Decision:** The CRC after reviewing all aspects of complaint, heard the parties and decided as under:

- i. Despite providing the opportunity to the complainant to defend his complaint and provide evidence against the elimination of M/s Ali Dino & Co. from bidding of Package - 1 'construction of academic block' of Benazir Bhutto Shaheed University of Technology & Skill Development Khairpur Mirs for reasons that 'the form of bid and cost offered by the contractor has been found cancelled with his own signature and handwriting'. But M/s Ali Dino & Co. could not submit/ produce any evidence before the CRC in this regard. *The complainant's complaint is proved false, baseless, and fabricated; hence, it cannot be considered and hereby declined/ rejected.*
- ii. The procuring agency should ensure to execute the electrical works through government licensed electrical contractor registered with electric inspectorate.

4. Given the CRC's decision, the appellant (vide letter dated 28.09.2020) preferred an appeal, along with the supporting documents and review appeal fee<sup>10</sup>, before the Review Committee in terms of Rules-32(1) & (5) ibid<sup>11</sup> whereby the appellant submitted that the CRC failed to address the issues/ grievances raised through the appellant's complaint before announcing the decision. Therefore, the appellant made a specific request to check the electrical license submitted by the lowest evaluated bidder, M/s Umer Jan & Co. Moreover, the appellant prayed before the Review Committee to pass orders for cancellation and re-invitation of fresh bids based on PC's dubious evaluation of proposals. In turn, the Authority (vide letter dated 29.09.2020) forwarded the appeal to the procuring agency with advice to update the appellant's bid security status for ascertaining the maintainability of the case, and the procuring agency (vide letter dated 01.10.2020) confirmed the appellant's bid security as still intact.

seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in under rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

<sup>9</sup> <http://www.pprasindh.gov.pk/committee/117CRCSMBBUDTKhairpur25092020.pdf>

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

<sup>11</sup> 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. 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.

5. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 14.10.2020 and then rescheduled on 21.10.2020 at 11.45 a.m. In this regard, the Authority (vide letters dated 06 & 13.10.2020) issued summon to the parties concerned<sup>12</sup> 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*<sup>13</sup>.

6. In compliance, Mir Sajjad Hussain Talpur (Director P&D), Engr. Imdad Ali Sial (Project Director), Benazir Bhutto Shaheed University of Technology & Skill Development Khairpur Mirs 'the procuring agency's representatives', Engr. Ali Dino Khokhar (Proprietor), M/s Ali Dino & Co. 'the appellant', and Mr. Fazul Mohammad Mangi 'the representative of M/s Umer Jan & Co.' appeared before the Committee.

### REVIEW COMMITTEE PROCEEDINGS

7. 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

8. Engr. Ali Dino Khokhar 'the appellant' apprised that he, upon payment of tender fee, purchased the procurement work's bid document from the procuring agency on 07.08.2020 in terms of Rule-20 *ibid*<sup>14</sup>, and each page of the bid document was duly signed and stamped by the Project Coordinator, Up-gradation of GCT into the BBSUTSD Khairpur. Thereafter, when they were filling their bid form, some arithmetic mistakes occurred that caused the appellant to cancel and replace the original (annexed with the document issued by the procuring agency) with another copy of the bid form. The appellant submitted that he annexed both the bid forms while submitting his bid to the procuring agency on 19.08.2020 and the PC accepted it by announcing the quoted bids as under<sup>15</sup>:

Sr. #	Bidder's Name	Quoted Bid PKR In Million	CDR Amount	Remarks
I.	M/s Ali Dino & Co.	344.698	7.200	4 <sup>th</sup> lowest submitted bid
II.	M/s Umer Jan & Co.	323.856	7.200	2 <sup>nd</sup> lowest submitted bid
III.	M/s Gul Construction Co.	269.163	7.168	1 <sup>st</sup> lowest submitted bid
IV.	M/s Canny Engineers & Developers	338.736	7.100	3 <sup>rd</sup> lowest submitted bid

9. The appellant contended that the procuring agency announced the bid evaluation results on 15.09.2020, whereupon the appellant's bid declared/ found as disqualified based on the reason 'the form of bid and cost offered by the contractor has been found as cancelled with his own signature and handwriting' and the procurement contract was recommended in favor of M/s Umer Jan & Co. at PKR 344.188 million (PKR 20 million above the bid announced at the time of the bids' opening) who failed to qualify an essential condition relating to the registration with Electrical Inspector of Sindh for execution of electric works as required for qualifying the eligibility criteria condition clause-3(d)<sup>16</sup>.

<sup>12</sup> While observing the principles of audi alteram partem and natural justice system, the Authority served a copy of the notice to M/s Umer, the lowest evaluated bidder recommended by the PC, for defending an allegation leveled by the appellant.

<sup>13</sup> 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.

<sup>14</sup> The procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the notice inviting tender. The procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

<sup>15</sup> The data is based on the documentary record made available/ claimed by the appellant.

<sup>16</sup> *Ibid*.



10. The appellant averred that the PC deliberately detached the original copy of the revised bid form in consideration of the canceled bid form to favor the bidder M/s Umer Jan & Co., whose bid stood as ineligible as per the referred condition. The appellant, in this regard, also placed copies of the letters bearing No.EIS/LB/ECL/2631 dated 24.08.2020 and No.EIH/LB/HYD/388 dated 26.01.2010 issued by the Electrical Inspector to Government of Sindh, Sukkur and Hyderabad Regions, respectively, which are reproduced herein-below for the sake of convenience and apparent reference<sup>17</sup>:

To,

The Proprietor, Mr. Sikandar Ali Khokhar,  
M/s Sikandar Ali Khokhar, Government Contractor,  
Sukkur.

Subject: CONFIRMATION/VALIDITY REGISTRATION LICENSE.

Reference: Your letter received dated 24.08.2020

With reference to your letter cited above, it is hereby confirmed that except the firm at Sr. # 1, below, no firm has been granted electrical contract license by the License Board Sukkur Region, therefore these firm are not entitled to execute any electrical works within the jurisdiction of Electric Inspector Sukkur Region Sukkur.

However, firm M/s Sikandar Ali Khokhar, Government Contractor Sukkur, is otherwise entitled to execute the electrical works within the jurisdiction of Electric Inspectorate Sukkur Region, Sukkur.

- I. M/s Ali Dino & Co.;
- II. M.s Umer Jan & Co.;
- III. M/s Gul Construction Co.;
- IV. M/s Canny Engineering & Developers.

Sd/-

Electric Inspector to Government of Sindh  
Sukkur Region, Sukkur

Subject: EXECUTION OF ELECTRICAL INSTALLATION WORK THROUGH GOVERNMENT ELECTRICAL LICENSED ELECTRICAL CONTRACTORS OF ELECTRIC INSPECTORATE HYDERABAD REGION HYDERABAD IN ACCORDANCE WITH THE PROVISION OF RULE-48 OF ELECTRICITY RULES 1937.

The Electrical Contractors' Association Hyderabad, have represented to this office, that electrical installation works are being awarded by the different federal/ provincial government departments and government/ semi-government organization to the contractors/ firms, not holding valid government electrical contractor license of this region for execution of such electrification works as required under Rule-48 of the Electricity Rules 1937. It is therefore informed as under:

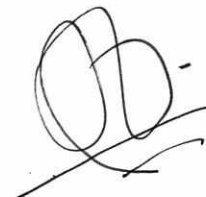

- I. That the execution of electric installation work by the contractors/ firms, who do not hold the valid electrical contractors license granted under Rule-29 of the Licensing Rules framed under Rule-48 of the Electricity Rules 1937, amount to infringements of the above said rules, which is punishable under Rule-123 of the Electricity Rules, 1937.
- II. That the civil contracts are undertaking the electrification works in their own names and thereafter sub-letting the electrification work noted below average. *The Electricity Act 1910 and Rules 1937 do not allow the subletting of the electrification works, and such binding is also obligations for government/ semi-government departments and organizations under Sub Section-3 of Section-37 of the Electricity Act 1910.*
- III. That the copy of the work order issued to the government licensed electrical contractor may be endorsed to this office as required under Rule-39 of the licensing rules...

Sd/-

Electric Inspector to Government of Sindh  
Hyderabad Region, Hyderabad

11. The appellant further contended that the requirement for a license from the electrical inspector for execution of electric work could not be relaxed to any bidder as also held by the Honorable High Court of Sindh, Sukkur Bench while passing an order dated 31.03.2015 that provides 'whenever electric work is to be awarded in future, the offers should be invited from registered electric

<sup>17</sup> <http://www.pprasindh.gov.pk/downloads/ElectricalLicensed020518.PDF>



contractors only, who are only competent to participate in the bid process and carry out the work in accordance with the rules...<sup>18</sup>.

- Mr. Manzoor Ahmed Memon (Member of Review Committee) queried the appellant as to why he retained a copy of the cancelled bid form when the same was replaced with the revised bid form, based on any reason whatsoever, before submitting the bid to the procuring agency?
  - ◆ The appellant stated that he purchased the bid document from the procuring agency that (each page of the document) was duly signed/ stamped by the procuring agency; therefore, he had to place an original copy of the cancelled form along with the bid submitted to the procuring agency.
- Engr. Munir Ahmed Shaikh (Member of Review Committee) asked the appellant to confirm the proposal/ bid (including revised bid with supporting or additional documents) was indexed with proper page numbering at the time of submission to the procuring agency?
  - ◆ The appellant stated that he enclosed the cancelled and revised forms without page numbering and the procuring agency deliberately detached some crucial pages (revised bid form) to exclude the appellant from the competitive bidding process.

### PROCURING AGENCY'S VERSION

12. Engr. Imdad Ali Sial, Project Director, Benazir Bhutto Shaheed University of Technology & Skill Development Khairpur Mirs 'the procuring agency's representative/ the PC member' submitted that the procuring agency opened the bids publicly, in the presence of bidders' representatives, on 19.08.2020, by following the procedure laid down under Rules-41(3) to (9) *ibid*<sup>19</sup>, whereupon the appellant's bid form found as cancelled without any signature. The PC, during the opening and preliminary evaluation of bids, raised a query to ascertain the handwriting, which was confirmed by the appellant whose signatures were sought over the form to authenticate the information and avoid any future conflict<sup>20</sup>. He asserted that the appellant did not submit the other form in place of the cancelled bid; otherwise, the PC could have considered the same while evaluating rather than disqualifying bid for given reason.

13. The procuring agency's representative further submitted that the PC undertook evaluation of bids as per notified criteria and other terms and conditions containing within the bid document. It allowed the bidder to sub-contract up to 25% of the entire project's assignment following the Pakistan Engineering Council (PEC) Guidelines that allow the registered firms to execute up to 25% of the licensed work in any other discipline. In relying so, the bidder M/s Umer Jan & Co. submitted the bid supporting documents along with a copy of the electrical license issued in favor of another contractor (sub-contracting) that eventually entitled the bidder as qualified for the award of procurement work.

- Syed Adil Gilani (Member of Review Committee) pointed out that the PEC issues the bidders/ firms' registration certificates/ licenses under various categories and specialization codes based on the firms' qualifications to execute the permitted works as required under the law. In

<sup>18</sup> C.P # D-3396/2013 (*Zanwar Peerano and Khalid v. Government of Sindh and others*)

<sup>19</sup> The bids shall be opened within one hour of the deadline for submission of the bids. All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid. The procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been permitted, shall be read aloud and recorded when opened. All bidders in attendance shall sign an attendance sheet. All bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened. The official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal. The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

<sup>20</sup> The procuring agency's representative placed the appellant's original bid record before the forum for checking/ confirming the appellant's bid form duly signed and marked by the appellant as cancelled. The record showed the appellant's bid form/ summary of the cost offered by the contractor annexed with the bid as cancelled that was admitted by the appellant when queried by the forum.



this case, the controversy is that the procuring agency required the bidders to have a mandatory electrical inspectorate license to participate and qualify the eligibility criteria, so why the referred condition relaxed for the specific bidder M/s Umer Jan & Co. as also highlighted by the appellant?

- ◆ The procuring agency's representative stated that the PEC allows the bidders with specialization codes under EE11 or C6(11) or C5(11) to execute general or allied electrical works<sup>21</sup>. As such, M/s Umer Jan & Co. found registered with the PEC in relevant category and specialized code(s) that entitled the bidder to qualify the condition and execute the procurement work being the lowest evaluated bidder<sup>22</sup>.
- Subsequently, the Chair of the Committee asked the procuring agency's representatives to update the current status of the instant procurement work;
  - ◆ The procuring agency's representative confirmed that the contract agreement had been mutually signed by both parties (the procuring agency and the bidder) on 30.09.2020<sup>23</sup> i.e. after announcement of the CRC decision in terms of Rule-31(6) ibid<sup>24</sup>; however, the work order will be issued after the final adjudication by this forum.

#### CHRONOLOGY OF THE BIDDING PROCESS<sup>25</sup>

14. 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<sup>26</sup>, 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<sup>27</sup>:

<b>ELIGIBILITY CRITERIA</b>	
I.	Valid registration with the PEC; Category C-3 or above in relevant field and specialization codes CE10, EE04, and EE06
II.	Valid registration with Sindh Revenue Board (SRB)
III.	NTN certificate activated status with Federal Board of Revenue (FBR)
IV.	Having valid license of Electrical Inspector
V.	At least five (5) years relevant experience
VI.	Turnover of at least PKR 500 million in last three (3) years
VII.	Copy of CNIC of Owners/ proprietors
VIII.	Qualification
I.	List of similar nature of building works (at least three jobs), with satisfactory completion certificates along with letters of award issued from procuring agency for costing of work done greater than (twice of the estimated cost of each package as per list of works mentioned herein) in million (cumulative) for last five (5) years
II.	Details of equipment, machinery and transport owned/ leased/ hired by the bidder related to the bidding construction with documentary evidence
III.	Financial statement (summary), income tax returns, bank statements and audited reports last three (3) years
IV.	List of litigation (if any) their nature and status/ outcomes

<sup>21</sup> <https://coportal.pec.org.pk/Miscellaneous/Codes>

<sup>22</sup> 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.

<sup>23</sup> The contract agreement signed on a stamp paper on 30.09.2020. The stamp paper issued by the government stamp vendor and then attested by the Oath Commissioner Sukkur on 19.09.2020. Plus, the stamp fee was paid on 01.10.2020.

<sup>24</sup> The procuring agency shall award the contract after the decision of the complaint redressal committee.

<sup>25</sup> Bidding process means the procurement procedure under which sealed bids invited, received, opened, examined and evaluated for the purpose of awarding a contract.

<sup>26</sup> Refer to the NTI's Clauses-3 & 4

<sup>27</sup> 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 manner 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.



- v. Affidavit on original stamp paper of PKR 50 (duly notarized) to the effect that the bidder is not blacklisted and not involved in any litigation and arbitration with any government procuring agency and bidder has not abandoned any work
- vi. The bidders shall have to submit complete details of engineering and technical personnel along with CVs (duly signed by concerned person), attested copies of testimonials and at least ten years' experience in relevant field
- vii. All supporting documents/ photocopies should be clearly readable and properly attested from any gazette government's officer otherwise bid cannot be considered for qualification
- viii. If bidder is involved in partnership deed then the complete details/ instructions and power of attorney be submitted with affidavit on stamp paper (duly notarized) by the proprietor
- ix. Bidders shall have to submit affidavit on original stamp paper of PKR 50 (duly notarized) to the effect that all the documents/ particulars/ information furnished are absolutely true and correct.

15. In response to the NIT, The procuring agency received four (4) timely proposals/ bids that were publicly opened, with financial bids read aloud, on 19.08.2020 by following the mechanism laid down under Clause-7.5 & of the Authority's Procurement Regulation (Works)<sup>28</sup>. Later on, the PC undertook the bidders' post-qualification and then announced the bid evaluation results (as summarized below) via the PPMS website on 15.09.2020 in terms of Rule-45 ibid<sup>29</sup> read with Clause-7.9.1 of the Authority's Procurement Regulation (Works)<sup>30</sup>:

SUMMARY OF THE BIDS EVALUATION (PKR IN MILLION) <sup>31</sup>						
Sr. #	Bidder's Name	Quoted Bid	Corrected Bid	Bid Rank	Post Qualification	Remarks
I.	M/s Umer Jan & Co.	323.856	144.188	1 <sup>st</sup>	Qualified	Qualified/ responsive as per eligibility criteria...stood 1 <sup>st</sup> lowest position & recommended for award of contract
II.	M/s Ali Dino & Co.	—	—	—	Disqualified	The form of bid and cost offered by the contractor has been found cancelled with his own signature and handwriting.
III.	M/s Gul Construction	—	—	—	Disqualified	The contractor has not provided required bid security as per NIT/ bid document...
IV.	M/s Canny Engineers	—	—	—	Disqualified	The contractor has not provided required bid security as per NIT/ bid document...

16. On the announcement of results, the appellant, feeling aggrieved and dissatisfied with the procuring agency's impugned action in not awarding the contract, lodged a complaint before the CRC, which decided the matter on time. Subsequently, the appellant challenged the CRC decision before the Review Committee, which allowed the rival parties to present/ defend the case for deciding the matter fairly and impartially. Meanwhile, the procuring agency awarded the procurement contract to M/s Umer Jan & Co., considering the bid as the lowest evaluated, on 30.09.2020.

### REVIEW COMMITTEE'S FINDINGS

17. The Committee heard the respective parties at length and perused the record. In this case, the procuring agency disqualified the appellant's bid as found cancelled by the appellant with his signature and handwriting. Against which, the appellant established contention for enclosing the revised bid

<sup>28</sup> 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...

<sup>29</sup> 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.

<sup>30</sup> 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...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...

<sup>31</sup> The data is based on the record as made available by the procuring agency via the PPMS website.



along with the originally cancelled bid form while submitting the proposal that was accepted/ announced by the PC at the time of the bids' opening but subsequently, the revised bid offer got detached to exclude the appellant from the competition. On the other hand, the procuring agency's representatives urged that the appellant's bid form found as cancelled, without any replacement or revised bid form, at the time of the opening of bids, and the appellant admitted/ confirmed it before the PC members who in turn unanimously decided to disqualify the appellant based on the given reason. *The Review Committee discussed the controversial issue in detail while examining the relevant record/ facts and noted that it is exceedingly difficult to conclusively ascertain whether the appellant submitted revised bid form in addition to the cancelled bid while submitting the proposal to the procuring agency as it seems a question of fact. Both the rival parties are stick to their gun claiming that the revised bid form was submitted in time and it was not received along with the bid, respectively. The instant issue requires to be decided based on evidence and the same cannot be decided merely oral submissions, and the appellant has not produced any concrete clinching material in his favor to prove his contention. The Review Committee further noted that the appellant could submit the revised bid on the bidding document downloaded from the Authority's website in terms of Rule-24(2) *ibid*<sup>32</sup> to avoid the current issue. Secondly, the appellant could place the index sheet as a table by referring to the page number(s) available with his bid for ease of reference and cross-examination.*

18. The appellant's another grievance, raised from the initial complaint, is that the procuring agency declared a bidder M/s Umer Jan & Co. as qualified even in the absence of the valid electrical license that was a vital requirement of the eligibility criteria. On the other hand, the procuring agency's representatives stated that the bidder submitted a letter of consent, issued by M/s A.M. Electric Centre, along with the bid for execution of the electric work through sub-contracting. Plus, the bidder submitted the PEC license having registration under Category CA and Specialization Codes under EE11 and others<sup>33</sup> along with the submitted bid, which rendered the PC to qualify the bidder under the given criterion. *After going through the rival contentions, the Review Committee noted that the PC required to evaluate the bids as per criteria and other terms & conditions outlined in the NIT/ bidding document (adhering to the principle of strict compliance) in terms of Rules-42(1) & 46(1)(c) *ibid*<sup>34</sup> (refer to the para # 14). A bare perusal of the criteria required the bidders for submission of a valid license issued by the electrical inspector to qualify the requirement for further process or to become eligible for award of the contract in terms of Rule-49 *ibid*<sup>35</sup> read with Clause-7.6(B)(I) of the Authority's Procurement Regulation (Works)<sup>36</sup>. At first blush, the plea raised by the appellant seems attractive because the procuring agency's representatives have admitted that the bidder M/s Umer Jan & Co. could not submit the electrical license issued in his name. Therefore, the Review Committee in the given position and the referred rules and regulations is of the view that the bidder was not qualified for procurement contract that was awarded by the procuring agency in violation of the referred laws.*

## PROCUREMENT RELATED OBSERVATIONS

19. The procuring agency's representatives affirmed for the awarding/ signing of the procurement contract in question on 30.09.2020; however, the contract documents (contract evaluation report;

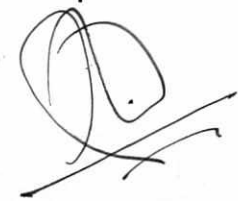
<sup>32</sup> The bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee, if any, by mail or by hand.

<sup>33</sup> <https://verification.pec.org.pk/v/fv/sFD/l.aspx?fid=382F3030313630>

<sup>34</sup> 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.

<sup>35</sup> The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity.


<sup>36</sup> Substantial responsiveness of the bidder and bid is to be determined by the eligibility and the fact that bid has no major deviations [as mentioned below]: (1) Eligibility: (A) the bidder is of valid license holder from the PEC and fall within the category and discipline allowed to participate; (B) The bidder is registered with tax authorities; (C) The bidder is not black listed by any Procuring Agency; (D) In case of electrical works, the bidder is in possession of electrical license from the Electrical Inspector of Sindh...





form of contract and letter of award; and bill of quantities or schedule of requirement) have not been made available so far on the Authority's website as required under Rule-50 read with Rule-10 Ibid<sup>37</sup>.

## REVIEW COMMITTEE'S DECISION

20. Given the preceding findings and observations, as at paras-18 to 19, and after due deliberation, and after due deliberation, the Review Committee, under the statutory powers conferred under Rule-32(7)(g) Ibid read with Sub-section(i) Section-2 of SPP Act, 2009<sup>38</sup>, declares the instant procurement as Mis-Procurement and decides to refer the matter to the Competent Authority for initiation of disciplinary action against the officials of the procuring agency responsible for mis-procurement in terms of Rule-32(A)(2) Ibid<sup>39</sup>.

  
\_\_\_\_\_  
(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

<sup>37</sup> Within fifteen (15) days of signing of contract, procuring agency shall publish on the website of the Authority and on its own website, if such website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and the [following information]: (1) Contract Evaluation Report; (2) Form of Contract and Letter of Award; (3) Bill of Quantities or Schedule of Requirement. The procuring agency shall, immediately upon award of contract, make the evaluation report of the bid, and the contract agreement public through hoisting on the Authority's website as well as on procuring agency's website, if the procuring agency has such a website; provided where the procuring agency is convinced that disclosure of any information related to the award of a contract shall be against the public interest or may jeopardize national security, it can withhold only such information from public disclosure, subject to the prior approval of the Chief Minister.

<sup>38</sup> [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.

<sup>39</sup> 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.

