GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-1528-18(74-75-83)/2020-21/1631 Karachi, dated the 04th December, 2020

To,

The Executive Engineer,
Rohri Division Kandiaro,
District Naushahro Feroze.

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 Ameer Ali Chandio and Anors v. Rohri Division Kandiaro)*** held on 23rd November 2020, for taking further necessary action in compliance of 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 Secretary to Government of Sindh, Works & Services Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Superintending Engineer, Rohri Canal Circle, Hyderabad.
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 of the Review Committee.
6. Messrs Ameer Ali Chandio, Al-Hassan Electric & Civil Works, Fatima & Co., and Babar Ali Chandio.

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NO.AD(L-II)/SPPRA/CMS-1528-18(74-75-83)/2020-21/1631 Karachi, dated the 04th December 2020

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

REVIEW APPEALS

Between:

M/s Ameer Ali Chandio and Anors

v.

Rohri Division Kandiaro

NIT ID Number
T01473-19-0002 dated 09.06.2020

DATES OF HEARINGS
18.11.2020 and 23.11.2020

FACTS AND BACKGROUND

The appellant, M/s Ameer Ali Chandio, Government Contractor Hyderabad[1], lodged a complaint (vide letter dated 10.08.2020) addressed to this Authority as well as the Complaints Redressal Committee (CRC)[2] against the NIT No. TC/G-55/864/2020 dated 05.06.2020 floated by the Executive Engineer, Rohri Division Kandiaro *'the procuring agency'* for procurement of below-mentioned works[3] in accordance with the SPP Rules, 2010:-

Sr.	NAME OF WORK	Estimate Cost	Earnest Money	Time Period
	ADP Scheme # 1140/2019-20			
I.	Constructing stone pitching along rohri main canal from RD 191 to 193 IP, 193 to 195 NIP & RD 253 to 258 NIP side	49.459	2.472	12 months
II.	Constructing stone pitching along rohri main canal from RD 289 to 293 NIP side. U/S Common Bank Nose Kandiaro X-Regulator & filling on depression from RD-330 to 340 IP side	43.205	2.160	12 months
	ADP Scheme # 1141/2019-20			
III.	Constructing stone pitching along rohri main canal from RD 308 to 314	33.053	1.653	12 months
IV.	Constructing stone pitching along rohri main canal from RD 305 to 310 IP side & RD 310 to 315 IP side	55.336	2.766	12 months
	ADP Scheme # 1109/2019-20			
V.	Constructing of village road bridge along sangi distry at RD 57	2.775	0.139	12 months
	Non-ADP Scheme			
VI.	Cement concrete lining of new kati minor from RD 0-00 to 16-00, repair/ reconstruction outlets, construction 03 Nos. road bridge at RD 3+800, 9+600 & 14+300 and repair/ reconstructing head regulator of new keti minor	55.700	2.785	24 months

2. The appellant therein claimed for submission of a sealed bid, with separate technical and financial proposals, against the instant procurement NIT's work listed at Sr. # VI on 14.07.2020[4], and the Procurement Committee (PC)[5] opened the technical proposal on the very same date; however,

[1] Appellant # I having its office located at Bungalow # A16-17, Sammanabad near Honda Palace, Hyderabad
[2] Constituted under the chairmanship of Director Design in Sindh, Irrigation Department, Hyderabad vide notification No.SO(R&S)8-110/2012-13 dated 30.12.2019 issued by the Section Officer (RR&S), Irrigation Department
[3] Detailed description/ nature of the procurement works is accessible via the instant procurement's NIT available on the PPMS website at ID # T01473-19-0002 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]
[4] The deadline for submission/ opening of bids as per NIT (2nd attempt) was 14.07.2020 at 12 p.m. and 01. pm, respectively
[5] Constituted under the chairmanship of Executive Engineer Rohri Division Kandiaro vide notification No.WB-11/RDK/PC/2020/4-w/936 dated 20.02.2020 issued by the Chief Engineer Sukkur Barrage Left Bank, Sukkur Region

the announcement of technical evaluation results and the opening of financial proposals not made despite lapse of reasonable time. Consequently, the appellant requested the authorities to direct the procuring agency for opening the financial proposals in terms of Rule-46(2)(g) ibid[6]. ***In turn, this Authority (vide letter dated 13.08.2020) forwarded the matter to the CRC, while endorsing a copy to the procuring agency, with advice to redress the grievances within the stipulated period as per Rules-31(3) & (5) ibid[7].*** Meanwhile, the Chairman CRC (vide letter dated 12.08.2020) also forwarded the appellant's matter to the procuring agency with direction to submit the procurement related documents within three (3) days for scrutinizing the case, against which the procuring agency (vide letter dated 17.08.2020) furnished its response, which reads as follows[8]:

> It is submitted that the technical proposals in connection with tenders invited vide this office No. TC/G-55/864 dated 05.06.2020 & corrigendum No. TC/G-55/984 dated 26.06.2020 were opened on 1.07.2020 by the procurement committee in the contractors' presence. After the opening of technical proposals, evaluation process was initiated, bid securities sent to the concerned banks for confirmation, and some of them are still awaited. As soon as, the evaluation process of technical proposals is completed, the result of technically qualified contractors would be announced and the date for opening of the financial proposals would also be fixed.
>
> In light of the position mentioned above, it is submitted that allegations leveled by M/s Ameer Ali Chandio, Government Contractor (complainant) are not based on facts and entire process of the procurement is being made according to SPPRA Rules.
>
> Sd/-
> Executive Engineer, Rohri Division Kandiaro

3. Subsequently, the appellants Messrs Ameer Ali Chandio, Al-Hassan Electric & Civil Works[9], Fatima & Co.[10], and Babar Ali Chandio[11] lodged their individual complaints (vide letters dated 22, 26 & 23.10.2020, respectively) addressed to this Authority and the CRC, whereby all the appellants claimed for their submission of bids through two envelopes (technical and another financial proposal) against the NIT's various works on 14.07.2020; albeit the procuring agency failed to announce the technical evaluation results despite the expiry of the ninety (90) days original bid validity. It was alleged on behalf of the appellants # II & III that the Chairman PC demanded them to withdraw the submitted bids on the pretext of pre-awarding procurement contracts among chosen contractors. Therefore, the appellants requested the authorities concerned to issue directions to the procuring agency for opening the financial offers or cancel the bidding process. ***In turn, this Authority (vide letters dated 28.10.2020 & 03.11.2020) forwarded the appellants' complaints to the CRC while reiterating to redress the grievances and then furnish the decisions to the appellants and the Authority within the stipulated period as prescribed under Rules-31(3) & (5) ibid; however, the CRC failed to respond the same.***

4. Subsequently, the appellants preferred individual appeals along with the supporting documents and review appeal fee[12] (vide letters dated 02, 03 & 05.11.2020) before this Authority by stating that the CRC had failed to fulfill its statutory obligations on deciding the matters within the prescribed 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[13]. *In turn, this Authority (vide letters dated 06.11.2020)*

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[6] Financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance.

[7] 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.

[8] This Authority (vide letter dated 08.09.2020) forwarded the procuring agency's response to the appellant for information.

[9] Appellant # II having its office located at Bungalow # 43/A, Abdullah Blessing near Agha Taj Mohd. School Qasimabad, Hyderabad

[10] Appellant # III having its office located at Bungalow # 43/A, Abdullah Blessing near Agha Taj Mohd. School Qasimabad, Hyderabad

[11] Appellant # IV having its office located at Village Mevo Khan Chandio City Tharu Shah Taluka Bhiria District Naushahro Feroze

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

[13] 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/ redressal committee, if any.

forwarded the cases to the procuring agency with advice to confirm the appellant's bid security status, latest by 12.10.2020, for ascertaining maintainability of the cases in terms of Rule-32(1) ibid[14]; however, the procuring agency failed to respond within the specified time.

5. Accordingly, the appellants' cases were taken up by the Review Committee for a hearing in its meeting scheduled on **18.11.2020 at 01.00 p.m.** In this regard, the Authority (vide letters dated 06 & 11.11.2020) issued a summon to the parties concerned to appear in person or depute authorized representatives, well conversant with instant procurement, along with relevant record and evidence before the Committee on the scheduled date, time and venue in terms of Rules-32(6), (8) & (10) ibid[15].

6. In compliance, Messrs. Ameer Ali Chandio, Irfan Ali Shaikh, Kamran Ali Shaikh, and Babar Ali Chandio ***'the appellants'*** appeared before the Committee; whereas, the procuring agency's representatives did not attend the meeting while submitting a written intimation, **received to the Authority on 19.08.2020,** wherein the Superintending Engineer Rohri Canal Circle made a request for rescheduling hearing due to engagement in Pre-IRC meetings scheduled on 18.11.2020.

7. 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 **23.11.2020 at 12.00 p.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. Resultantly, the Authority (vide letter dated 19.11.2020) issued another summon to the parties concerned, and in compliance to it, the following representatives appeared before the Committee:

Name of Representative	Designation/ Organization
Procuring Agency	
Mr. Niaz Ahmed Memon	Superintending Engineer, Rohri Canal Circle, Hyderabad
Mr. Nadeem Ahmed Jokhio	Executive Engineer, Rohri Division Kandiaro
Appellants	
Mr. Ameer Ali Chandio	Chief Executive Officer, M/s Ameer Ali Chandio
Mr. Kamran Ali Shaikh	Representative, M/s Al-Hassan Electric & Civil Works
Mr. Kamran Ali Shaikh	Proprietor, M/s Fatima & Co.
Mr. Babar Ali Chandio	Chief Executive Officer, M/s Babar Ali Chandio

REVIEW COMMITTEE PROCEEDINGS

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

APPELLANTS' VERSION

9. Mr. Ameer Ali Chandio **'the appellant # I'** while presenting the case, apprised the forum about his submission of a technical and financial bid with all the requisite documents against the **NIT's work listed at Sr. # VI** that (technical part) was opened by the PC on 14.07.2020. Subsequently, the procuring agency, after passing eighty-seven (87) days of technical bids opening, announced the evaluation results (vide letter dated 09.10.2020), whereby the appellant was **declared as technically qualified** with direction to attend the procuring agency's office on **16.10.2020 at 11.30 a.m.** for witnessing the financial bids opening. After that, the procuring agency issued a corrigendum (vide letter dated 15.10.2020)

[14] 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.

[15] 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.

extending the schedule for the opening of financial bids on **20.10.2020**, where the appellant was physically present but could not witness any member of the PC. Resultantly, the appellant approached the CRC that also failed to take any action or decision concerning the opening of financial bids.

10. Mr. Kamran Ali Shaikh **'the appellant # III'** argued that he participated in the bidding process, despite having serious reservations over two envelopes bidding procedure for the simple and routine nature works as also pointed out by the Authority via the PPMS website[16], and submitted his bid with the requisite documents against the **NIT's work listed at Sr. # V** on 14.07.2020, against which the procuring agency so far has not intimated the results, whether qualified or disqualified under technical evaluation. The appellant contended that he approached the procuring agency to seek confirmation relating to the financial bids opening; in response, the PC's Chairman updated to have cancelled the bid process. The appellant stressed that he could not receive any official correspondence concerning the cancellation or further extension in the bidding process, and their bid security/ call deposit submitted with the bid is still available with the procuring agency despite the original bid validity period expiry. On the other hand, the procuring agency issued letters for financial bids opening on 20.11.2020 without serving such information or meeting notice to the appellant, and the procuring agency, while exercising so, might extend the validity period by seeking higher authorities' approval in back dates.

11. Messrs. Irfan Ali Shaikh and Babar Ali Chandio **'the appellants # II & IV'** endorsed the above contentions by adding that they also submitted their bids against the NIT's works listed at Sr. # III & V, and their status against qualification or disqualification is not communicated by the procuring agency.

PROCURING AGENCY'S VERSION

12. Mr. Niaz Ahmed Memon (Superintending Engineer, Rohri Canal Circle Hyderabad) and Mr. Nadeem Ahmed Jokhio (Executive Engineer, Rohri Division Kandiaro), **'the procuring agency's representatives'** while defending the appellants' arguments acknowledged that the PC opened the technical proposals on 14.07.2020 that are still in evaluation stage due to certain delays occurred while verifying the documents – experience certificates, and bid securities, etc. – submitted by the bidders. Therefore, the procuring agency extended the original bid validity period for a further two (2) months to complete the remaining work of the bid process against the all the works.

- Syed Adil Gilani (Member of Review Committee) pointed out that the procuring agency issued a letter dated 09.10.2020 addressed to M/s Ameer Ali Chandio 'the appellant # I' for opening financial bids on 16.10.2020 and then issued a corrigendum (vide letter dated 15.10.2020) while extending the schedule for the opening of financial bids on 20.10.2020, then what action was taken on the latter date i.e. 20.10.2020?
    - The procuring agency's representative endorsed the referred letters by stating that the financial bids were not opened on the scheduled date due to the pendency of documents' verification.
- The Committee noted that the procuring agency announced technical evaluation results and scheduled the financial bids opening meeting, which transpires that the PC finalized those steps after taking into account all the processes, including verification of required documents. A continuous delay without justifiable reason, as seems to have occurred in this case, raises a question over the integrity of the procurement process that must be avoided as reflect under Clause-7.9.5(2)(i) of the Authority's Procurement Regulation (Works)[17]. The procuring agency could ask the bidders' clarification needed to evaluate the bids in terms of Rule-43(1) ibid[18].

[16] The Authority's observations under instant procurement are publicly accessible via the PPMS website comment's section

[17] [Single stage two envelope bidding procedure – However, the procedure suffers from serious disadvantages] (i) delay in opening of financial proposal, and longer the delay less is the perceived integrity.

[18] No bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bids; provided that the procuring agency may ask the bidders for clarifications needed to evaluate the bids but shall not permit any bidder to change the substance of price of the bid.

REVIEW COMMITTEE'S FINDINGS

13. After hearing the rival parties and going through their pleadings, the procuring agency's representatives have admitted that the appellants submitted their bids that were opened by the PC on 14.07.2020, and the same are still under evaluation zone despite a lapse of around 133 days, reckoned from the date of opening to hearing, without any significant reason except approval of the competent authority for extension in original bid validity period for further two (2) months. Therefore, the appellants have prayed to pass orders for opening the financial bids or cancelling the bidding process on account of non-compliance with the applicable rules.

14. Before proceeding further, it would be relevant to note the relevant rules and terms & conditions of the bid documents, which read as under:-

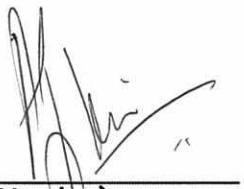
> **Rule 38 – Bid Validity**
> (1) A procuring agency, keeping in view of procurement, **shall subject the bid to a validity period, which shall be specified in the bidding document and shall not be more than 90 days in case of National Competitive Bidding** and 120 days in case of International Competitive Bidding;
> **(1A) The bid validity period shall start from the date of opening of technical or financial bids, whichever is earlier;**
> (2) 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;***
> (3) After obtaining such approval, **the procuring agency, shall request in writing all the bidders to extend the bid validity period. *Such a request shall be made before the date of expiry of the original bid validity period;***
> (4) Such an extension shall not be more than of the original period of bid validity;
> (5) In case the procuring agency fails to finalize the bid evaluation within the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated;
> (6) 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;
> (7) Bidders 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.
>
> **Rule 49 – Acceptance of Bids: 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.**
>
> **Bidding Documents – Instructions to Bidders (IB)**
> **Clause – 6: Referring to IB 14.1 (90 days)** of bidding data, a bid validity period shall be specified therein, keeping in view the nature of procurement, it shall not exceed 90 days in case of National Competitive Bidding (NCB) and 120 days in case of International Competitive Bidding (ICB) SPP Rule 38(1).
>
> **Clause – 14:**
> 14.1 Bids shall remain valid for the period stipulated in the bidding data from the date of opening of bid specified in clause IB.23.
> 14.2 **In exceptional circumstances, prior to expiry of the original, the procuring agency may request the bidders to extend the period of validity** for a specified additional period, which shall not be for more than one third of the original period of bid validity. The request and the responses thereto, shall be made in writing. A bidder may refuse the request without the forfeiture of the bid security. In case, a bidder agreed to the request, shall not be required or permitted to modify the bid, but will be required to extend the validity of the bid security for the period of the extension, and in compliance with Clause IB.15 in all respects.

15. It is ex facie clear in the present case that the appellants/ bidders submitted their bids for a validity period of ninety (90) days, which expired on 11.10.2020. After that, the procuring agency could

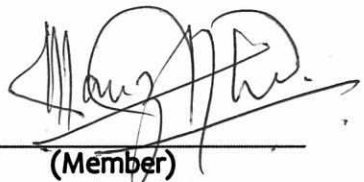
not seek the bidders' consent for an extension in the bid validity period (before the expiry of original period) as per record placed before this forum; therefore, the bids submitted by the bidders' stood to expire as of 12.10.2020 and cannot be considered further for a legally binding contract.

REVIEW COMMITTEE'S DECISION

16. Given the preceding findings, as at para-15, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed any contract; therefore, the procurement proceedings against all the works shall be terminated in terms of Rule-32(7)(f) ibid.[19], and fresh tenders be floated while ensuring strict compliance of the rules. Compliance of the decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.

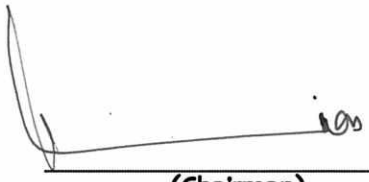


(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Manzoor Ahmed Memon
Private Member SPPRA Board

(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
(Rtd.) Executive Engineer



(Chairman)
Riaz Hussain Soomro
Managing Director
Sindh Public Procurement Regulatory Authority

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