GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-18(25-26-32)/2020-21/1732 Karachi, dated the 24 December, 2020

To,

Executive Engineer,
Provincial Highway Division,
Mirpurkhas.

Subject: **DECESION OF REVIEW COMMITTEE OF SINDH PRUBLIC PROCUREMENT REGULATORY AUTHORITY.**

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision M/s Abdul Ghaffar Mahar, Abdul Rashed Bhutto & Asif Ali Mugheri v/s Executive Engineer, Provincial Highway Division Mirpurkhas, held on 18.11.2020, for your information and further necessary action, under intimation to this Authority, at the earliest.

DEPUTY DIRECTOR (LEGAL)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, Works & Services Department.
2. 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)**
3. The Staff Officer to the Chairman / Members Review Committee.
4. The Appellants/Complainants.

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD(L-II)/SPPRA/CMS-18(25-26-32)/2020-21 Karachi, dated the December 2020

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

REVIEW APPEALS

Between:

M/s Abdul Ghaffar Mahar and Anors

v.

Provincial Highway Division Mirpurkhas

NIT ID Number
T00598-17-0015 dated 19.06.2020

DATE OF HEARING
18th November, 2020

FACTS AND BACKGROUND

The appellants Messrs Abdul Ghaffar Mahar[1], Asif Ali Mugheri[2], Abdul Rasheed Bhutto[3] lodged separate complaints (vide letters dated 12, 11 & 14.10.2020, respectively) addressed to the Complaints Redressal Committee **'hereinafter referred to as the CRC'[4]** and copy endorsed to this Authority[5] – for taking necessary action – against the NIT No. TC/G-55/485/2020 dated 10.06.2020 floated by the Executive Engineer, Provincial Highway Division Mirpurkhas **'hereinafter referred to as the procuring agency'** for procurement of the following works in accordance with the SPP Rules, 2010[6]:

Sr.	NAME OF WORK (PKR in Million)	Estimate Cost	Bid Security	PEC Category (Spec. Code)	Completion Period
I.	Reconditioning of road Mirpurkhas bypass to Jhillori with asphalt Taluka Shujaabad mile: 0/0-3/1 (5 Kms)	65.10	3.255	C4 (CE01 & 10)	12 months
II.	W/R of Kot Ghulam Mohd. Tando Jan Mohd. via Ka-chelo Farm road with asphalt mile: 3/6-7/4 (6 Kms)	105.90	5.295	C4 (CE01 & 10)	16 months
III.	Recondition of road from Mirpurkhas Umerkot road to Umerkot Chhore road (Kharoro Bypass) mile: 0/0-3/7 (6.23 Kms)	110.10	5.505	C4 (CE01 & 10)	24 months
IV.	Improvement of Samaro Kunri road (Phase-II) mile: 7/4-13/0 (8.85 Kms)	99.00	4.950	C4 (CE01 & 10)	24 months
V.	Improvement of road from Khatri Bugri Farm to Dargha Lashkar Shah mile: 0/0-6/2 (10 Kms)	109.90	5.495	C4 (CE01 & 10)	24 months

2. The appellants therein claimed for submission of their sealed bids with supporting documents/ bid security **(works listed at Sr. # 2, 1 & 4, respectively)** to the procuring agency on the scheduled date[7]; nonetheless, the Procurement Committee **'hereinafter referred to as the PC'[8]** rejected the appellants lowest submitted bids on account of non-qualifying the relevant experience/ eligibility criteria as confirmed through the evaluation reports announced by the procuring agency via the PPMS website[9].

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1 Appellant # I having its office located at House # A-31, G.M.B. Colony Qasimabad, Hyderabad
2 Appellant # II having its office located at Mugheri House, Mugheri Street, First Family Line, Jacobabad
3 Appellant # III having its office located at Zaib Water Park, New Bypass Sindh Wah Canal, Sukkur Road, Shikarpur
4 Constituted under the chairmanship of Superintending Engineer, Provincial Highway Circle Mirpurkhas, vide notification No.E&A(W&S)/3-9/2020 dated 03.02.2020 issued by the Section Officer (General), Works & Services Department
5 Sindh Public Procurement Regulatory Authority
6 Detailed description/ nature of the procurement works can be accessed via the instant procurement's NIT available on the PPMS website at ID # T00598-17-0015 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender]
7 The deadline for submission/ opening of bids as per NIT (2nd attempt)/ corrigendum was 23.07.2020 at 10 & 11.30 am, respectively
8 Constituted under the chairmanship of Executive Engineer, Provincial Highway Mirpurkhas, vide corrigendum No.E&A(W&S)3-9/91-16 dated 19.02.2019 issued by the Section Officer (General), Works & Services Department
9 Bid evaluation reports at ID # BE00598-17-0015-2 to 7 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/ber]

As per appellants, the PC at first failed to open bids publicly and then rejected bids as non-responsive on unjustified reasons to favor specific bidders/ contractors by circumventing objectives of fair and open competitive bidding as laid down under Rules-4, 15, 41(4) & (4) ibid[10]. Consequently, the appellants requested the authorities to redress the grievances concerning to rejection of the bids and also pass orders for cancellation of the bidding process. *In turn, this Authority (vide letters dated 16.10.2020) forwarded the complaints (appellant # I & II) to the procuring agency for seeking views/ comments and another complaint (appellant # III) 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[11]. Simultaneously, the Authority restrained procuring agency from issuing procurement contracts till the CRC decision or expiry of the review appeal period in terms of Rule-31(6) read with Proviso of Rule-31(7) ibid[12].*

3. Subsequently, the appellants preferred individual appeals with the supporting documents and review appeal fee[13] (vide letters dated 20 & 23.10.2020) before this Authority[14] by stating that the CRC convened a meeting on 16.10.2020 at 02.00 p.m. while affording an opportunity of hearing to the appellants; however, the CRC failed to announce its decision despite lapse of the prescribed time. Therefore, the appellants requested the Authority to place the cases before the Review Committee in terms of Rule-31(5) read with Rule-32(5) ibid[15]. *In turn, this Authority (vide letters dated 28.10.2020) forwarded the cases to the procuring agency with advice to confirm the appellant's bid security status for ascertaining maintainability of the cases in terms of Rule-32(1) read with proviso of Rule-31(7) ibid[16].* In response, the procuring agency *(vide letters dated 02.11.2020) confirmed the bid securities as intact.*

4. Meanwhile, the Superintending Engineer, Provincial Highway Circle Mirpurkhas/ Chairman (vide letter dated 16.10.2020 received to the Authority on 27.10.2020) furnished the CRC decisions – an excerpt of which covering appellants' version is reproduced below for better appreciation of cases[17]:

> **Facts and Background:** The Executive Engineer, Provincial Highway Division Mirpurkhas invited tenders for five (5) different works through NIT No.TC/G-55/485/2020 dated 10.06.2020 (ID # T00598-17-0015). The date for opening bids was 23.07.2020. After thorough scrutiny of all participating contractors as per eligibility criteria, the BER was hoisted on SPPRA website on 09.10.2020 & 10.10.2020. The complaints of five aggrieved contractors were received by this office on 13 & 15.10.2002 and meeting of CRC was held on 16.10.2020 at 02.00 p.m. All the complainants and Executive Engineer Provincial Highway Division Mirpurkhas were presented in the meeting:
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> **2. M/s Asif Ali Mugheri:** Mr. Taj Muhammad Soomro attended the meeting on behalf of M/s Asif Ali Mugheri, who stated that he applied for the work of Sr. # 4 'reconditioning of road Mirpurkhas bypass to Jhulori with asphalt Taluka Shujabad mile 0/0-3/1 (5 Kms)' costing PKR 65.10 million. BER was hoisted on 09.10.2020 (Friday) wherein his bid was rejected for not having eligibility criteria, although his bid amount was PKR 50.884 million against the successful bidder (M/s F.B. Enterprises) having bid amount

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[10] While procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical. Open competitive bidding shall be the principal method of procurement...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.

[11] 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.

[12] 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.

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

[14] All of these appeals received to this Authority on 26.10.2020.

[15] 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.

[16] 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.

[17] http://www.pprasindh.gov.pk/committee/128CRCEEPHDMirpur27102020.pdf

of PKR 56.336 million. He further alleged that PC has given loss of PKR 5.451 million to the government exchequer. He complained that neither bids were opened before him nor rates were announced loudly.

3. M/s Abdul Rasheed Bhutto: Mr. Fareed Ahmed Bhutto attended that the meeting on behalf of M/s Abdul Rasheed Bhutto. He stated that he had applied for the work 'Improvement of Samaro Kunri road Phase-II'. He alleged that bids were not opened on the same date and time. Executive Engineer opened bids on his own level, without any intimation, his company has twenty years' experience and entire relevant machinery is available, but his bid was rejected on the grounds of relevant experience.

4. M/s Abdul Ghaffar Mahar: The complainant stated that he had applied for the work 'W/R of Kot Ghulam Muhammad Tando Jan Muhammad via Kachelo Farm road with asphalt mile 3/6-7 (6.0) Kms'. He alleged that his bid was rejected illegally on relevant experience grounds even he is working in this department as well as in other departments since 1991.

Complaint Redressal Committee's Findings: Almost nature of all five complaints is same. All of them have been rejected for not having relevant experience as per required eligibility criteria. The bids amounts which were submitted by the complaints are same as hoisted in BER SPPRA website. The procuring agency may ask the bidders to have completed previous projects of similar nature in terms of Rule-46(1)(a)(iv) read with Rule-42(1) ibid and Clause-2.6 of the Authority's Procurement Regulation (Works). It is stated that mere submission of the lowest bid/ offer does not warrant an award of procurement contract until and unless, the bid fulfills the required criteria and other terms and conditions outlined in the bidding documents in terms of Rule-49 ibid.

Complaint Redressal Committee's Decision: After hearing the parties at length, scrutinizing the procurement record, discerning the applicable rules, the complaint of M/s Asif Ali Mugheri, M/s Abdul Rasheed Bhutto, M/s Abdul Ghaffar Mahar, and others are rejected/ nullified.

5. Accordingly, the appellants' cases (after initial security and maintainability) were taken up by the Review Committee for a hearing in its meeting scheduled on **18.11.2020 at 12.30 p.m.** In this regard, the Authority (vide letter dated 06.11.2020) 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, if any, before the Committee on the scheduled date, time and venue in terms of Rules-32(6), (8) & (10) ibid[18]. ***In compliance, the following officials/ representatives appeared:***

Name of Representative	Designation/ Organization
Procuring Agency	
Mr. Muhammad Ayoub Junejo	Superintending Engineer, Provincial Highway Circle, Mirpurkhas
Mr. Abdul Sattar Khatti	Executive Engineer, Provincial Highway Circle, Mirpurkhas
Appellants	
Mr. Abdul Ghaffar Mahar	Proprietor, M/s Abdul Ghaffar Mahar
Mr. Taj Muhammad Soomro	Representative, M/s Asif Ali Mugheri
Mr. Fareed Ahmed Bhutto	Proprietor, M/s Abdul Rasheed Bhutto

REVIEW COMMITTEE PROCEEDINGS

6. The Chairperson of the Review Committee commenced the meeting by welcoming all the meeting participants. The chair then asked the appellants to present the case/ version, one by one, over the instant procurement issues/ grievances.

APPELLANTS' VERSION

7. Mr. Taj Muhammad Soomro **'the appellant # II representative'**[19] argued that the appellant's firm, being registered with the PEC Category C-2 since 2002 and holding diversified experience with

[18] 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.

[19] The appellant's representative submitted an authority letter dated 16.11.2020 duly signed and stamped by M/s Asif Ali Mugheri

various procuring agencies, submitted a bid as PKR 50.884 million with all requisite documents (experience certificates and audit reports of last three years) against the NIT's work listed at Sr. # 1 that was rejected by the PC based on the relevant experience. As per the appellant's representative, they had executed various works, as tabulated below, relating to the road carpeting (costing up to PKR 20 million) almost similar to the instant procurement work, which is required to be executed through the asphalt plant as conveniently available on a rental basis, when needed, through various private firms located across the province; however, the bidders/ contractors are solely responsible for the work's execution in conformance with the quality standards as mutually agreed by both sides. The appellant's representative further argued that the procuring agency, despite the Authority's timely instructions restraining further bid process, awarded all the procurement contracts, and then disclosed the same via the PPMS website on 17.11.2020 at 11.00 p.m. thus causing a loss of million rupees to the national kitty.

Appellant's List of Works/ Work Orders (PKR in million)[20]				
Sr.	Issued By	Issued On	Description	Amount
i	Pakistan Public Works Department	09.10.2020	Construction of tuff paver	5.00
ii	Public Health Engineering Division Jacobabad	09.05.2019	Rehabilitation of rural drainage	5.53
iii	Public Health Engineering Division Jacobabad	10.05.2019	Rehabilitation of rural drainage	6.23
iv	Education Works Division Jacobabad	09.04.2018	Rehabilitation of schools	39.06
v	Education Works Division Jacobabad	09.04.2018	Rehabilitation of schools	35.10
vi	Public Health Engineering Division Dadu	22.02.2017	Water supply scheme	7.71
vii	Public Health Engineering Division Dadu	18.02.2017	Construction of pump house	12.94
viii	Beghari Sindh Feeder Division Kashmore	24.08.2016	Construction of stone spurs	100.8
ix	Shikarpur Drainage Division	10.08.2016	Surface drainage scheme	78.55
x	Highways Division Jacobabad	30.4.2016	Construction of link road	16.20
xi	Public Health Engineering Division Dadu	23.01.2016	Construction drainage system	7.879
xii	Irrigation Kandhkot Division	20.06.2015	Rehabilitation of Hairo Distry	193.4
xiii	Begari Sindh Feeder Division	09.06.2015	Supply and dumping stone	164.3
xiv	Highways Division Jacobabad	21.05.2014	Construction of link road	19.75
xv	Kairi Baghar Division Thatta	26.03.2012	Strengthening of earth work	14.19

8. Mr. Fareed Ahmed Bhutto 'the appellant # iii', while supporting the arguments as mentioned above, apprised of the forum that he submitted the lowest bid as PKR 74.23 million (25% below the estimated cost) against the NIT's work listed at Sr. # 4; nevertheless, the PC recommended the bid offered by M/s AMB & Co. as PKR 96.063 million for an award of procurement contract. He contended that the PC disqualified his firm based on the relevant experience alone despite availability dozens of work orders (with different amounts as tabulated below) issued by the various procuring agencies from time to time that were also annexed with the proposal submitted to the procuring agency. The appellant further contended that there is not any specific provision under the rules that allows the procuring agency to impose a condition on bidders for completion of works equivalent to the estimated cost of the procured work as done under the present case for rejection of the lowest submitted bids.

Appellant's List of Works/ Work Orders (PKR in million)[21]				
Sr.	Issued By	Issued On	Description	Amount
i	Municipal Committee Qasimabad	07.11.2019	Construction of room	2.12
ii	Municipal Committee Qasimabad	07.11.2019	Construction of CC block road	6.11
iii	Municipal Committee Qasimabad	23.09.2019	Construction of CC block road	4.03
iv	Municipal Committee Qasimabad	23.09.2019	Construction of CC block road	2.92
v	Pakistan Public Works Department	05.06.2018	Construction of link road	7.72
vi	Pakistan Public Works Department	16.02.2018	Repair of Government Masjid	1.36
vii	Pakistan Public Works Department	16.02.2018	Recondition of metaled road	9.18

[20] The data is based on the record as submitted by the appellant # ii
[21] The data is summarized through the appellant's proposals submitted by the procuring agency (the appellant's record included)

viii	Public Health Engineering Division Shikarpur	29.11.2017	Construction of surface drains	5.32
ix	Highways Division Shikarpur	24.05.2017	Construction of road	4.15
x	Highways Division Shikarpur	24.05.2017	Construction of paver block	5.90
xi	Highways Division Shikarpur	24.05.2017	Construction of paver block	14.78
xii	Highways Division Shikarpur	24.05.2017	Construction of road	3.52
xiii	Highway Division Sujawal	16.05.2017	Construction of link road	—
xiv	Oil & Gas Development Company Limited	19.04.2017	Supply of construction material	19.84
xv	Machinery & Maintenance Division Khairpur	20.03.2017	Recondition of road	52.32
xvi	Provincial Highways Circle Larkano	15.03.2017	Recondition of road	52.32
xxvii	Oil & Gas Development Company Limited	22.02.2017	Supply of construction material	23.32
xviii	Director Minorities Affairs Hyderabad	22.11.2016	Repair of Hindu Massan	4.24
xix	Highways Division Sujawal	01.06.2016	Construction of link road	—
xx	Machinery & Maintenance Division Khairpur	07.06.2016	Construction of road	27.75
xxi	Public Health Engineering Division Shikarpur	30.05.2016	Providing paver and drains	2.85
xxii	Highways Division Shikarpur	11.05.2016	Reconditioning of road	9.90
xxiii	Mehran University of Engineering & Tech.	30.09.2015	Construction - compound wall	16.59
xxiv	Oil & Gas Development Company Limited	31.08.2015	Pre-drilling engineering works	34.49
xxv	Public Health Engineering Division Shikarpur	04.06.2015	Construction of surface drains	4.89
xxvi	District Officer Roads Jacobabad	14.05.2015	Construction of road/ masjid	11.90
xxvii	Oil & Gas Development Company Limited	05.03.2015	Pre-drilling engineering works	28.32
xxviii	Public Health Engineering Division Shikarpur	08.05.2014	Construction of surface drains	2.87
xxix	Oil & Gas Development Company Limited	10.03.2014	Construction of foundation	5.15
xxx	Department of Antiquities	01.03.2014	Establishment of museum	21.17
xxxi	Oil & Gas Development Company Limited	27.05.2013	Pre-drilling engineering works	26.28
xxxii	Machinery & Maintenance Division Khairpur	09.05.2013	Construction of link road	22.12
xxxiii	Public Health Engineering Division Shikarpur	07.05.2012	Construction of surface drains	1.97
xxxiv	Directorate of Conservation	19.01.2012	Construction of office	49.45
xxxv	Pakistan Public Works Department	21.06.2010	Construction of link road	—
xxxvi	Pakistan Public Works Department	02.02.2010	Construction of metaled road	2.83
xxxvii	Pakistan Public Works Department	16.12.2009	Construction of link road	2.98
xxxviii	Pakistan Public Works Department	25.11.2009	Construction of road	3.98
xxxix	Pakistan Public Works Department	02.11.2009	Construction of federal lodge	9.09
xl	Pakistan Public Works Department	30.05.2009	Road construction	2.55
xli	Malir Development Authority	23.05.2009	Construction of water drain	12.34
xlii	Pakistan Public Works Department	01.07.2008	Construction of RHS Centre	2.15
xliii	Malir Development Authority	13.08.2007	Construction & carpeting road	20.06
xliv	Pakistan Public Works Department	08.07.2006	Construction of PCC Path	0.73
xlv	Director Minorities Affairs Hyderabad	—	Repair of Rangi Ram Mandir	3.96

9. Mr. Abdul Ghaffar Mahar **'the appellant # 1'**, while presenting the case, contested that he submitted a bid as PKR 71.76 million (32% below the estimated cost) against the NIT's work listed at Sr. # 2. However, the PC rejected the appellant as well as other bidders' lowest submitted bids while recommending the award of impugned procurement to M/s Khokhar Brothers at PKR 103.53 million (PKR 31.76 million above the appellant's bid). The PC acted so to award the procurement contracts on favoritism basis in violation of the rules, which requires the tendering process needs to be cancelled and re-invited in an open and transparent manner.

PROCURING AGENCY'S VERSION

10. Muhammad Ayoub Junejo (Superintending Engineer, Provincial Highway Circle Mirpurkhas), and Mr. Abdul Sattar Khatti (Executive Engineer, Provincial Highway Circle Mirpurkhas) **'the procuring agency's representatives'** while defending the appellants' arguments and clarifying the queries emphasized that the bidders' qualification, in these procurement works, was based upon the following

essential conditions – as laid down under the NIT's Clause 2 – and the PC assessed/ evaluated the bidders' capability based on the given parameters as provided under Rules-42(1) & 46(1) ibid[22]:

	ELIGIBILITY/ MANDATORY
I.	Valid registration certificate up to June 2021 and onwards with Pakistan Engineering Council in relevant category and specialized codes as mentioned against each work;
II.	At least (3) works of same specifications and nature of equivalent or more cost completed during past three (3) years; duly supported with completion certificate;
III.	For asphalt concrete works, at least two (2) works completed of equivalent or more cost (with asphalt concrete) during past three years duly supported with completion certificate (this condition in addition to as mentioned at works listed at Sr. # 1 & 2);
IV.	Bio data of engineering and technical staff working with the firm;
V.	Annual turnover at least twice per annum, the estimated cost of the work applied, in last three (3) years;
VI.	Annual audited reports of last three (3) years from registered audit firm;
VII.	List of machinery and equipment available with documentary evidence of its ownership;
VIII.	Documentary evidence showing the contractor/ firm owns/ rented an asphalt plant along with its related machinery such as tandor, PTR, and paver machine (applicable only on asphalt related works);
IX.	Registration with Income Tax Department (NTN certificate) active status with Federal Board of Revenue;
X.	Annual income tax returns of last three (3) years;
XI.	Registration certificate of Sindh Revenue Board (SRB), Government of Sindh; and
XII.	All the above mandatory eligibility criteria are for works which are above PKR 4 million.

11. Following the notified criteria, the PC found the appellants submitted bids could not qualify the essential condition of relevant experience that amounted for rejection of their bids. Besides, the appellant # II submitted annual audit reports of financial years 2014 to 2016 only against the required reports of last three (3) years (2017 to 219) that can be verified from the submitted proposals. On the other hand, those bidders who submitted the requisite documents in support of relevant experience and other conditions were declared qualified as can be ascertained through their submitted proposal.

- The procuring agency's representatives, in compliance with the forum orders, furnished the procurement record (proposals submitted by the appellants and the lowest evaluated bidders) for ascertaining the evaluation process finalized by the PC. Details of the lowest evaluated bidders to the extent of experience are tabulated below for sake of convenience:

The Lowest Evaluated Bidders – List of Works/ Work Orders (PKR in million)[23]				
Sr.	Issued By	Issued On	Description	Amount
Work # I Estimated cost = PKR 65.10 M (M/s F.B. Enterprises)				
I	Highway Division Mirpurkhas	30.04.2019	M&R of road	29.60
II	Provincial Highways Division Hyderabad	14.05.2018	Construction of new road	38.47
III	Highway Division Thatta	08.03.2018	Construction of link road	15.32
iv	Local Government Project Hyderabad	27.02.2018	CC block roads	291.2
v	Provincial Highways Division Hyderabad	26.02.2018	Construction of new road	8.04
vi	Highway Division (W&S) Department	29.01.2018	M&R of CC paver	8.07
vii	Highway Division Hyderabad	07.06.2016	Construction of road	15.45
viii	Highway Division Hyderabad	07.06.2016	Recondition of road	11.91
ix	Highway Division Dadu	26.01.2016	Improvement of roads	19.75
x	Highway Division Dadu	26.01.2016	Construction of roads	15.31
Work # II Estimated cost = PKR 105.90 M (M/s Khokhar Brothers)				

[22] All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents. [Save as otherwise provided in these rules, the following procedures shall be permissible for open competitive bidding:] (1) Single Stage – One Envelope Procedure: (a) Notice inviting tenders and bidding documents of this method shall contain the [following] eligibility criteria: (i) relevant experience; (ii) turnover of at least three years; (iii) registration with Federal Board of Revenue (FB), for Income Tax, Sales Tax in case of procurement of goods, Registration with the Sindh Revenue Board (SRB) in case of procurement of work and services, and registration with Pakistan Engineering Council (where applicable); (iv) any other factor deemed to be relevant by the procuring agency subject to provision of Rule-44; (b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at Clause-a above; (c) all bids received shall be opened and evaluated in the manner prescribed in the notice inviting tenders or bidding document.

[23] The data is summarized through the appellant's proposals submitted by the procuring agency (the appellant's record included)

i	Highway Division Hyderabad	14.05.2018	Widening of road	374.3
ii	Highway Division Hyderabad	24.11.2017	Widening of road	116.4
iii	Highway Division Badin	21.11.2017	Reconditioning of road	76.16
iv	Highway Division Mirpurkhas	24.03.2017	Improvement of road	66.16
v	Highway Division Mirpurkhas	16.03.2017	Recondition of road	26.62
vi	Highway Division Mirpurkhas	03.03.2017	Improvement of road	49.39
vii	Highway Division Dadu	31.05.2017	Improvement of road	43.78
viii	Highway Division Hyderabad	29.05.2017	Recondition of road	45.00
ix	Highway Division Hyderabad	10.05.2017	M/R of road	42.70
x	Highway Division Hyderabad	23.01.2017	Recondition of road	43.10
xi	Highway Division Badin	25.04.2016	Construction of road	46.64
xii	Highway Division Mirpurkhas	28.03.2016	Recondition of road	43.53
xiii	Local Government Project Thatto	—	Construction of road	70.73
xiv	Local Government Project Hyderabad	—	Rehabilitation of road	39.72
Work # IV Estimated cost = PKR 99.00 M (M/s AMB & Co.)				
i	Housing Project – I HAD	21.02.2020	Laying of asphalt	24.68
ii	Highway Division Thar	09.05.2018	Construction of road	43.38
iii	Highway Division Thar	09.05.2018	Construction of road	132.9
iv	Highway Division Shaheed Benazirabad	04.05.2018	Construction of road	99.93
v	Highway Division Jamshoro	03.04.2018	Improvement of road	201.0
vi	Highway Division Jamshoro	01.02.2018	Construction of road	242.7
vii	Highway Division Hyderabad	29.05.2017	M&R of road	230.4
viii	Highway Division Hyderabad	12.08.2016	W/R of road	42.59
ix	Highway Division Hyderabad	14.05.2015	W/R of road	231.1
x	Highway Division Hyderabad	17.08.2015	W/R of road	118.4

- The Committee members raised a query as to why the procuring agency awarded the procurement contracts to the purportedly lowest evaluated bidders on 23.10.2020 **(before announcing the CRC decision)**[24] when the Authority already restrained the procuring agency from awarding the procurement contracts till the final decision of the CRC and/ or the Review Committee in terms of Rules-31(5), (6) read with proviso of Rule-31(7) ibid[25].
    - The procuring agency's representatives claimed for awarding the procurement contracts after communicating the CRC decision to the Authority and the appellants; albeit, the procuring agency's representatives failed to place any documentary record/ evidence in support of such claim for defending the appellants' plea.

CHRONOLOGY OF THE BIDDING PROCESS[26]

12. The Chronology of significant events shows that the procuring agency solicited bids under impugned procurement works by adopting single stage one envelope bidding procedure laid down under Rule-46(1) read with Rule-47(1) ibid[27]. In response, the procuring agency received nine (9) to twelve (12) timely proposals that were opened by the PC publicly on 23.07.2020 as verified through the attendance sheets signed by the bidders[28]. After that, the PC undertook bids post qualification as per

[24] This Authority received the CRC decision on 27.10.2020 i.e. after issuance of the procurement contracts. Plus, the appellants record placed before the forum reveals that the CRC Chairman forwarded a copy of the decision through the mail (Pakistan Post) received by the appellants on 31.10.2020 [https://ep.gov.pk/track.asp – Tracking IDs RGL46117948 & 49).

[25] The procuring agency shall award the contract after the decision of the complaint redressal committee; provided that in case of failure of the Complaint 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.

[26] The procurement procedure under which sealed bids invited, received, opened, examined and evaluated for the purpose of awarding a contract.

[27] Single stage one envelope bidding procedure shall be used as the standard bidding procedure for procurement of goods, works and services of simple and routine nature and where no technical complexity or innovation is involved.

[28] Bidders' attendance sheets can be accessed along with the bid evaluation reports posted on the PPMS website

criteria notified through the NIT, and then announced the bid evaluation results (as summarized below) via the PPMS website on 09 & 10.10.2020 in terms of Rule-45 ibid[29]:

SUMMARY OF THE BIDS EVALUATION RESULTS (WORKS # I, II & IV – PKR in Million)[30]				
Sr. #	Bidder's Name	Quoted Bid	Bid Ranking	Reasons for acceptance/ rejection
Work # I Reconditioning of road Mirpurkhas bypass to Jhillori with asphalt (Estimated Cost = 65.10 million)				
I.	M/s Mian Abdul Jabbar & Co.	36.209	1st	
II.	M/s K.K. Associate	39.193	2nd	
III.	M/s Saeed Ahmed	40.987	3rd	The bidders do not have relevant experience and so on as required under the eligibility criteria (bids rejected).
IV.	M/s Civil Link Associate	44.039	4th	
V.	M/s Abdul Nizam	48.443	5th	
VI.	M/s Abdul Ghaffar Rind	50.077	6th	
VII.	M/s Asif Ali Mugheri	50.884	7th	
VIII.	M/s Ghulam Murtaza Enterprises	53.590	8th	
IX.	M/s F.B. Enterprises	56.336	9th	The lowest evaluated bid
X.	M/s Asadullah Construction	57.080	10th	
XI.	M/s Khokhar Brothers	57.170	11th	Rejected being higher side.
XII.	M/s Vijai & Sons	57.330	12th	
Work # II W/r OF Kot Ghulam Muhammad Tando Jan Muhammad via Kachelo (Estimated Cost = 105.90 million)				
I.	M/s Abdul Ghaffar Mahar	71.768	1st	The bidders do not have relevant experience and so on as required under the eligibility criteria.
II.	M/s Mian Abdul Jabbar & Co.	72.535	2nd	
III.	M/s K.K Associate	74.207	3rd	
IV.	M/s Abdul Salam Arif	75.019	4th	
V.	M/s Khokhar Brothers	103.532	5th	The lowest evaluated bid
VI.	M/s AMB & Co.	104.297	6th	
VII.	M/s Abdul Salam Arif	104.310	7th	Rejected being higher side.
VIII.	M/s MBC & Sons	104.603	8th	
IX.	M/s Preety Construction	104.959	9th	
Work # IV Improvement of Samaro Kunri road (Phase-II) (Estimated Cost = 99.00 million)				
I.	M/s Junejo Ali Muhammad	59.245	1st	The bidders do not have relevant experience and so on as required under the eligibility criteria.
II.	M/s Maaji & Sons	63.466	2nd	
III.	M/s Abdul Rasheed Bhutto	74.230	3rd	
IV.	M/s AMB & Co.	96.063	4th	The lowest evaluated bid
V.	M/s Harish & Co.	96.596	5th	
VI.	M/s MBC & Sons	97.251	6th	
VII.	M/s United Engineers Construction	98.016	7th	Rejected being higher side.
VIII.	M/s Kamran Builders	98.811	8th	
IX.	M/s New Al-Rehman Construction	99.140	9th	

13. On the announcement of results, the appellants, feeling aggrieved by the PC's action to reject the bids, lodged individual complaints before the CRC that heard the appellants but failed to announce the decision on time. Resultantly, the appellants preferred separate appeals before the Review Committee, which allowed the rival parties to present/ defend their case for deciding the

[29] 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.

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

matters fairly and impartially. Meanwhile, the procuring agency had already awarded the procurement contracts on 23.10.2020[31].

REVIEW COMMITTEE'S FINDINGS

14. The Review Committee heard the rival submissions and closely perused the procurement record. In the present appeals, the main controversy, identical among all the cases, is that the appellants claimed for holding relevant experience in the form of various procurement contracts amounting to different levels but below the estimated cost of the impugned works. Therefore, the appellants stressed that the PC could consider their aggregate experience against the NIT's eligibility criteria condition # II based on their lowest submitted bids and registered with the PEC from the last couple of decades. In relying so upon, the appellants also argued that there is no specific provision under the rules that allows the procuring agency to impose a condition on bidders to hold the similar experience equivalent to the procured work(s) estimated cost. Conversely, the procuring agency's representatives maintained that the PC carried out bidders' post-qualification following the eligibility criteria outlined in the NIT as per Rules-42(1) & 46(1)(c) ibid.

15. Before touching the controversy, the Review Committee noted that the procuring agency is bound to award the procurement contract to the lowest evaluated bidder that is legally distinguished from the lowest submitted bidder in terms of Rule-49 read with Rule-2(1)(v) & (w) ibid[32]. Specifically citing the lowest evaluated bidder is the combination of the lowest bid/ price that mandatorily qualifies all the material terms and conditions available within the bidding document.

16. In the case at hand, the procuring agency advertised the NIT, containing detailed eligibility criteria, in leading newspapers and posted the same on the PPMS website in terms of Rules-17(1A) & (2) ibid[33]. Admittedly the appellants purchased or downloaded the bid documents and were well aware of all the conditions contained therein. The appellants then, without raising any query under Rule-23(1) ibid[34], submitted their bids by the cut-off date of 23.07.2020, fully knowing the implication of the conditions incorporated in the bidding documents. After the evaluation results' announcement, the appellants raised concern against the impugned condition (relevant/ similar experience) when they realized their bids' rejection. At no point in time before submitting the proposals, the appellants raised any objection against eligibility criteria or any of its conditions, which shows that they accepted and consented to the NIT/ bidding documents eligibility criteria/ post-qualification conditions that cannot be altered once the bidders entered into an arena of submission and opening of the bids.

17. Now, turning towards the controversy involved in this case that requires clarification whether the procuring agency can impose a condition for bidders to have mandatory experience of similar works costing equivalent to or above the estimated cost of work under procurement. ***The Review Committee examined the issue in detail and concluded that the procuring agency may incorporate a condition for bidders to possess experience under similar nature or scope and complexity of works[35], but not necessarily with the same amount as done under instant procurement works.*** An illustration to a better comprehension of the given controversy can be correlated with a case where a bidder has completed a similar nature or scope of work at a lesser contract value due to market penetration or

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[31] Contract Documents at ID # C00598-17-0015 dated 17.11.20 [https://ppms.pprasindh.gov.pk/PPMS/public/portal/contract_list]

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

[33] All procurements opportunities over two million rupees shall be advertised on the Authority's website as well as in the newspapers as prescribed. The advertisement in the newspapers shall appear in at least three widely circulated leading dailies of English, Urdu and Sindhi languages.

[34] An interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding document in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of the bid; provided that any clarification in response to a query by any bidder shall be communicated to all parties who have obtained bidding documents.

[35] Refer to the Authority's Procurement Regulation (Works) read in conjunction with Rule-46(1)(a)(iv) ibid.

net present value of the project or any other factor. Such bidder cannot be rejected merely based on completing similar work(s) with a lesser contract amount than the estimated cost of work under procurement. ***The Review Committee is of the considered view that the impugned condition can be incorporated, where deemed appropriate, while strictly following the given clarification/ illustration to ensure a fair and competitive bidding process.***

REVIEW COMMITTEE'S OBSERVATIONS

18. The Review Committee observed that the Authority conveyed various infirmities/ observations to the procuring agency through the PPMS website[36] on 14.07.2010 and 13.10.2020 with the instruction to rectify or clarify the same on time; however, the procuring agency could not proceed accordingly to the given instructions. **Besides, the Committee observed that the procuring agency failed to comply with the following procurement rules while undertaking the instant bidding process:**

- The procuring agency had to open the bids within an hour of submission/ receipt of the bids as required under Rule-41(3) ibid[37]. Secondly, the procuring agency's CRC had to intimate its decision to the appellants and the Authority on time before awarding contracts in terms of Rules-31(5) & (6) ibid. Thirdly, the procuring agency was required to post the contract documents (including form of contract/ contract agreement) within fifteen (15) days of the signing of contract in terms of Rule-50 ibid[38].

REVIEW COMMITTEE'S DECISION

19. Given the preceding observations, as at para-18, and after due deliberation, the Review Committee, in the exercise of statutory powers conferred upon it under Rule-32(7)(g) ibid read with Sub-section(i) Section-2 of SPP Act, 2009[39], 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[40].

(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

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[36] The NIT and BERs' observations can be accessed along with the NIT's comments section [https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender T00598-17-0015 & BE00598-17-0015]

[37] The bids shall be opened within one hour of the deadline for submission of bids.

[38] 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.

[39] [unless 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.

[40] 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.