



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1718/2020-21/ 1985

Karachi, dated the 27th January, 2021

To,

Medical Superintendent,
Chandka Medical College Hospital,
Health Department,
LARKANO

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 Medequips Pharma v/s Medical Superintendent, Chandka Medical College Hospital Larkano**, held on 31.12.2020, for taking further necessary action in compliance of referred decision, under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The Secretary to Government of Sindh, Health 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 Appellant.

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

NO.AD(L-II)/SPPRA/CMS-1718/2020-21

Karachi, dated 20th January, 2021

(APPEAL)

M/s Medequips (Pvt.) Ltd., Karachi (Appellant)

Versus

Chandka Medical College Hospital Larkana (Procuring Agency)

(NIT ID # T00738-20-0003 dated 18.09.2020)

Facts and background

1. The appellant¹ M/s Medequips (Pvt.) Ltd., Karachi, lodged a complaint (vide letter dated 2.10.2020) addressed to the Secretary Health Department, Chairman Complaints Redressal Committee (CRC) against the **NIT T00738-20-0003** dated 18.09.2020 floated by The Medical Superintendent CMCH, Larkana "*the procuring agency*" for the *Purchase of Machinery, Equipment's / instruments & Furniture/Fixture (Grant-in-Aid) for CMC Hospital, Larkana*, whereby the appellant raised concerns regarding the products specifications available in the bidding documents that the specifications of various electro-medical equipments are not generalized and the specifications mentioned by the procuring agency has supported to the specific vendor. This Authority forwarded letter to The Medical Superintendent CMCH, Larkana and advised to redress the grievances of the bidder in terms of Rule 31(3) & 5² of SPP Rules and directed to not award contract before CRC decision.
2. Earlier, the appellant (vide letter dated 23.9.2020) submitted representation before the Medical Superintendent CMCH regarding clarification in the specifications of certain Machinery items and endorsed a copy to this Authority. The Authority also forwarded the letter to the Medical Superintendent CMCH and advised to resolve the matter as per law. Subsequently, the firm requested Medical Superintendent to extend the date for the submission of bidding documents vide letter dated 2.10.2020 and similarly endorsed a copy to this Authority. However, the procuring Agency did **neither extended the date nor replied to the objections which were raised by the complainant.** Meanwhile, the Medical Superintendent provided the clarification vide letter NO.CMCH/ACCTS/14313 dated 26.10.2020 wherein the procuring agency clarified that specifications are general in nature and do not support to any specific vendor.
3. Owing to the non resolution of the complaint by the complaint redressal committee, the bidder requested the Authority to hear the matter in the review committee meeting. Therefore, the

¹ M/s Medequips (Pvt.) Ltd, banglow No 49 D block 6 PECHS near main nursery bus stop Karachi.

² . Rule-31(5) provides that complain redressal committee shall announce its decision within seven days and intimate the same to the bidder and to the Authority within three working days. If the committee fails to arrive at derision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose o f the complaint in accordance with the procedure laid down in under rule 32, if the aggrieved bidder files for review appeal within ten (10) days o f such transfer.

Authority listed the matter in a meeting of the Review³ Committee of SPPRA that was scheduled to be held on **Wednesday, 23rd December 2020 at 11.00 a.m.** The matter could not be heard by the review committee **because the representative of procuring agency was not present**. The Authority once again listed the matter in a meeting of the Review⁴ Committee of SPPRA that was scheduled to be held on **Wednesday, 31st December 2020 at 11.00 a.m.** under the Chairmanship of Managing Director, SPPRA in Committee Room of Sindh Public Procurement Regulatory Authority, Barrack No.8, Sindh Secretariat Block-4-A, Court Road, Karachi, **for hearing of the appeal of the appellant** in terms of Rule-31(5) read with 32⁵ SPP Rules, 2010 (amended up-to date).

4. Accordingly, the appellant's case was taken up by the Review Committee⁶ for hearing in its meeting re-scheduled on 31.12.2020 at 10.00 a.m. and notices, in this regard, were already issued to the parties concerned as mentioned above. The meeting was attended by the Chairman and members of the Review Committee. Besides, again the Procuring Agency did not participate for the instant matter. Mr. Shaikh Danish Javed and Muhammad Rizwan, attended the meeting being the appellant of the matter.

REVIEW COMMITTEE PROCEEDINGS

5. 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, on the instant procurement before the committee.

Appellant's Version

6. The Appellant submitted that its firm had submitted the representation dated 23rd of September wherein he informed Medical Superintendent, CMCH, Larkana that the specifications are not generalized but these are supporting to a specific vendor that will reduce the Healthy competition. He further requested to the Medical Superintendent that date may be extended.
7. The appellant also submitted that its firms had written another letter to the Medical Superintendent dated 2.10.2020 requested to extend the tender opening date till the queries are replied and addressed accordingly.
8. Similarly, the firm further submitted that the procuring agency neither replied to the observations nor extended the date of bid opening but opened on the usual.

³The bidder shall submit (following documents] to the Review Committee: - (a) a letter stating 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

⁴ The Review Committee shall comprise the following

- (a) Managing Director;
- (b) Director General Audit Sindh or his nominee not below the rank of BS-19;
- (c) Two private members represented on the SPPRA Board;
- (d) An independent professional having expertise of relevant field concerning the procurement in question.

⁵ Rule-32(1) provides that foe a bidder not satisfied with decision o f foe procuring agency's complaints redressal committee may lodge an appeal to foe Review Committee within ten (10) days o f announcement of foe decision provided that he has not Withdrawn the bid security, if any, deposited by him.

The image shows four handwritten signatures in black ink, arranged horizontally. The signatures are stylized and appear to be those of the members of the Review Committee mentioned in the text above.

9. The Firm claimed that the conditions and specifications are supportive to specific vendors and these are discriminatory. The appellant further submitted that some specifications do not serve primary purpose of machines but these are secondary in nature and specifications are not in accordance with the latest research.

Procuring Agency's Version

10. The procuring agency neither attended nor send its representative in the meeting. However, the letter NO. CMCHL/ACCTTS/14313/16 dated 26.10.2020, submitted by the procuring agency is on record where in the procuring agency has submitted that all the conditions that are mentioned in the bidding documents are not discriminatory and they are general in nature and do not support to any specific or special vendor.

Findings of Review Committee

11. The chronology of the procurement process/ record shows that the procuring agency called the bids in terms of SPPRA Rule for the Purchase of Machinery, Equipments/Instrument & Furniture/Fixture (Grant-in-aid) for CMC hospital, Larkana.
12. The M/s Medequips submitted the representation before the Medical Superintendent in terms of Rule 23 of SPPRA Rules for seeking clarifications in specifications.
13. The bidder again submitted an application before the Medical Superintendent on 2.10.2020 and requested to extend the date for the submission and opening of bidding documents because the procuring agency did not reply the queries of the bidder which were asked vide letter dated 23.9.2020.
14. Meanwhile, the procuring agency opened the technical proposal on 6.10.2020 without replying to the queries of the bidder.
15. The procuring agency replied to the queries of the bidder on **26.10.2020, twenty days** after the technical opening of the bids.
16. The bidder submitted an application for CRC on 27.10.2020. However, CRC not was convened within specified time.
17. On 7.12.2020, The bidder approached the Authority with a request to hear the firm in Review Meeting.

OBSERVATION OF THE REVIEW COMMITTEE

18. The Medequips is an interested bidder, who has obtained bidding documents, requested medical Superintendent for clarifications of contents of the bidding document in writing.

The image shows four handwritten signatures or initials in black ink, arranged horizontally. From left to right: the first is a stylized 'S', the second is 'M', the third is a circular scribble, and the fourth is 'W'. Below these, there is a large, sweeping checkmark or signature that spans across the bottom of the page.

However, the procuring agency did not reply to the clarifications asked by the bidder within specified time of 3 days as per SPP Rules 2010. The Rule 23 of clearly defines;

Clarification and Modification of Bidding Documents:

1. *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 bid;*

Provided that any clarification in response to a query by any bidder shall be communicated to all parties who have obtained bidding documents;

2. *Procuring Agency shall re-issue the Notice Inviting Tenders, in accordance with Rules 17 and 18, if it is convinced that there is a material infirmity or ambiguity in the bidding documents, which cannot be addressed without modifying the contents of bidding documents.*

Therefore, it was incumbent upon the procuring agency to reply to the bidder within three days time in writing.

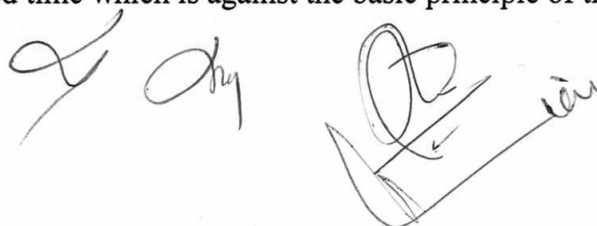
19. Furthermore, the Complaint Redressal Committee neither held on time nor resolved the matter within specified time limit which is mentioned under SPP rule 31(5) of SPP rules:

“The committee shall announce its decision within seven days. The decision shall be intimated to the bidder and the Authority within three working days by procuring agency. In case of failure of the committee to decide the complaint, the Procuring Agency shall not award the contract”

20. The bidder has invoked the SPP Rule 44 which clearly directs that the procuring agency should not insert any condition which may discriminate to any of the bidder. The rule states that

***Discriminatory and Difficult Conditions** – Save as otherwise provided, no procuring agency shall introduce any condition which discriminates among bidders. In ascertaining the discriminatory nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.*

21. The Procuring Agency is required to complete the procedure in a transparent way as per SPP Rules. Whereas, the procuring agency did not reply to the queries of the bidder within specified time which is against the basic principle of transparency.

The image shows several handwritten signatures and initials in black ink. On the left, there are two distinct signatures. In the center, there are some initials that appear to be 'DJ'. On the right, there is a larger, more complex signature with a long horizontal line extending to the right, possibly indicating a date or a specific reference.

Review Committee's Decision

22. Given the foregoing findings and after due deliberation, the Review Committee unanimously decides that the procuring agency, the Medical Superintendent Chandka Medical College Hospital, shall immediately place the complaint before the Procuring Agency's Complaint Redressal Committee, prior to opening of financial bids, as per Rule-31(4)(a) of SPP Rules, 2010 to redress the grievances of the bidder, within seven days, and intimate the same to the Bidder and the Authority within three days.
23. The Procuring Agency and Administrative Department may also look into the matter why the SPP rules/Procedure is not followed in letter and spirit.



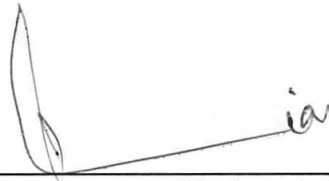
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Engr. Munir Ahmed Shaikh
Independent Professional



(Member)
Manzoor Ahmed Memon
Member SPPRA Board



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