



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2001/2020-21/ 1986

Karachi, dated the 27<sup>th</sup> January, 2021

To,

Medical Superintendent,  
Lyari General Hospital,  
Health 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 Green Top Pharma v/s Medical Superintendent Lyari General Hospital Karachi**, held on 20.01.2021, 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-1944/2020-21/

Karachi, dated the 24<sup>th</sup> January, 2021

(Appeal)

M/s Green Top Pharma (Griffin Chambers)

Versus

The Medical Superintendent Lyari General Hospital Karachi. (Procuring Agency)

**(NIT T1053-20-0002** dated 07.11.2020)

Facts and background

1. The appellant<sup>1</sup> **M/s Green Top Pharma through** Griffin Chambers, Chamber No. 501, 5<sup>th</sup> Floor, Al-Fatima Chambers, Near Passport Office Sadar Karachi, lodged a complaint (**vide letter dated 14.11.2020**) addressed to the Medical Superintendent Lyari General Hospital Karachi, Head of the procuring agency, against the **NIT T1053-20-0002** dated **07.11.2020** that was floated by the the Medical Superintendent Lyari General Hospital Karachi "procuring agency". The appellant complained that the procuring agency has taken disproportionate action by specifying the purchase of medicine with in radius of 5 km of the hospital from Medical stores. This Authority wrote a letter to the Medical Superintendent Lyari General Hospital Karachi and advised to redress the grievances of the appellant in terms of Rule 31(3) & 5<sup>2</sup> of SPP Rules and directed to not award contract before CRC decision.
2. Subsequently, the appellant (vide letter dated **20.11.2020**) preferred an appeal before the review committee of SPPRA and submitted review appeal fees<sup>3</sup>. He stated that CRC was unable to decide the matter within specified time. The Authority listed the matter in a meeting of the review<sup>4</sup> committee of SPPRA that was scheduled to be held on **Wednesday, 31<sup>th</sup> 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**

<sup>1</sup>**M/s Green Top Pharma through** Griffin Chambers, Chamber No. 501, 5<sup>th</sup> Floor, Al-Fatima Chambers, Near Passport Office Sadar Karachi

<sup>2</sup>. Rule-31(5) provides that the complainant 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 a 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 rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

<sup>3</sup>This Authority's Office Order No. Dir(A&FVSPPRNI8-1910325 dated 26.07.2019 [<https://fpms.pprasindh.gov.pk/PPMS/>]

<sup>4</sup>The bidder shall submit (following documents) to the Review Committee:- (a) a letter stating the 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



**hearing of the appeal of the appellant** in terms of Rule-31(5) read with 32<sup>5</sup> SPP Rules, 2010(amended up-to-date).

3. Meanwhile, the firm approached to the Honorable court of Sindh, Karachi and filed Constitutional Petition-**C.P D-6502 of 2020**- the date for the hearing of the constitutional petition was fixed on **31.12.2020** on the same day on which the matter was enlisted for hearing in the review committee meeting of SPPRA, The committee did not hear the appeal because the matter was sub-judice before the honorable Court of Sindh,Karachi.
4. The Honorable High Court of Sindh had pleased to pass the order in the C.P D-6502 of 2020 on 31.12.2020.The Operative part is reproduced as under:

**Learned counsel for the petitioner submits that hearing of his appeal has been scheduled today by SPPRA. Counsel further submits that as a consequence of this scheduling one of his prayer has been satisfied, however, he requests that direction be given to SPPRA to hear and decide the appeal within seven days.SPPRA is directed accordingly. Petition is disposed of along with the listed applications.**

5. Accordingly, the appellant's case was taken up by the Review Committee<sup>6</sup> for hearing in its meeting re-scheduled on **07.01.2021 at 11.00 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 the members of the Review Committee.However, the procuring agency sent Pharmacist of BS-17 as nominee instead of an officer not below the rank of BS-19 and the appellant also was not present whereas it is required by the by the rule 32(8) of SPP Rules 2010 (amended up-to-date) that appellant shall be present before the ReviewCommittee. The rule 32(8) of SPP Rules says:

**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.**

<sup>5</sup>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.

<sup>6</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 announces Its decision within ten working days **of** submission of appeal. However, In case **of delay**, reasons thereof shall be recorded In writing.



Therefore, learned counsel for the appellant as well as the nominee of the procuring agency, requested to the review for the grant of the next date of hearing. Subsequently, the matter was heard by the Review Committee in its hearings scheduled on 13.1.2021 and 20.1.2021 respectively.

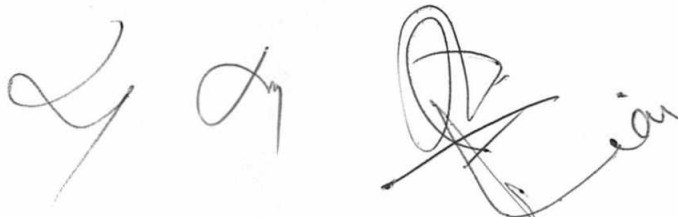
### **REVIEW COMMITTEE PROCEEDINGS**

6. The Chairperson of the Review Committee commenced the meetings 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**

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7. The appellant submitted that, on 03.11. 2020, the advertisement in one of the regional newspapers was published whereby the procuring agency sought offers from interested bidders for the procurement of various items for the functionaries of the hospital. In the same advertisement, at Serial Number 3, the procuring agency called the bids for the procurement of drugs/medicines/surgical items on accounts of funds of local purchase of 15%. The appellant submitted that the procuring has specified the medical stores within 5 km radius of hospital for the procurement of L.P 15% medicines.
8. The Appellant clarified that the general practice, across the hospitals in Sindh, for the procurement of drugs medicines, is to ensure bulk supply with the competitive rates. Whereas the procurement of the drugs and medicines is for the purpose to meet emergency requirements. Therefore, the procurement of drugs medicines of whole amount of local purchase through medical store only and not by other prospective bidders such as distributors and manufacturers to participate, is a dis-proportionate action of the procuring agency and it would give rise to the principle of requirement that is mentioned in a rule 4 of public procurement rules.
9. Therefore, the Appellant requested to the complaint redressal committee to resolve the instant complaint and requested to declare the utilization of whole 15% of the local purchase from the medical store is against the concept of competition in violates the principle of fairness and equal opportunity in the procurement process. He further requested that the procurement committee shall be prevented from acting to proceed with the tender of LP drugs/medicines
10. Furthermore, the appellant submitted that in pursuant to rule 31 of the Sindh public procurement rules 2010 it was necessary for the complaint redressal committee to



redress the matter within 7 days. However, due to the non-resolving of the complaint-by-complaint redressal committee, the appeal is considered to be transferred to the review committee under rule 32 of Sindh public procurement rules.

11. The complainant relied on the general practice of hospitals across the province for the procurement of drugs, is that they are pretty good through a competitive process. Besides that the complainant has also relied on the SPPRA rule 44 which speaks that the procuring agency should not mention any of the condition that may discriminate any of the bidder.
12. The learned Advocate also contended that the discretion of local purchase of medicine is subject to the SPP rules and the procurement committee shall ensure the competitive bidding wherein all the bidders must be given the opportunity to compete. The learned advocate also argued that the supplier, and manufacturer can offer more discounts in competition as compared to the discounts offered by the medical stores.
13. Mr. Manzoor Ahmed Memon, member of the review committee, asked the appellant to present the evidence for the General practice of hospitals regarding the 15% local purchase of medicine. The appellant shared the advertisement of various hospitals wherein the hospitals have asked for the supply of medicine irrespective of medical store or supplier. Furthermore, the appellant also submitted the medicine was procured by NICVD and JPMC in the same way. The advocate also contended that Civil Hospital, Karachi also had solicited the bids in the same manner.

#### **Procuring Agency's Version**

14. The procuring agency submitted that the local purchase is utilized for day-to-day requirement of patients, coming to seek their treatment in emergencies as well as in normal circumstances.
15. The procuring agency further argued that Sindh Government Lyari General Hospital is one of the tertiary care hospitals, where anytime any emergency may arise.
16. The agency also claimed that "currently second wave of COVID-19 is going on and in Sindh Govt. Lyari General hospital; the Covid patients are also under treatment. For their treatment any medicine those are in LGHK formulary or not may be required, in such circumstance's patient might be in danger if we could not be able to provide right medicines at right time. **To fulfill such circumstances, medical store (only those are giving their services 24/7 and within 5km radius) will have the edge over any distributors, importers and Manufactures those could not be able to supply MSD (Medicine, Surgical, and Disposable) 24/7**"



17. The procuring agency further believed that, "it is necessary to ensure the supply of MSD (Medicine, Surgical and Disposal item) at any instant within a short span of time to fulfill patients' treatment requirement even at night, which would not be possible in case of distributors, importers and manufacturers and for the feasibility of fulfillment of patient treatment is under above the 5 kilometers radius and remain open 24 hourly.
18. Additionally, the procuring agency submitted that the most of the MSD (Medicine, Surgical, and Disposable items) are in central rate contract list (CPC) which is procured by the Central Procurement Committee of Health Department, Government of Sindh..LGHK is bound to purchase MSD items (in Bulk) from that list. Distributors, importers and manufacturer offer same MSD items those are already in CPC list leading to the duplication. Moreover, other required medicines those are not in CPC list, most of the time not quoted by disruptors, importers and Manufacturers.
19. It was also contended by the procuring agency that Local purchase weighing 15% of total budget of MSD for any government hospital, is not for bulk supply.
20. The procuring agency also clarified that under rule 13 of SPPRA while requiring any goods works orservices, the procurement committee and the government General hospital always ensure that the procurement be conducted in a fair in transparent manner and the object of requirement is to bring value for the patient seeking their treatment it's in the government General hospital in the procurement process is efficient and economical
21. The procuring agency was also of the view that On the basis of above mentioned clarification for best patient outcome there by recruiting agency has decided to go for medical store for LP 15% tender rather than to purchase medicine surgical and disposable items distributors in in manufacturers therefore the complainant is requested to withdraw his complaint in the benefits of the patients.

#### **Findings of Review Committee**

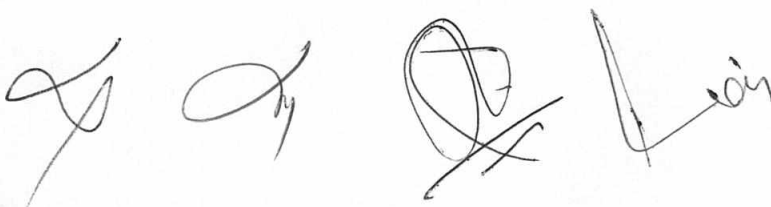
22. The chronology of the procurement process/ record shows that the procuring agency called the bids in terms of SPP Rules for the purchase of the different items from serial 1 to 7.
23. The procuring agency called bids at Sr.No.2 from the eligible bidders for **L.P 15% of Drug/Medicines/Surgical sundaries(Disposable items)Procurement will be carried out through Medical stores that will be within 5 km radius to the hospital which will remain open for 24 hours)**

The image shows three handwritten signatures or initials in black ink. The first is a stylized 'S' or 'A' shape. The second is a cursive 'D' or 'G'. The third is a large, complex signature with a circular loop and a long tail ending in 'ian'.

24. There the appellant raised concerns about the procurement from medical stores. The appellantsubmitted an application before the Medical Superintendent lyari General Hospital, head of the procuring agency, with a request to convene CRC meeting for the redressal of grievance of the appellant on 14.11.2020.
25. The appellant submitted the application before Review committee on 20.11.2020 and simultaneously approached the Honorable high of Sindh @ Karachi. The honorable high court of Sindh passed order on 31.12.2020 and directed SPPRA to decide the matter accordingly.
26. **The procuring agency has specified the Medical store for the purchase of medicines and did not include the supplier/ manufacturer in the bidding. The matter of contention is about the condition of Medical Store by the procuring agency for the procurement of 15 % Local Purchase of medicine. The appellant has contended to give chance to other entities such as Manufacturer/supplier to compete in the bidding process.**

#### ***VIEW OF THE REVIEW COMITTEE***

27. The committee is of the view that the procurement and bidding is not all about achieving the lowest price. It is also about achieving the right quality, in the right quantity, at the right price, at the right time, at the right place and from a suitable bidder in a suitable manner that may help in achieving the objectives, ends and purpose of the procurement. Therefore, as a usual routine of matter a supplier or manufacturer is supposed to offer the lowest price but they cannot provide the medicine at a suitable place that is the nearness to the hospital. Similarly, the supplier cannot manage the right time that is the availability of medicine/other items at the time of emergency and natural calamity that are usually unpredictable.
28. Furthermore the committee is also of the view that whenever decisions are made during the procurement cycle, there will be a trade-off between the benefits gained and the costs incurred relative to the benefits and costs of an alternative approach. For instance one approach for the procuring agency is to get the lowest cost and get the medicine from the manufacturer/supplier. In this approach there is trade-off and to leave other facilities available such as 24/7 availability of medicine, human resources and services of the Medical Stores. Similarly, in case of the procurement from medical store, other services will be available, but the medical stores cannot offer the discounts as a supplier and manufacturer can do.
29. Therefore, the better trade-off between the approaches will be to adopt the approach that can optimize the aims, ends, objectives and goals of the procurement. The prime and core aim of the local purchase is meet the day to day emergency matters and to deal with unforeseen issues of medicine. The hospital Administration can decide the



better trade-off among the options available for Local purchase of medicine. Therefore, in case of Local purchase of medicine, the Authority to procure the medicine is delegated to the Hospital Administration to decide the suitability according to the needs.

30. For appellant invoked the Rule 44 of SPP rules wherein the appellant claimed that the specifying **“Medical Store”** is a discriminatory act. The rule 44 of SPP rules 2010(amended up-to-date)is as under

44. 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.

The committee is of the view that the rule prohibits the discrimination among the bidders and the appellant is not a bidder as required by the procuring agency in the instant procurement process. The SPP rules are defining the bidder as:

["Bidder" means a person or entity; Submitting a bid; or Who intends to submit a bid and is able to substantially prove such intention;]<sup>2</sup>

Therefore, the definition “who intends to submit a bid and is able to substantially prove such intention” shows that to be considered as a bidder, it is necessary that the bidder has to substantially prove whether the bidder has such intention that he will provide the services as required by the procuring agency through medical Store in 5km radius for 24/7. Hence, as the supplier or manufacture is not able to substantially prove to have such intention to provide such services as required by the procuring agency. Therefore, the committee does not find any discrimination in bidding process for any bidder who is to be counted as a bidder for the instant procurement.

31. Furthermore, as the procuring agency has initiated the instant procurement in accordance with the Notification issued by the Health Department, Government of Sindh. The operative part is reproduced as under:

**Fifteen per centum 15% of allocated budget for Medicines will remain on the sole discretion of District/provincial Health institutions for local purchase (LP) instead of 25% to cover emergency requirements after observance of codal formalities of SPP Rules 2010.**

In this regard the committee is also of the view that is clear that the local purchase has been given at the sole discretion of District/provincial Health institutions for local purchase (LP) to cover emergency requirements. Hence, the Authority cannot interfere in the policy matters of government. The Authority cannot decide against the policy of

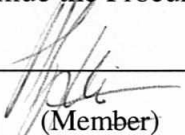




government.

**Review Committee's Decision**

32. Given the proceedings findings/observations as at Para 27 to 31 and after due deliberation, the review committee, In the exercise of statutory powers conferred upon it under Rule 32(7)(a) ibid read with Sub-Section(1) Section-2 of SPP act 2009, declares the instant review appeal dismissed and allows the procuring agency to continue the Procurement process as per Rules.



(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