



Government of Sindh
Sindh Public Procurement Regulatory Authority



No.AD(Legal-II)SPPRA/RC-1/2018-19

Karachi, dated

October, 2018

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

(Appeal)
M/s Green Top Pharma
Versus
NICVD Karachi.

Facts and background

1. M/s Griffin Chambers (Law Firm) referred an appeal on behalf of M/S Green Top Pharma hereinafter referred to as Appellant, on 19-09-2018 to the Review Committee (RC) of Sindh Public Procurement Regulatory Authority (SPPRA) stating therein that M/s Green Top Pharma participated in the bidding process in response to Notice Inviting Tender (NIT) issued by NICVD, hereinafter referred as Procuring Agency (PA), for the procurement of surgical and disposable items for the year 2018-2019. They submitted the bids for two products, that are at Sr. No.3 and 4 in the list of tender notice (i.e. Syringe 5CC /BD / NIPRO/TERMO or Equivalent and Syringe 10 CC /BD /NIPRO/TERUMO or equivalent) under Single Stage Two Envelop procedure of SPPRA Rules. The Technical bids were opened on 01-08-2018, and subsequently the appellant received a letter dated 06.09.2018 from the procuring agency requiring them to attend the financial bid opening on 8-09-2018 at procuring agency's premises. That on the day when financial bid opening meeting was held, a representative of procuring agency informed the appellant that your company has been dis-qualified in the technical round and returned the unopened financial bid without providing any reasons for dis-qualification. Resultantly the appellant raised their grievances vide letter dated 10th September, 2018 to Complaint Redressal Committee (CRC) constituted by P.A against the Technical Evaluation Report. The CRC was required to decide the matter within 7 days, which they failed to do so.

2. Hence the matter was taken up by R.C under Rule-31(5) of SPPRA Rule 2010. Accordingly notices were issued to the Parties for appearing before the Review Committee and the matter was fixed for hearing on 05-10-2018 at 10.00 a.m Mr. Ghulam Asghar Pathan (Advocate), representative of appellant and Muhammad Khurram Hassan Khan, Head of Procurement, NICVD Karachi representative of Procuring Agency appeared before the Review Committee.

[Handwritten signatures and dates]
10/10/18

Appellant Version

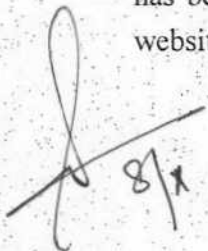
3. The Appellant, while arguing for his appeal apprised the committee that the Procuring Agency floated the tender in question through Newspapers and SPPRA website on 11-07-2018. He stated that the manner in which bidder was asked to take his financial bid was clearly an attempt to restricting competition by any means possible. He further stated that by calling for financial bid PA had created an intentional delusion by misrepresenting the fact and giving impression that the bidder had qualified technical round and proceeded to the next phase which is financial. On the other hand, by returning financial bid without providing any reasons the PA has cemented the fact that they never intended to provide fair opportunity to the appellant as such acted illegally and against the principle of natural justice. This indicates the mala fide intention and ulterior motives of the PA. He requested the RC to ask PA not to proceed further with the procurements of items in which he had participated, until the dispute is settled within the time stipulated in rule SPPRA 2010 (amended 2017).

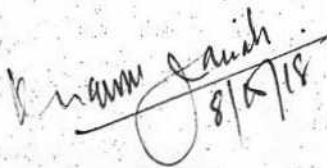
Procuring Agency Version:-

4. Mr. M. Khurram Hassan, the Head of Procurement NICVD, while responding to queries raised by the Review Committee clarified that for the tender No.4 supply of Surgical/Disposable Remaining items, appellant was dis-qualified during technical evaluation process. The Technical Evaluation Report was not provided to the bidder as he did not ask for the same. He further informed that the complaint was not addressed to the Chairman CRC, therefore, the same was not entertained. The complaint was addressed to Professor Nadeem Hassan Rizvi, Who is the Chairman of Employees Grievances and Redressal committee, not of Complaint Redressal Committee. On a query he responded that neither Technical Evaluation nor Bid Evaluation Report have been furnished to SPPRA for hosting on Website nor posted by PA itself on PPMS website of SPPRA as required under Rule-45 of SPP Rules 2010 and the contract has been awarded to the lowest evaluated bidder and the same is also not hosted on the SPPRA website as required under Rule-50 of SPP Rules 2010 (written statement is enclosed). The reason for dis-qualification have not been communicated to bidder / complainant and other bidders as yet, however technical report has been provided to the complainant during the proceeding of Review Committee meeting.

Review Committee observations:-

5. After hearing the parties at length and perusal of record the Review Committee observed that neither the appellant asked PA for the provision of Technical Evaluation Report nor PA itself provided the same to the appellant. The representative of Procuring Agency admitted that neither Technical Evaluation nor financial Evaluation Reports have been hosted on SPPRA website nor they have sent the reports to SPPRA for hosting. The contract to successful bidders has been awarded and the same has not also been provided to authority or hosted on SPPRA website thus committed the serious violation of Rule-45.

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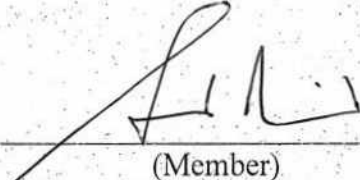




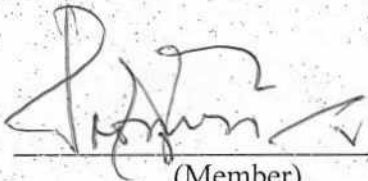
6. Although P.A was asked by Review Committee to appear before it alongwith all relevant record but the representative of P.A did not bring complete record of the instant procurement. As such it could not be determined as to when the procurement contract was awarded. The Review Committee further observed that under Rule-32(7)(d) the R.C may “annul in whole or in part of a non-compliant act or decision of a procuring agency, other than any act or decision bringing the procurement contract into force”.

Decision:-

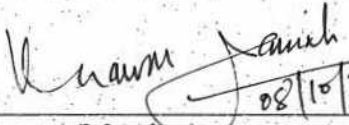
7. After detailed deliberations, the Review Committee, unanimously opined that the Procuring Agency has failed to ensure the compliance of SPP Rules and has violated SPP Rules-45 by issuing contract award before the hosting of Technical and Financial bids. Hence, the members of the Review Committee unanimously declared the said procurement as **MIS-PROCUREMENT** in exercise of powers conferred by Rule-32(7)(g), read with Section 2((i) of APPRA Act 2009 and the matter is referred to the Competent Authority of Procuring Agency for disciplinary proceedings against the Officers/Officials responsible for it, under Rule-32(A)(2). The Review Committee in terms of Rule-32(7)(e) further decided to order compensation of Rs.10,000 to be paid to the appellant by the officer (s)/Official (s) of P.A found responsible for mis-procurement. The P.A shall ensure payment of the aforesaid compensation amount to the Appellant for cost incurred on preparation of bids within three weeks time.



(Member)
Saad Rashid
Member Transparency International
Private Representative on SSPRA Board



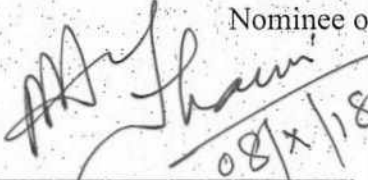
(Member)
Asadullah Soomro
Private Member SSPRA Board



(Member)
Professor Khawar Saeed Jamali
(Independent Professional)

(NOT ATTENDED)

(Member)
Mansoor Ahmed Siyal
Nominee of Director General Audit Sindh



(Chairman)
Muhammad Aslam Ghauri
Managing Director
Sindh Public Procurement Regulatory Authority

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⇒ The BER of ~~MTF~~ Tender 04/2018
has not been hosted on SPPRA website
under ID No. T0022-17-0013

The ~~award~~ ^{contract} has been
awarded.


05/10/18

Head of procurement
MIC UD-Kowachi

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