



Government of Sindh
Sindh Public Procurement Regulatory Authority



No. SPPRA/RC/2018/737

Karachi, dated 13-09-2018

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

(Appeal)

M/s Hoffmann Human Health Pakistan limited

Versus

Health Department Government of Sindh

Facts & Background

M/S Hoffmann Human Health Pakistan limited referred an appeal on 06-06-2018 to the Review Committee (RC) of SPPR Authority stating therein that at the time of Technical Evaluation Report they raised their grievances vide letter dated 28th October, 2017 to Complaint Redressal Committee (CRC) over the Evaluation Report. He further stated that CRC has accepted their plea as M/S Amson was neither WHO prequalified nor its product is WHO prequalified and provided WHO link to CRC for exploring the list of WHO prequalified Vaccines at WHO official website. They further stated that several times they requested the Procuring Agency (PA) to publish the result of CRC meeting but each time it was communicated that result would be announced very soon but almost seven months had passed and no result of CRC meeting had been published by health department Government of Sindh and surprisingly they had come to know that health department had announced the result of financial bids which clearly indicated there were something wrong in the evaluation process. They further requested for enquiring into the whole process of tender and asking Health Department to stop purchase process immediately until the final decision of Review Committee.

2. The matter was taken up under Rule-32(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 04-07-2018. Mr. Atif Hussain (Sales Manager), representative M/S (3H Hoffman) and Dr. Jamaluddin Jalalani (Additional Secretary) Health Department appeared before the Review Committee.

Appellant Version

3. Mr. Atif Hussain the representative of Appellant, while arguing his appeal apprised the committee that the Procuring Agency floated the tender in question through Newspapers and SPPRA website on 15-08-2017. The appellant stated that M/s Amson, the manufacturer, is neither WHO prequalified nor its product is WHO prequalified. He emphasized that if a sensitive biological vaccine is not manufactured under the WHO guidelines then, with all standards, it should not be approved by a provincial Health Department. He further added that all other provinces, in principle, are purchasing only "WHO prequalified Hepatitis B vaccine" as otherwise the quality of vaccine can be compromised. Initially in bidding documents, the Health Department Government Sindh had also specified the purchase of only WHO Prequalified vaccine but later -on a corrigendum regarding change in the bidding documents was issued allegedly to favor Amson's vaccine. Even then the Amson's product was not meeting the specification of the corrigendum. The appellant moreover requested the Review Committee to kindly inquire the whole process of tender and ask Health Department Government of Sindh to stop purchase process immediately for the best interest of public.

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Department/Procuring Agency Version

4. The Additional Secretary (Health) Mr. Jalalani while responding to queries raised by the Review Committee clarified that the therapeutic group No.9 Vaccine of subject tender were approved by the technical Committee comprising the senior professor / Consultant of relevant specialty. But due to some reservations in respect of generalized specification and correction in published items, the same were forwarded to the respective technical committee for their guidance and recommendations. On the recommendation of technical committee, the specification of various items including Hepatitis B vaccines were amended accordingly and such amendments in specifications were immediately informed to all bidders through corrigendum published in Newspapers on 01.09.2017 and requested that all interested bidders may obtain updated documents from Health department. The technical bids were opened on 18.09.2017. The respective technical committees evaluated the bid. For therapeutic group No. 9 only 3 bids were received against item No.10 & 11 Hepatitis –B Vaccine, which all were found according to requirements/Specification and all 3 bids were declared technically qualified, as the source of Bulk material is of WHO pre-qualified vaccine manufacturer. Financial bids of approved bidders were opened on 24.10.2017. All the representative of bidders attended the meeting including Mr. Khalid Jawaid (Representative of complainant) M/S Hoffmann. The complainant M/s Hoffmann was the 2nd lowest qualified bidder.

5. Mr. Jamaluddin Jalalani, further clarified that after opening of financial bids the complainant lodged complaint before the CRC vide his letter dated 28.10.2017 on the ground that the Vaccine to be supplied by the lowest qualified bidder is not the WHO pre-qualified, after he came to know that he was not the first lowest bidder. However, the CRC heard the grievances of complainant in details in its meeting held on 22.12.2017 & 26.12.2017 and after thorough examination of all related record, the CRC decided to refer both items No.10 &11 to Technical Committee for Review /Opinion. Moreover, Mr. Jalalani vide letter NO.SO(PM&I)2-1/2017-18-Misc(ACE) dated 20th July 2018, also furnished brief facts of procurement process of Hepatitis-B Vaccine under Central Rate Contract 2017-18 on 20.07.2018 along with copy of Corrigendum, copy of minutes of CRC meeting , copy of decision by Technical Committee and copy of guidance from Drug Regulatory Authority of Pakistan (DRAP) etc, as the requisite information was asked by RC in its second meeting held on 10.07.2018. He -further clarified regarding the response of CRC on the decision of the Technical Committee remarking that Amson Pharma was purchasing bulk material from M/S L.G Pharma and doing re-filling and re-packaging in Pakistan. The CRC recommended to get comments from DRAP regarding WHO –Rules and in the light of Complaint. The reply of DRAP was placed before the newly constituted Central Procurement Committee. CPC also examined the documents of M/s Amson Pharma & Vaccines and found according to WHO Guidelines for International Procurement of Vaccines. After deliberation/ discussion CPC agreed to circulate items No.10 & 11 as already was approved in favor of lowest bidder accordingly. He further argued that M/s Amson is importing bulk product from M/s L.G life science Korea which is WHO Pre-qualified and also WHO guidelines are met, therefore the proceedings of subject tender are fairly in accordance with the Law & Rules and had not violated any SPPRA Rules, as the approval of Vaccines are in line with WHO international Guidelines for procurement of Vaccine.

Review Committee observations

6. The Review committee examined thoroughly the statements of Procuring Agency and the appellant and reviewed the documents submitted by the Health Department including the letter of DRAP. During the examination it is transpired that procedure of evaluation was not followed in letter and spirit as the bids were not evaluated as per the evaluation criteria given in the Bidding Documents, hence Rule 42 (1) of SPP rule was not complied with, which stipulates that **"all bids shall be evaluated in accordance with evaluation criteria and other terms and conditions set forth in the bidding documents"**. It was observed by the RC that in the evaluation criteria given in the bidding documents, it is mentioned that **"the finished and bulk product/ material/manufacturer should be from WHO prequalified"**, whereas, In the instant case the bulk material procured by M/S Amson from M/S L.G Life Science Korea is WHO prequalified but the finished Product supplied by M/S Amson (i.e Inj. AMVAX and IMATET) is not WHO pre-qualified. According to Section 2 (i) of SPP Act (2010) any Public procurement made in contravention of any provision of SPP Act, any Rule, Regulation, Order or instruction made there under or any other Law in respect of, or relating to, public procurement is **mis-procurement**.

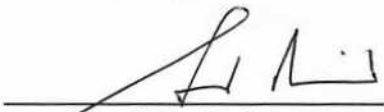
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7. During discussion it was revealed that the appellant in the instant case M/S Hoffman is also supplier of the same product to the Government of Punjab, Primary & Secondary Healthcare Department but astonishingly the rates quoted by them are Rs. 114/- per unit alongwith the Syringe, but for similar procurement of Hepatitis-B Vaccine in Health Department Government of Sindh their quoted unit price is Rs. 162/- without Syringe (copy of Notification NO.PSHD-TCO-I(M)4-123/2017 dated Lahore the 13th October, 2017 Government of the Punjab, Primary & Secondary HealthCare Department, is Annexed "A"). If appellant had quoted the same or matching price in instant procurement then they would have been first lowest.

8. Furthermore, it is also observed that neither the CRC nor the Technical Committee of Health Department has given any clear decision in the instant procurement but the matter was referred to the DRAP, whose report is also not very clear regarding the WHO prequalification status of finished product of M/S Amson. CRC instead of deciding the matter referred the case back to the Technical Committee while the Technical Committee, without taking any decision just referred the matter to DRAP for guidance. In its report DRAP did not certify that the finished product of M/S Amson was WHO prequalified. The Reivew Committee observed that the contract was awarded to M/S Amson in the absence of clear decision / recommendation of CRC dealing with the complaint of the Appellant.

Decision:-

9. The bidding documents had expressly required WHO Pre-qualification for both bulk and the finished product, however Procuring Agency failed to prove that M/S Amson's finished product (i.e Inj. AMVAX and IMATET) is WHO Pre-qualified, notwithstanding its source material being WHO prequalified. Hence, the members of the Review Committee unanimously declared the said procurement as Mis-Procurement in the light of SPP Rule-32(7)(g). Mr. Saad Rasheed, (Transparency International Pakistan TIP) member of RC was of the opinion that the case may be referred to Anti corruption establishment, beside communicating to the Competent Authority of the Procuring Agency but majority of the members are of the view that the option of referring the matter to Inquiries and Anti-Corruption Establishment Sindh may be exercised only in cases of gross violation of rules. It is therefore, decided that the instant procurement is declared as mis-procurement and the matter is referred to the Competent Authority of Procuring Agency for Disciplinary Action against the Officers / Officials responsible for it, under Rule 32(A)(2) of SPPRA.




(Member)
Saad Rashid
Private Member SPPRA Board
Representative Transparency International



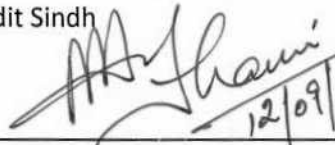
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