



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3293/2022-23/0490

Karachi, dated the 28th October, 2022

To,

The Chief Executive Officer,
Sindh Health Insurance Limited,
KARACHI.

Subject: **DECISION OF THE 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 Health Econnex Pvt Limited V/s Sindh Insurance Limited, held on 29.06.2022, for information.

DEPUTY DIRECTOR (LEGAL)

A copy is forwarded for information and necessary action to:

1. Mr. Nadeem Akhtar, (Head of Procurement Committee), CFO & Company Secretary (EVP) Sindh Insurance Limited.
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.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3293/2021-22

Karachi, dated, 03rd August, 2022

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

Decision of the Review Committee held on 29.06.2022

Appellant	M/s Health E-connex
Procuring Agency	Sindh Insurance Limited
PPMS ID # Reference No.	T00013-21-0014 SIL/HO/Third Party Administration (TPA) for Health Insurance
Appeal Received in Authority Dated	08.06.2022
Complaint addressed to the CEO Sindh Insurance Ltd / Chairman CRC	19.05.2022
Dated of Posting Notice Inviting Tender on PPMS website	11-05-2022
Date of Opening of Notice Inviting Tender on PPMS website	27.05.2022
Date of Posting Bid Evaluation Report on PPMS website	Posted on Authority website 23.06.2022
Date of Posting Contract Documents on PPMS website	Not Posted up-to 15.6.2022
SPPRA Observations communicated to Procuring Agency through PPMS website dated	23.05.2022
Estimated Cost of NIT Total	6.00 million
Total works in NIT	1 works
Issue Involved	Evaluation Criteria
CRC Decision	Received on dated 06.06.2022

The Appellant's Version:-

1. The Appellant submitted that in this tender, SIL prepared a very lenient evaluation criteria in the bidding documents for example "Average Yearly Turnover of Last 3 years" which was a valid category in all four (04) previous tenders and was the key to judge the Financial Performance & Stability of the participant, was removed altogether as newer, inexperienced companies cannot score in this category and the marks allocated for this category were adjusted elsewhere in an arbitrary manner.
2. The Appellant furthermore submitted that weightage of key elements from selection criteria was significantly altered, a breakdown of this is as follows:-

Scoring Criteria	Category	1 st & 2 nd Tender	3 rd Tender	4 th Tender	5 th Tender
Should have existing Third Party Administration of Health Insurance Premium Portfolio	100 Million+	10 marks	15 marks		20 marks
	50 Million+	7 marks	10 marks	10 marks	15 marks
	20 Million+	5 marks (below 50 million)	7 marks		
	10 Million+			7 marks	10 marks

Number of Corporate/Group third party Administration of Health Insurance Clients	10	10 marks	10	15 marks	8	10 marks	8	20 marks
	7	7 marks	6	10 marks	5	7 marks	5	15 marks
	5	5 marks	3	7 marks	2	5 marks	2	10 marks

Experience in the field of third party Administration of Health Insurance	5+	10 marks	7+	15 marks	8+	5 marks	5+	10 marks
	4+	7 marks	5+	10 marks	5+	3 marks	3+	7 marks
	4-	5 marks	3+	7 marks	2+	2 marks	1+	5 marks

3. From the above, it was concluded by the appellant that it was evident that how the selection criteria aimed to decrease the weight-age of key element that measure the expertise and competence of an organization, and somehow grant qualifying marks to incompetent and new organizations.

4. The Appellant further submitted that the selection criterion for the bid, in addition to being lenient and unjust, also appeared to have been manipulated by the Committee in order to allow for achievement of qualifying scores by inexperienced organization.
5. The Appellant also contended that such marking was a direct violation of the prevailing rules and regulations, as it allowed all organizations working in the sector to score the same amount of marks, and hence was violating the principles of competition set forth by the Competition Act, 2010.
6. The Appellant further submitted that there remained no scale in such categories by which the competence of new organization may be evaluated and the appellant also contended that instead of choosing to lay out valid and relevant categories which would allow for a fair assessment of proposals, the Committee deliberately set out categories which would be awarded to each and every eligible participant, so as to facilitate the new companies such as the Other Participant in achieving a high score.
7. The Appellant requested the Review Committee to direct the procuring agency to terminate the procurement process and direction be issued to the procuring agency to call tender afresh by formulating an appropriate evaluation criteria whereby the competent, experienced and financial sound bidder may be selected in the larger interest of public

The Procuring Agency's Version:

1. The Procuring Agency submitted that the appellant submitted the appeal on 7th June 2022, whereas the meeting of the Review Committee for the hearing of appeal was convened on 27th June, 2022 vide notice no. AD (L-II)/SPPRA/VMS-3293/2021-22/1342 i.e. after the laps of 20 days. The Procuring Agency maintained that as per rule -32 (6) review appeal meeting should have been convened within 07 days. Therefore, the review appeal has become time barred and has no legality.
2. The procuring agency while refuting the malafide intention in formulation of evaluation criteria informed that SIL made the TPA ("third party administrator") agreement in the year 2015, when the complainant was new entrant being licensed with SECP (Securities and Exchange Commission of Pakistan" the insurance regulator). The complaint had very small Pakistan medical insurance business volume. The procuring agency had confidence that the complainant acquired SECP license for TPA and the basic formality and checking has been made by the regulator. At that time the complainant was the only TPA working in medical insurance market. There was another license TPA in the market in the year 2015. However, the TPA was only working in with its group insurance company. Therefore, partially there was only TPA working in medical insurance market in Pakistan. In summary that business was provided to the complainant after their SECP registration having no prior business exposure in the health insurance market as TPA. From 2015 till 2021, the procuring agency worked with complainant as no other competitor or company operating in the medical insurance market.



3. The PA further informed that in the year 2021 M/s. Crescent Care had acquired license for TPA from SECP. In order to procure the services by open competition, tender for TPA published on 15th September 2021 wherein only two bidders submitted for the tender and M/s. Crescent Care Company being licensed from SECP won the first tender. The rate offered M/s Crescent Care was @7.5% and complainant @ 9.00% which in turn was bringing benefit of Rs. 0.825 million towards procuring agency, being a public sector company.
4. The Procuring Agency further informed that similarly, in the fourth tender again two bidders participated and the price quoted by complainant was @ 9.00% and other bidder was @ 6.700% with saving of Rs. 1.60million to the procuring agency. The procuring agency contended that complainant although being old company, was not able to compete with price as it was previously working in monopoly imminent.
5. The procuring agency also submitted that in order to avoid competition, the complainant started blocking the tendering process and procurement process becomes delayed.
6. The Procuring agency further submitted that the appellant is already working with SIL and due to delay in the fresh procurement process the PA has no option except to extend the contract of TPA in favor of the appellant on higher rates.
7. The Procuring agency clarified that evaluation criteria was clear and unambiguous, but the appellant was challenging as he cannot compete and submitted higher rates in all tenders.
8. The Procuring agency submitted that due to delay in the conclusion of procurement contract, the procuring agency has borne loss of Rs. 1.2 million.
9. The procuring agency also submitted that it used single stage – two envelope bidding procedure as per rule 46(2) of the SPP Rules. As per section 21A read with section 44 of SPP Rules and also mentioned in SPPRA letter dated 27th April, 2022 guidelines provided and contended that the formulation of selection criteria was the discretion of the procuring agency.
10. The procuring agency apprehended that the complainant had mala fide intentions to discourage the competition and delay the tendering process, and it was also contended that the objections raised by complainant had no relevance.
11. The procuring agency at very outset contended that the appeal filed by the appellant challenging the evaluation criteria ought not to have been entertained by the Review Committee since the appellant having participated in the procurement process; they are estopped from challenging the selection/ evaluation Criteria. The appellant being aware of the criteria, which was to be applied for selection, did not ask for the clarification and continued waiting till the opening date came near thereafter he filed CRC complaint. Such filing of the complaint was tantamount to create the obstruction in the normal working of the procuring agency.



12. Replying to the question of 3 years ' average turnover , The procuring agency submitted that it had adopted single stage-two envelope method for bidding under Rule-46(2) of SPP Rules 2010. The 3 years ' average turnover condition applied to single stage-one envelope as per rule -46(1) pf SPP rules. It was also contended that turnover was not the only touchstone to check the financial capacity of any bidder.
13. It was also contended that the procuring agency followed the spirit of SPPRA rules by providing equal opportunity to all available bidders in transparent manner for saving the public fund. The Procuring agency requested the Review Committee to dismiss the appeal being devoid of merits

Observations of the Review Committee:

1. The Review Committee observed that it is an admitted position that the bids were evaluated as per the evaluation criteria mentioned in the bidding documents.

Now the following questions are yet to be decided.

- a. Whether a bidder has any right in the formulation of Evaluation Criteria?
- b. Whether the evaluation criteria in the instant tender violate the Rule 44 of the SPP Rules?
- c. Whether the evaluation criteria aim to decrease the weightage of key elements of competence and expertise?
- d. Whether Pre-Qualification was necessary or mandatory under the SPP Rules as claimed by the Appellant?
- e. Whether the the evaluation criteria violates the Section 4(2)(e) of the Competition Act 2010?
- f. Whether the bidder was able to compete in the tender in financial terms or not?
- g. Whether a bidder can challenge any specification or criteria that do not suit him?
- h. Whether the cancellation of tenders by the procuring agency can be called into question by the Review Committee?

a. Whether a bidder has any right in the formulation of Evaluation Criteria?

i. Concept of Aims of Procurement and Requirements of Procuring Agency

2. As a matter of fact, the procurement process is carried out in order to fulfill the needs and requirements of the procuring agency. The requirements and needs are directly linked to the aims and objectives, which help ensure that contract delivery is fully aligned with the desired outcome. The aims and objectives and subsequent requirements and needs are kept in mind whenever the procurement process is initiated. The procuring agency that procures the goods, services or works or as the case may be, can understand well its requirements and needs in orders to fulfill its objectives and aims.



ii. Authority of the Procuring Agency to formulate the evaluation Criteria as per requirements

3. The Review Committee observed that SPP Rules 21(A) and 44 provide the guidance about the formulation of Evaluation Criteria for tenders and similarly Rule 29 provides the guidance for the eligibility of contractors. The SPP Rules entrust and authorize the procuring agency to formulate and fix the criteria for selection of contractors as it may deem appropriate, however, such criteria must be clear and unambiguous. The aim and objective behind the authorization of a procuring agency to formulate the evaluation criteria, was to authorize the entity that can understand its requirement better than any other person, entity, institution or any company. The SPP Rule 21(A) is reproduced as under:

21(A). [Evaluation Criteria- The procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide a clear and unambiguous evaluation criterion in the bidding documents shall amount to mis-procurement.]

4. The Rule mentioned above makes clear that subject to the law, the formulation of evaluation criteria is the prerogative of the procuring agency. Neither Authority nor the Review Committee or any other institution can compel the procuring agency to formulate any specific evaluation criteria because the procuring agency can well understand its requirements.

iii. Value for money is linked to the requirements of the procuring agency:

The SPP Rule 4 describes the Principles of Procurements which are Fairness, Efficiency, Economy, Transparency and Value for money. The definition of Value for money has been described under the Rule 2(1)(dd)

"Value for Money" means best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, upgrade ability, price, source, and the combination of whole-life cost and quality to meet the procuring agency's requirements.

5. It may be noted that all the requirements and attributes of value for money are directly linked to the requirements of the procuring agency. The procuring agency can understand better its need and the condition can be put by the procuring agency as per requirements of the procuring agency.
 - a. Illustrations I: An Educational Institutions is hiring the services for the conduct of Book Fair. The value for money for the procurement of services would be to hire the goods and services on rent basis. No one can argue that such procuring agency shall construct the buildings and hire staff on permanent basis for the conduct of two days Book Fair.
 - b. Illustration-II. Provincial Health Department is hiring the services of young doctors and allied staff to cope with the challenges of Covid-19. The department cannot be compelled to hire experienced and aged doctor because they possess considerable experience, as the requirement of the procuring agency can be better understood by the procuring agency.



c. **Illustration-III.** Municipal Corporation is hiring the services of a firm to collect the solid waste. For that task, a procuring agency puts the condition of the availability of manpower, machinery and equipments. The procuring agency cannot be compelled to put the conditions for highly technical and learned staff because the requirements of the procuring agency can be fulfilled by the use of machinery and by semi-skilled or in some cases by the unskilled staff.

iv. Procurement cycle is a trade-off among the choices available.

6. 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. A decision to select more experienced person, firm or company may trade off the financial soundness. Likewise, sometimes giving more weightage to the **Financial Capability may trade off for more score to Quality Management of the contractor. Therefore, there cannot be any single touchstone to get one aspect and trade off the other one.**

7. **Keeping in view of the varying needs, objectives and requirements, the procuring agency has been asked to formulate an appropriate evaluation criterion, listing all the relevant information subject to conditions that the evaluation criteria.**

v. **Right of any bidder in the formulation of evaluation Criteria.**

8. As described above, the formulation of evaluation criteria is the authority and prerogative of the procuring agency. None of the bidders can claim for any specific evaluation Criteria as a right. However, the reading of the Rule 21(A) makes clear that the evaluation criteria shall be appropriate and listing the relevant requirements and must be clear and unambiguous. In the instant procurement all the requirements were clear and no any ambiguity has been pointed out by the appellant.

9. The Review Committee cannot interfere with the terms of the tender prescribed by any Government agency just because that any bidder feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand the procuring agency had to decide what the requirements of the procuring agency and what are are its preferences.

b. **Whether the evaluation criteria in the instant tender violate the Rule 44 of the SPP Rules?**

10. The appellant contended that the terms and conditions of the tender were discriminatory and were favoring to an experienced to pass the minimum score and get the contract. The Rule 44 is reproduced as under:

Rule 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.

11. The committee observed that the appellant's contention was based on his personal assumption and understanding. There was no any condition in the evaluation criteria



that could be called discriminatory on the basis of nation, state, province, or region neither there was any biased condition towards any particular company or service provider.

12. Furthermore, all that participating bidders were entitled to a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well-settled that award of a contract is essentially a decision to fulfill the requirements of the procuring agency which must be determined on the basis of consideration that are relevant to such fulfill the requirements of the procuring agency. This implies that terms subject to which tenders are invited are not open to the review unless it is found that the same have been tailor made to benefit any particular tenderer or class of tenderers. Hence, it is clear to say that the contention of **Discriminatory and Difficult Conditions of the tender was without any sound justification and was based on assumption and personal understanding.**
13. RC also observed that in all tenders invited by the PA only two bidders participated and both qualified on technical grounds hence it is out of question that criteria prepared by the PA is discriminatory.

c. **Whether the evaluation criteria aim to decrease the weightage of key elements of competence and expertise?**

14. The Appellant also submitted that while re-inviting the tenders the procuring agency aimed to decrease the weightage of key elements of competence and expertise in order to accommodate the inexperienced bidders. The appellant has substantiated his complaint that score for the Third Party Administration of Health Insurance Premium, Number of Corporate/Group third party Administration of Health Insurance Clients and Number of Corporate/Group third party Administration of Health Insurance Clients, was slightly and subtly was lowered. The comparison of score of all tenders in these field is given below:

Scoring Criteria	Category	1 st & 2 ND	3 rd	4 th	5 th
Should have existing Third Party Administration of Health Insurance Premium Portfolio	100 Million+	10 marks	15 marks		20 marks
	50 Million+	7 marks	10 marks	10 marks	15 marks
	20 Million+	5 marks (below 50 million)	7 marks		
	10 Million+			7 marks	10 marks

Number of Corporate/Group third party Administration of Health Insurance Clients		10	10 marks	10	15 marks	8	10 marks	8	20 marks
		7	7 marks	6	10 marks	5	7 marks	5	15 marks
		5	5 marks	3	7 marks	2	5 marks	2	10 marks

Experience in the field of third party Administration of Health Insurance		5 +	10 marks	7+	15 marks	8+	5 marks	5+	10 marks
		4 +	7 marks	5+	10 marks	5+	3 marks	3+	7 marks
		4-	5 marks	3+	7 marks	2+	2 marks	1+	5 marks

15. The Committee maintained that as described above the formulation of the evaluation criteria is the discretion of the procuring agency. Furthermore, the SPP Rules also authorize the procuring agency to make changes while tenders are re-invited.

26. RE-ISSUANCE OF TENDERS.- The procuring agency may re-issue tenders in case, the bidding process has been cancelled, as provided in Rule 25 or one of the following conditions exist – (1) Such an infirmity in the bidding documents has surfaced that the procuring committee recommends to the competent authority that the bids have to be invited afresh. (2) The case has been declared as one of Mis-procurement, in pursuance of 2 [Rule 32 and 32- A:] Provided while re-issuing tenders, the procuring agency may change the specifications and other contents of bidding documents, as deemed appropriate.

16. Therefore, the contention of the appellant cannot be protected just because the procuring agency changed the score for different requirement. It is also clarified that to decide any requirement falls in key, major requirement or minor requirement is decided by the procuring agency not by the bidder.

17. The Appellant also contended that the turnover is the basic criterion for ascertaining financial soundness of any bidder. The RC observed that claim of the PA that requirement of turn-over of last three years is only for “Single Stage One Envelope Bidding Procedure” as provided in Rule-46(1)(a)(ii) of the SPP Rules, 2010. Further, term of “Financial Turnover” is not mentioned in the Rule. Hence, interpretation of the PA that “Turnover” is not applicable for Single Stage Two Envelope procedure cannot be rejected. The RC directed SPPRA to initiate process of clarification / amendment / changes in the above mentioned SPP Rules in order to avoid any confusion.

18. The Committee also observed that market of the instant procurement is very thin and there are only two bidders in the market who participated in all previous tenders issued by the PA.

d. Whether Pre-Qualification was necessary or mandatory under the SPP Rules as claimed by the Appellant

19. The appellant submitted that the procuring agency had called the bids without conducting prequalification of the bidders and had not observed the due diligence while calling the bids. The committee observed that the SPP Rule 27 has allowed the procuring agency to call for prequalification in certain condition. The prequalification is not mandatory for the procuring agency

1. 27. Pre-qualification of Suppliers and Contractors:

1. A procuring agency, may engage in pre-qualification of bidders in the following cases

a. in case of contracts for large and complex works and services related to, in which there are high costs of preparing detailed bids;

b. in the contracts to be let under turnkey, design and build, or management contract;

- c. in case of expensive and technically complex equipment and works with a view to ensuring that invitations to bid are extended only to those who have adequate capabilities, competence and resources;
- d. in case of drugs and services of complex natured.

20. The procuring agency cannot be mandatorily asked to call the bids for prequalification.
e. **Whether the evaluation criteria violates the Section 4(2)(e) of the Competition Act 2010?**

21. The appellant claimed that the procuring agency violated the Section 4(2)(e) of the Competition Act 2010. The Section 4(2)(e) of the Act is reproduced as under:

Collusive tendering or bidding for sale purchase or procurement of any goods or services

22. Collusive practice means a scheme or arrangement between two or more bidders, with or without the knowledge of the purchaser, designed to establish bid prices at artificial, non-competitive level. The Committee observed that nothing has been placed on the record to substantiate the assertions of the appellant that any collusion had occurred during the procurement process.

f. **Whether the bidder was able to compete in the tender in financial terms or not?**

23. The Review Committee observed that the appellant was unable to compete in financial bid. His bid remained higher all the times. The comparison of the financial bid of the appellant is given below:

24. In the instant tender, the appellant's bid was 1.60 Million higher as compared to the other bidder. The Committee was of the view that all assessments of bidders should be proportionate, flexible, contract specific and not overly risk averse while ensuring protection of taxpayer value and safety and compliance with relevant procurement law. Therefore, it is evident that the appellant was unable to submit lower bid in almost all the tenders rather stressed on imposing certain conditions in the tenders.

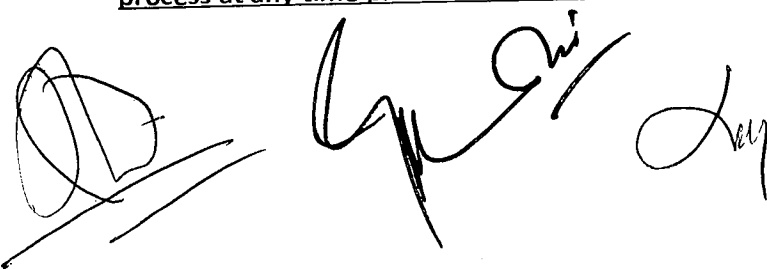
g. **Whether a bidder can challenge any specification or criteria that do not suit him?**

25. The Committee observed that any bidder cannot challenge any specification or criteria that do not suit him. It will not be open for any bidder to suggest the technical specifications or criteria which might suits him/it and/or the bidder cannot be permitted to challenge the eligibility criteria / technical specifications which might not suit the petitioner, as these things do not fall in the domain of any bidder.

h. **Whether the cancellation of tenders by the procuring agency can be called into question by the Review Committee?**

26. The Review Committee observed that the appellant has challenged the decision of the procuring agency regarding the cancellation of bids. The Committee observed that the cancellation of bids is the authority of the procuring agency and bids may be cancelled by the procuring agency at any time. The cancellation of bids cannot be called into the question by any bidder and the SPP Rule stipulates the same which is as follows:

25. CANCELLATION OF BIDDING PROCESS.- (1) A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal. (2) The procuring agency shall




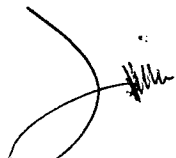
incur no liability towards the bidders, solely by virtue of its invoking sub-rule (1). (3) Intimation of the cancellation of bidding process shall be given promptly to all bidders and bid security shall be returned along with such intimation. (4) The procuring agency shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds.


31. The Rule clearly mentions that the A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal and PA is not required to justify such grounds.
32. The Committee also observed that even the Review Committee cannot question the cancellation of bids by the procuring agency. The SPP Rule 33 stipulates the same:
MATTERS NOT SUBJECT TO APPEAL OR REVIEW.- The following actions of the procuring agency shall not be subject to the appeal or review – (1) Selection method adopted by the procurement committee. (2) Decision by the procuring agency under Rule 25 to cancel the bidding process.
34. RC observed that PA complied the directions issued by the RC in last decision and has not assigned marks to the mandatory requirements.

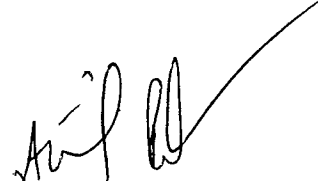
Decision of the Review Committee:

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(a) of the SPP Rules, the Review Committee rejects the appeal as the appellant could not prove any violation rules during the procurement process and detailed reasons are recorded supra in the observations of the Review Committee.


Member
(Marizoor Ahmed Memon)
Member SPPRA Board


Member
(Munir Ahmed Shaikh)
Independent Professional


Member
(G. Muhr Uddin Asim)
Representative of P & D Board ,P& D
Department Karachi


Chairman
(Atif Rehman)
Managing Director
Sindh Public Procurement Regulatory
Authority