



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/R.C-HAKIMSONS/2018-19/2320 Karachi, dated the 26th February, 2019

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

(Appeal)

M/s Hakimsons (impex) Private Ltd.

Versus

Health Department, Government of Sindh

(NIT ID # T00911-17-0001 dated 06.07.2018)

Facts and background

M/s Hakimsons (impex) Private Ltd., Karachi (hereinafter referred as the appellant) lodged an appeal vide letter dated 31.01.2019 to the Review Committee of Sindh Public Procurement Regulatory Authority (hereinafter referred as the Authority) against the decision of the Complaints Redressal Committee (CRC) of Health Department (hereinafter referred as the procuring agency) in terms of Rule-32(1) of SPP Rules, 2010 (Amended Up to date) wherein the appellant stated that the procuring agency vide its letter No.SO(PM&I)2-1/2018-19/CPC/CRC dated 22.01.2019 has circulated information among its sub-ordinate program offices/ hospitals with the directions to withdraw supply orders and stop/ recover payments, if any, under Central Rate Contract 2018-19, awarded to the appellant. These directions were issued by the procuring agency in pursuance of the decisions of its CRC's meetings held on 28.12.2018, 31.12.2018, and 01.01.2019. Subsequently, the appellant filed a complaint vide letter dated 24.01.2019 to the procuring agency's head of CRC stating their position.

2. On receipt of the above appeal, the Authority vide its letter dated 06.02.2019 advised the procuring agency to confirm that the appellant has not withdrawn its bid security as required under Rule-32(1) of SPP Rules, 2010 (Amended Up to date). In response, the procuring agency vide its letter dated 11.02.2019 confirmed that the bid security submitted by the appellant against instant procurement is still available with it in shape of pay order No.20769456 dated 26.07.2018 amounting to PKR 3,161,238.00 issued by the Habib Bank, M.A. Jinnah Road Branch, Karachi.

3. Subsequently, the Authority vide letters dated 15.02.2019 issued notices to the concerned parties for appearing before the Review Committee on 20th February, 2019 at 12.00 p.m. Mr. Waheed Ahmed, Additional Secretary, Health Department (representative of the procuring

agency) and Mr. Zulfiqar Ali Hakim, Chief Executive Officer (representative of the appellant) appeared before the Review Committee.

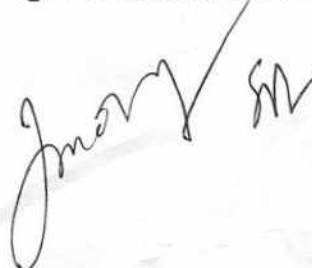
Review Committee Proceedings

4. Chairperson of the Review Committee welcomed all the participants of the meeting and then introduced the members of the Review Committee. Then, the chair advised the appellant to present his case/ version before the committee.

Appellant's Version

5. Mr. Zulfiqar Ali Hakim (representative of the appellant) while arguing his appeal apprised the Committee that the appellant has already submitted its basic grievances to the Authority's Review Committee and then presented summary of the case, which is as under:

- The procuring agency awarded the contract to the appellant on 24.12.2018 for supply of medicines under centralized rate contract system during current financial year of 2018-19, after conducting evaluation of technical and financial proposals in July and September, 2018 respectively;
- The Central Procurement Committee (CPC) of the procuring agency called the appellant for clarification during technical evaluation process and same were presented to it;
- Upon completion of the evaluation process, their products (bid evaluation reports) were posted on the Authority's PPMS and the procuring agency's websites in compliance of SPP Rules so that aggrieved bidder(s), if any, may file complaint to the procuring agency but not any grievance received during the stipulated time period; therefore, the procuring agency awarded the contract to the appellant on 24.12.2018;
- The instant procurement process took time period of around five to six ^{months} to complete; therefore, tons of supply orders were pending in hospitals and the appellant immediately started making those supplies by importing the stock of critically life-saving products;
- The appellant supplied products worth PKR 70.00 million (approximately) on the basis of orders received from respective hospitals by third week of January 2019; thereafter, the procuring agency issued a letter on 22.01.2019 wherein the appellant was disqualified and their supplies were suspended and payments were withheld;
- The procuring agency neither issued any notice nor awarded any opportunity to the appellant before its disqualification, after award of contract, which was their vested right and principle of natural justice to clarify their position of financial soundness. The appellant submitted its audited financial statements along with technical proposal but could not provide the FBR document, which is issued in the end of year i.e. in December. The appellant further highlighted that in the bidding documents the condition for financial soundness up to PKR 1000 million is waived off for orphan products manufacturers/ importers as per evaluation criteria (pre-evaluation criteria documents



check list for eligibility report). Evidence thereof was also provided before the Review Committee;

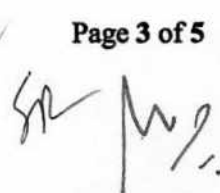
- The appellant highlighted that all their winning products, as quoted/ offered under instant procurement, are known as critically life-saving products as per list/ report on life-savings drugs generated and submitted by the DRAP to the Honorable Supreme Court of Pakistan in November 2018;
- The procuring agency allowed grievances period after posting/ publishing bid evaluation report but not a single complaint was received against the appellant in that period; thereafter, the procuring agency awarded contract to the appellant. The appellant is the sole importer of these critically life-saving products, which provide relief to the dialysis, rabies, burns, accident patients etc.

Procuring Agency's Version

6. Mr. Waheed Ahmed, Additional Secretary while responding to queries raised by the Review Committee clarified that:

- The procuring agency received three complaints from M/s RTJ Enterprises, M/s Paras Enterprises, M/s Shamim & Co. that were entertained by the procuring agency in accordance with SPPRA Rules. Within these complaints, it was addressed that the various firms, without quoting any name of bidder/ appellant, do not fulfill the criteria of financial soundness up to PKR 1000 million;
- Subsequently, the procuring agency issued notice to the bidders as well as appellant to get verified their return/ financial soundness through FBR but probably the appellant did not furnish response to that notice.
 - The appellant denied from receiving any notice/ letter from the procuring agency.
- Resultantly, the procuring agency's Complaint Redressal Committee (CRC) in its meetings dated 28.12.2018, 31.12.2018, and 01.01.2019 decided the complaints by taking it decision as reproduced below:

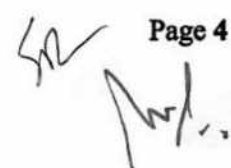
[CRC in light of SPPRA Rules "42.1. Evaluation of bids: All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents" decided that financial soundness of 1000 million was one of the mandatory condition which cannot be compromised despite considerable facts highlighted by the aggrieved firms. CRC also decided that all those firms despite not having 1000 financial soundness, were allowed/ declared as responsive bidder in a technical/ financial comparative statement should be disqualified/ declared non-responsive and their approved items may be re-tendered as well as field formation may be intimated not to entertain the items of this firms.]



Review Committee Observations

7. After hearing parties at length and perusal of the record, the Review Committee observed that:-

- The procuring agency awarded contract and signed agreement with the appellant then unilaterally withdrew that contract.
 - The representative of the procuring agency admitted that the decision for re-tendering should have been taken before the award of contract as per SPP Rules.
- How it is possible for the procuring agency to conduct CRC meeting after completion/ finalization of procurement proceedings and awarding contract?
 - The representative of the procuring agency stated that we received these complaints under review appeal; therefore same were entertained.
 - In response, the Committee clarified that the bidder can lodge an appeal to only Review Committee of this Authority under Rule-32 of SPP Rules, 2010. The CRC of the procuring agency can only redress bidders' grievances prior to award of contract in terms of Rule-31 of SPP Rules, 2010.
- Whenever an aggrieved bidder lodges a written complaint to the procuring agency's CRC then it bound to announce its decision within seven days and the procuring agency is also bound to award the contract after the decision of the CRC in accordance with Rule-31(4), (5) & (6) of SPP Rules, 2010; however, in the instant case, the procuring agency has violated the referred rules read in conjunction with Rule-25(1) of SPP Rules, 2010.
- The procuring agency was conducting technical evaluation of bids from July to September 2018 but could not finalize the list of bidders, which fulfills the criteria of minimum turnover of PKR 1000 million or not.
- The Committee asked whether technical evaluation reports under the instant procurement were circulated among bidders and made public before opening of financial bids.
 - The representative of procuring agency admitted that technical evaluation results were circulated among bidders and made public before opening of financial bids.
 - The Committee queried as to why CRC admitted the complaints regarding technical evaluation after opening of financial bids or award of contract and how the same were entertained by the procuring agency after issuance of award of contract.
- The committee also pointed out that the appellant has presented proof for its financial soundness, which exceeds the requirement of PKR 1000 million as per FBR document. Although such requirement of financial soundness is already exempted for orphan drugs manufacturers/ importers and miscellaneous supplies as per condition # 7 of evaluation



criteria (pre-evaluation criteria documents check list for eligibility report) available with the bid documents.

- The representative of procuring agency stated that the decision for appellant's disqualification, despite having orphan status, was made by the CRC erroneously.

Review Committee Decision

8. In light of the above observations, as mentioned under para-7, and due deliberation, the Review Committee unanimously decided to over-turn the decision of the procuring agency's CRC, to the extent of the appellant's case only. The Committee also directed the representative of procuring agency to release due payments to the appellant and stop re-tendering process of drugs/ medicines to the extent where appellant had qualified and was awarded the central contract.


9. The above decision shall be final and binding upon the procuring agency in terms of Rule-32(11) of SPP Rules, 2010 (Amended Up to date).



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



(Member)
Asadullah Soomro
Private Member
SPPRA Board




(Member)
Muhammad Atif Hussain
Nominee of Director General Audit Sindh



22/02/19

(Member)
Dr. Saadat Ahmed Memon
Director Procurement
Sindh Employees Social Security Institution
Independent Professional



22/2/19

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