



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-215/2018-19

Karachi, dated the April, 2019

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

**(Appeal)**

M/s Biotech Pakistan

Versus

National Institute of Cardiovascular Diseases, Karachi

**(NIT ID # T00022-17-0018 dated 30.10.2019)**

**Facts and background**

M/s Biotech Pakistan, Karachi (hereinafter referred to as the appellant) lodged a complaint vide letter dated 25.01.2019 in Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # 5AAE/2017 dated 30.10.2018 floated for 'Supply, Installation, Testing and Commissioning of Complete CSSD System for NICVD Karachi' by the Executive Engineer, National Institute of Cardiovascular Diseases, Karachi (hereinafter referred to as the procuring agency).

2. The Authority vide letter dated 06.02.2019 forwarded the aforementioned matter to the procuring agency with an advice to redress the appellant's grievances through its Complaints Redressal Committee (CRC) within seven days and furnish its decision to the appellant as well as this Authority within three working days in accordance with Rule-31 of SPP Rules, 2010 (Amended Up to date); however, the procuring agency did not furnish any response against it.

3. Thereafter, the appellant vide letter dated 26.02.2019 informed the Authority that the procuring agency's CRC did not call any meeting to resolve their grievances despite lapse of stipulated time period; therefore, the matter might be placed at appropriate forum to resolve their matter in accordance with SPP Rules. In turn, the Authority vide letter dated 19.03.2019 issued notices to concerned parties for appearing before Review Committee on 21.03.2019 at 12 p.m.

4. In compliance, Mr. Sarfraz Ahmed (representative of the appellant) appeared before the Review Committee whereas the representative of the procuring agency failed to appear on scheduled date and time, due to which the committee decided to give a chance to the procuring agency to depute its representative to appear in next Review Committee meeting.

5. Subsequently, the Authority vide letter dated 01.04.2019 convened second meeting of the Review Committee on 09.04.2019 and issued notices to the concerned parties to appear along with complete record before the Review Committee. In compliance, Mr. Khurram Hassan Khan, Head of Procurement (representative of the procuring agency) and Mr. Sarfraz Ahmed (representative of the appellant) appeared before the Review Committee.

## Review Committee Proceedings

6. The Chairperson of Review Committee welcomed all participants of the meeting and apprised the members that due to non-representation of the procuring agency in the last meeting, the Committee had to postpone and reschedule that meeting. Then, the chair asked the appellant to present his case/ version before the committee.

### Appellant's Version

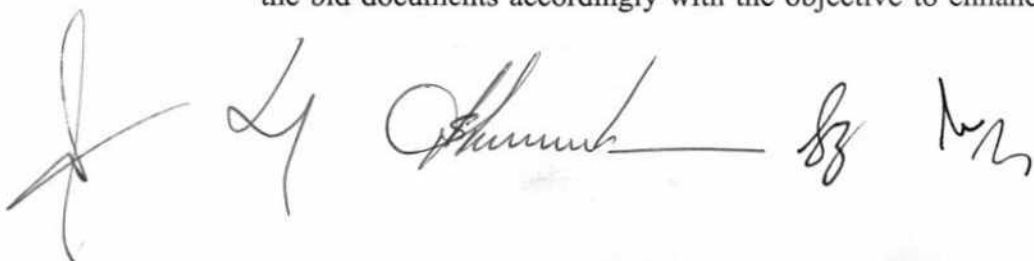
7. Mr. Sarfraz Ahmed (representative of the appellant) while arguing his appeal apprised the Committee that:

- They participated under instant procurement NIT item # 6 'CSSD System' and quoted leading brand 'Getinge' of infection control equipment but the procuring agency rejected their proposal before opening of financial proposal without assigning any reason;
- They had successfully provided CSSD solutions with this leading brand in major hospitals like: Aga Khan Hospital; Sindh Institute of Urology & Transplantation; Pakistan Kidney & Liver Institute; and Pakistan Air Force etc.;
- They submitted all documents in accordance with terms & conditions and requirements of bid documents as issued by the procuring agency; but it was abstruse how the procuring agency disqualified them on technical grounds without assigning any reason. In this connection, they lodged a complaint vide letter dated 25.01.2019 to the procuring agency and simultaneously approached the Authority, which forwarded their matter to the procuring agency but they did not receive any response from the procuring agency;
- The procuring agency disqualified three out of four bidders without assigning any reason of rejection and disclosing technical evaluation report; only a single bidder was technically qualified for opening of financial proposal that could cause huge loss to national exchequer

### Procuring Agency's Version

8. Mr. Khurram Hassan Khan, Head of Procurement (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The Procuring agency received total number of four bids under the instant procurement – item at Sr. # 6 of NIT – and only a single bid was found technically responsive; therefore, he – being the procurement head– proposed his higher-ups to cancel bidding process;
  - The chair asked the procuring agency why he had proposed for cancellation of bidding process and what were recommendations of their procurement committee;
  - The procuring agency clarified that the procurement committee disqualified three out of four bidders under technical evaluation process; acceptance of a bid quoted by the single technically responsive bidder may weaken the competition level; therefore, he had recommended the higher-ups of procuring agency to cancel and invite afresh bids while conducting pre-bid meeting with bidders to know their capabilities and then modify the bid documents accordingly with the objective to enhance competition



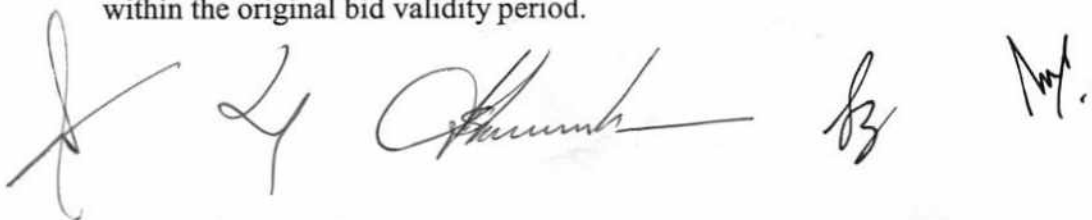
level in the bidding process, but his higher-ups did not respond to this proposal. They had conducted meetings with the appellant twice.

- On the basis of above clarification, the chair asked the procuring agency about the actions and specific recommendations given so far by their procurement committee, which opened and evaluated the bids;
  - The procurement committee evaluated technical proposals and then opened financial bids of single technically responsive bidder whose rates are higher as compared to the market rates.
- Dr. Saadat Ahmed Memon (Member of Review Committee) highlighted that the procuring agency had not posted bid evaluation report on the Authority's website yet as required under Rule-45 of SPP Rules, 2010 (Amended Up to date). He observed that the procuring agency opened technical bids on 19.11.2018; therefore, the original bid validity period of 90 days expired on 16.02.2019 in terms of Rule-38(1) of SPP Rules, 2010 (Amended Up to date), which stipulates that *'a procuring agency, keeping in view nature of procurement, shall subject the bid to a validity period, which shall be specified in the bidding document and shall not be more than 90 days in case of National Competitive Bidding and 120 days in case of International Competitive Bidding'*;
- The chair enquired if bid validity period has been extended or not.
  - The procuring agency replied in negative and further stated that the bid evaluation report is not finalized yet.
- The chair noted that the procuring agency should have extended, if required, the bid validity period before the expiry of original bid validity period in terms of Rule-38(3) of SPP Rules, 2010 (Amended Up to date), which stipulates that *'after obtaining such approval (competent authority), the procuring agency, shall request in writing all bidders to extend the bid validity period. Such request shall be made before the date of expiry of the original bid validity period'*;
- Syed Adil Gilani (Member of Review Committee) asked the procuring agency about the concrete reason – as mentioned under the technical evaluation criteria of bid documents – on which three bidders were technically disqualified;
  - The procuring agency clarified that these three bidders were disqualified by their procurement committee on technical grounds.

### **Review Committee Observations**

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

- The procuring agency failed to finalize and announce its CRC decision within seven days and intimate the same to the appellant and the Authority within three working days in terms of Rule-31(5) of SPP Rules, 2010 (Amended Up to date);
- The procuring agency failed to finalize the bid evaluation within the bid validity period. Moreover, bid validity period has expired on 16.02.2019 and it has not been extended within the original bid validity period.

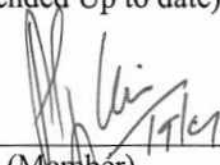


- The procuring agency failed to communicate bid evaluation report giving reasons for acceptance or rejection of bids to the bidders in terms of Rule-45 of SPP Rules, 2010 (Amended Up to date);
- The procuring agency failed to award the contract within the bid validity period as required under Rule-49 read in conjunction with Rules-38(1), (2), (3), (6) & (7) of SPP Rules, 2010 (Amended Up to date)

### Review Committee Decision

10. In light of the above observations and violation of Rules as mentioned under para-9, and after due deliberation, Review Committee unanimously decides that the procuring agency has not awarded or signed procurement contract yet; hence, the instant procurement's proceedings may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010 (Amended Up to date), as Rule-35(5) of SPP Rules, 2010 (Amended Up to date), stipulates that '*in case the procuring agency fails to finalize the bid evaluation within the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated.*' Moreover, the Review Committee decides that:

- The procuring agency shall furnish the compliance report to this Authority in pursuance of the decision taken by the Review Committee in its meeting dated 05.10.2018 while hearing the appeal lodged by M/s Green Top Pharma;
- The procuring agency shall ensure compliance of SPP Rules and also communicate bid evaluation report giving reasons for acceptance or rejection of bids to all the bidders at least three working days prior to the award of contract in terms of Rule-45 of SPP Rules, 2010 (Amended Up to date).

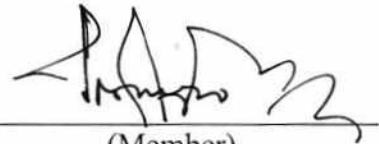


(Member)

Syed Adil Gilani

Private Member SPPRA Board

Representative Transparency International




(Member)

Asadullah Soomro

Private Member

SPPRA Board



(Member)

Shoaib Zafar

Nominee of Director General Audit Sindh



(Member)

Dr. Saadat Ahmed Memon

Director Procurement

Sindh Employees Social Security Institution

Independent Professional



(Chairman)

Muhammad Aslam Ghauri

Managing Director

Sindh Public Procurement Regulatory Authority