



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/R.C-AL.HAMD/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 Al-Hamd Enterprises

Versus

Health Department, Government of Sindh

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

Facts and background

M/s Al-Hamd Enterprises, Karachi (hereinafter referred to as the appellant) vide letter dated 25.01.2019 lodged an appeal to the Review Committee of Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the decision of the Complaints Redressal Committee (CRC) of Health Department (hereinafter referred to as the procuring agency) in terms of Rule-32(1) of SPP Rules, 2010 (Amended Up to date) whereby the CRC upheld the decision of the procuring agency's Central Procurement Committee (CPC) made in favor of products quoted by the appellant.

2. On receipt of the above appeal, the Authority vide its letter dated 14.02.2019 advised the procuring agency to confirm that the appellant has not withdrawn its bid security as required under Rule-32(1) of SPP Rules, 2010 (Amended Up to date). The procuring agency did not furnish any response/ confirmation regarding the appellant's bid security status; however, the appellant vide its letter dated 18.02.2019 confirmed the Authority that their bid security was still available with the procuring agency in shape of pay order No.19619311 dated 20.07.2018 amounting to PKR 2,600,000.00 issued by the Habib Bank, Block-I, Gulistan-e-Jouhar, Karachi.

3. Subsequently, the Authority vide letters dated 08.03.2019 issued notices to the concerned parties for appearing before the Review Committee on 13.03.2019 at 12.00 p.m. Mr. Waheed Ahmed, Additional Secretary, Health Department (representative of the procuring agency) and Mr. Imran Khan, Proprietorship Member (representative of the appellant) appeared before the Review Committee.

Review Committee Proceedings

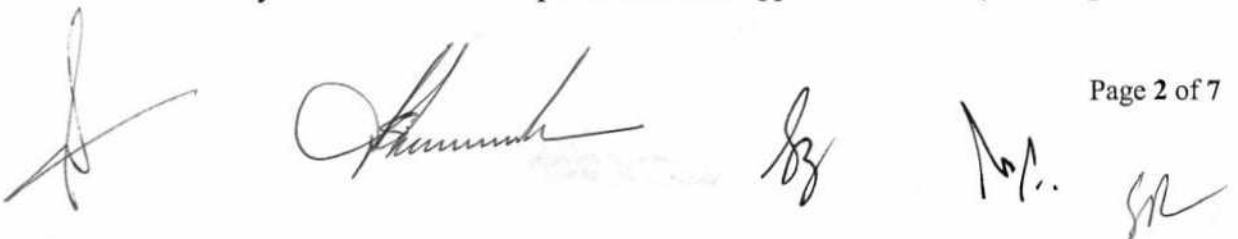
4. Chairperson of the Review Committee welcomed all the participants of the meeting and then introduced the members of the Review Committee. After that, the chair asked the appellant to present his case/ version before the committee.

5. Mr. Imran Khan (representative of the appellant) while arguing his appeal apprised the Committee that they had raised their similar grievances before the procuring agency's CRC after

announcement of technical evaluation report/ results but the same were not satisfactorily redressed. Resultantly, they lodged an appeal in this Authority and their product-wise summary is as under:

■ **Item # 28 & 29 – Surgical Tape 1” & 2”:** They quoted Surgical Tape with brand name ‘Advantive’ with valid Free Sales Certificate (FSC) in country of origin, which was a compulsory requirement as per terms and conditions of bid documents. Their competitor i.e. M/s Meher Enterprises quoted these items with ‘Wellmed’ brand, which is an OEM brand and their competitor used the same brand with all the quoted items – under the instant procurement case – whether items were being imported from China or Malaysia etc. They requested the procuring agency to clarify/ verify the FSC certificate submitted by M/s Meher Enterprises and to ensure the brand is registered in China but the procuring agency did not respond to it positively. Mr. Imran further highlighted that they quoted the prices of these item against 5-Yards instead of the procuring agency’s requirement of 10-yards as surgical tape prices were based on yards; if bid prices were re-calculated on aggregate basis – multiplied with unit cost – then their bid was the lowest as compared to their competitor but the procuring agency declared them as ‘non-responsive’ on basis of item quoted against 5-yards despite mentioning the word ‘or equivalent’ with the item in bid documents.

- ◆ The chair enquired from the appellant whether they were importing these items from China. In response, the appellant stated that they were importing the items from China and these were registered in China, for which they had also submitted copy of FSC with quoted brand along with bid documents to the procuring agency.
- ◆ The chair reproduced the observations and decision of the procuring agency’s CRC which stipulates that *“M/s Al-Hamd quoted prices of 5-yards against required 10-yards as per specification of tender. The record of CPC provides that they were declared non-responsive due to non-compliance of tender specification. Moreover, M/s Meher Enterprises quoted this item as per required specification and secured highest rank in marking who secured 68 marks. Hence, no justification was found in the grievance of Al-Hamd. CRC upheld the decision of CPC.”*
- ◆ The committee pointed out the appellant that it was explicitly mentioned in the bid documents to quote the items against the required specification of 10-yards but they quoted against 5-yards; that was the reason for the procuring agency’s CPC to declare them as ‘non-response’. Lodging a complaint on such reasonable grounds seemed worthless/ un-challengeable. In response, the appellant agreed that they quoted items against 5-yards but their complaint was lodged on the grounds that tape prices could be calculated on yard basis as its use was made in fractions rather than as a whole and payment was also made by the procuring agency by using unit cost – per yard basis.
- ◆ The appellant further highlighted that M/s Meher Enterprises – who won the contract – did not have sufficient stock of these items with similar specification; therefore M/s Meher was asking for supplies of the items from them, which could be verified from whatsapp conversation/ audio call that M/s Meher made to them last day. The committee enquired from the appellant how they could prove that



M/s Meher Enterprises was asking for supplies of the items solely for the use or supply to the procuring agency; it was possible that M/s Meher might have asked the appellant for sourcing and supplies of items for a purpose other than the instant case.

- ◆ The committee clarified the appellant that word 'equivalent' with yards means quoting the same item in another measurement unit like: meters; feet etc. with equivalent size or value but it does not mean quoting item below the required unit value or size like 5-yards. The appellant should have quoted bid as per specification of bid documents rather than deviating from its primary requirement. The chair pointed out that there was a difference between lowest evaluated and lowest submitted price as defined under Rule-2(1)(v) & (w) of SPP Rules, 2010 (Amended Up to date).

- *Lowest Evaluated Bid means a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost; Lowest Submitted Bid means the lowest price quoted in a bid, which is otherwise not substantially responsive;*

- ◆ The representative of appellant accepted that the committee's above clarification was suffice to declare their bid as 'non-responsive' and requested the committee to check and verify how their competitor M/s Meher Enterprises was qualified during the technical evaluation process in the absence of FSC of quoted brand. In turn, the chair asked the representative of the procuring agency to clarify the position but the representative of the procuring agency could not showcase the procurement record during the meeting by stating that complete procurement record was available in Dow University Ojha Campus and they needed additional time period to produce the record before the Committee. The appellant highlighted that they submitted their query various times to procuring agency but could not get reply.

- Mr. Saad Rashid (member of the Committee) asked the representative of procuring agency to clarify the reasons for such delay in response to the appellant's repetitive queries. The chair also pointed out that the Authority in its meeting letter clearly communicated the procuring agency to bring the procurement record; how can the committee review and decide the matter in the absence of relevant procurement record.

- **Item # 138 28 & 139 – Foleys Catheter 2 Way Silicon Coated:** They quoted Foleys Catheter with brand name "Silky Gold" with valid Free Sales Certificate (FSC) in country of origin, which was a compulsory requirement as per terms and conditions of bid documents. The appellant showcased copy of FSC – wherein brand name was also mentioned – to the committee and requested that the FSC submitted by their competitor i.e. M/s Meher Enterprises should be checked and also verified whether it was attested by Pakistan embassy or not. The appellant raised concerns as to how it was possible that their competitor quoted "Wellmed" brand registered with different manufacturers in one country.



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- ◆ Mr. Saad Rashid highlighted that the issue of similar nature – FSC submitted by M/s Meher Enterprises – existed under that scenario, which was agreed upon by the appellant. The chair highlighted that the appellant’s bid security might be forfeited in case of his appeal being frivolous as per Rule-32(7) of SPP Rules, 2010 (Amended Up to date); in turn the appellant responded that they knew the repercussions of any mis-statements, if any, made by them and further stated that how one brand could be registered with two manufacturers in one country – Surgical Tape and Foleys Catheter produced by different manufacturers in one country but quoted by their competitor with one brand name looked like impossible.
- ◆ Dr. Saadat Ahmed Memon (member of Review Committee) asked the procuring agency about the reasons for dis-qualification of the appellant under these products or bid. In turn, the procuring agency replied that the appellant technically qualified but their bid stood as 2nd lowest, hence, they were not awarded.
- **Item # 215 & 216 – Surgical Gloves Sterile All Sizes:** They quoted Surgical Gloves with the brand name ‘Surgitex’ but the CPC of the procuring agency did not award marks as per criteria and documents submitted with their bid.
 - ◆ The appellant further stated that the procuring agency didn’t award them marks under following criteria despite submission of required documents with the bid. They approached the procuring agency’s CRC, which awarded them 08 out of 18 marks; however, documents for remaining 10 marks were attached with the bid.
 - ISO 14001 Certificate (Page # 164 of bid documents) 02 marks;
 - ISO 9001 Certificate (Page # 165) 03 marks;
 - Valid Manufacturing Unit (Pages # 168-171) 05 marks;
 - Accreditation with WHO/ UNFPA

6. On the request of the procuring agency to provide them opportunity for additional time period to bring and showcase relevant procurement record before the Committee, *it was unanimously decided to discuss and decide the instant matter in next Review Committee meeting to be scheduled on 21.03.2019.*

7. Pursuant to the Committee’s above decision, the Authority vide letters dated 18.03.2019 issued notices to the concerned parties for appearing before the Review Committee on 21.03.2019 at 11.00 a.m. Mr. Waheed Ahmed, Additional Secretary, Health Department (representative of the procuring agency) and Mr. Sameed, Proprietorship Member (representative of the appellant) appeared before the Review Committee.

8. The representative of the appellant – who did not attend the last meeting – was fully aware of the previous proceedings. Subsequently, the chair asked the representative of the appellant to brief over their concerns where they were not awarded marks despite having requisite documents with the bid.

- **Item # 215 & 216 – Surgical Gloves Sterile All Sizes:** The representative of the appellant highlighted that they were not awarded marks under following areas:



- ◆ **ISO 14001 Certificate:** Upon examination of bid documents, it was found that the certificate was available in bid documents as submitted by the appellant to the procuring agency; therefore, the committee unanimously decided to add 02 marks in their technical scoring.
- ◆ **ISO 9001 Certificate:** Upon examination of bid documents, it was found that the appellant submitted the certificate with bid documents but it was in Chinese language.
 - The chair asked the appellant why not they submitted the certificate having translated in English language that was a requirement/ condition of bid document. The chair further highlighted that when no one could read and understood the certificate's content then how they could be assigned marks against those documents. In turn, the appellant highlighted that they had missed to bring the copy of translated certificate, upon which the committee responded that the same would not be accepted at this stage.
- ◆ **Valid manufacturing Unit Accreditation with WHO/ UNFPA:** Upon examination of bid documents, it was found that the appellant submitted the certificate issued by World Health Organization.
 - The representative of the procuring agency informed that the certificate, submitted by the appellant with bid documents was valid for only male condoms rather than surgical gloves sterile. Dr. Saadat also endorsed that the certificate was valid for a specific product – male condoms. The representative of the appellant highlighted that the certificate was not required for a particular product as per conditions of bid documents. Both the products gloves and condoms were manufactured by the same manufacturer.
- ◆ Mr. Saad Rashid asked the appellant whether they were disqualified under these items. In response, the appellant stated that they were technically qualified but they were awarded less marks by the CPC. Again, the committee asked whether it could have impact to their end results or opportunity for winning if additional marks were allocated. In turn, the appellant responded that the procuring agency used combined weightage method under the instant procurement and additional score under technical evaluation might have increased their chances for winning.
 - The committee observed/ highlighted that the combined weightage was used under Quality and Cost Based Selection Method (QCBS), which can only be used for selection of consultants as per Rule-72(3) of SPP Rules, 2010 (Amended Up to date).
 - The chair elaborated that the Authority had urged in the past to opt for another method for procurement of drugs and medicines – as quality cannot be compromised while procuring such goods – but it was not allowed under the SPP Rules to use QCBS method for procurement of goods;





- ◆ Mr. Ali Imam Qadri, Procurement Specialist SPPRA, informed that the Authority had communicated its observations against the NIT through SPPRA's PPMS website on 10.07.2018 wherein the procuring agency was also advised to ensure acceptance of bids that are found as to be the lowest evaluated bid. In response, the procuring agency furnished its clarification vide letter dated 28.11.2018 as under:

"The drugs are not ordinary commodities and should therefore be treated as such. Thus evaluation criteria has been followed by the Central Procurement Committee (constituted by the Learned Water Commission) in accordance with the SPPRA Rules and the directions of Water Commission and set standards of W.H.O. which provide "products should be complied with efficacy, safety and quality, as often the case, the determining factor for awarding a tender is price. Quality must be more important consideration due to the fact that sub-standard products give rise to health hazards as well as financial losses to the procurement agency. While product of assured quality may be price higher, they will be cheaper in long run" (http://www.wpro.who.int/essential_medicines/en/), as accordance of above set criteria, the CPC considered high ranked products as best evaluated lowest bid."

- ◆ Mr. Qadri further highlighted that the usage of combined weightage method under QCBS was solely allowed for consulting services; and its use by the procuring agency under the procurement of goods was not allowed under SPP Rules. He further informed procurement of drugs & medicines under QCBS method are allowed in KPP Rules and Federal PP Rules but not in SPP Rules. Mr. Qadri - while clarifying query raised by Mr. Saad Rashid - stated that the Authority had conveyed its observations to the procuring agency in a timely manner so that rectification could be made. Moreover, the procuring agency had floated another tender for procurement of drugs/ medicines on similar lines, on which the Authority had reiterated similar nature of observations to the procuring agency through PPMS website.
 - The chair observed that the procuring agency had awarded contracts and released payments; whereas, the very foundation of procurement process was beyond the SPP Rules. Procuring agencies under Sindh Government are required to follow SPP Rules rather than KPPRA or PPRA etc.
 - The representative of procuring agency stated that CPC - constituted by the Water Commission - had designed and implemented this whole tender;
 - The chair asked the representative of procuring agency whether the Water Commission had ordered the CPC to follow KPPRA Rules. In turn, he stated that committee had itself decided to follow combined weightage method;
 - The chair highlighted that the combined weightage method cannot be used for procurement of goods; therefore, deciding upon award of correct marks to the appellant would be against the SPP rules.

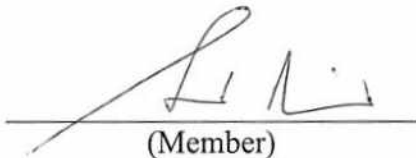
Review Committee Observations

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

- The procuring agency had 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; moreover, the procuring agency was required to decide the complainant's matter through its CRC prior to awarding contract in terms of Rule-31(6) and Proviso of Rule-31(7) of SPP Rules;
- Although the Notice Inviting Tender clearly states that procurement would be carried out on single stage two envelope bidding procedure basis, as specified under Rule-46(2) of SPP Rules, 2010 (Amended Up to date), but the procuring agency effectively used QCBS method as described in Rule-72(3) of SPP Rules, 2010 (Amended Up to date), which is applicable only for procurement of consulting services as per Rule-58 of SPP Rules, 2010 (Amended Up to date). For procurement of goods, works, and other services, Rule-46 of SPP Rules, 2010 (Amended Up to date) has to be followed.

Review Committee Decision

10. In light of the above observations and violation of Rules as mentioned under para-9, and after due deliberation, the Review Committee unanimously declares the said procurement as **Mis-Procurement** in the light of SPP Rule-32(7)(g) and decides to refer the matter to the Competent Authority for proceeding further under Rule-32(A)(2) of SPP Rules, 2010 (Amended Up to date) read in conjunction with Section-2(i) of SPP Act, 2009 (Amended 2017).

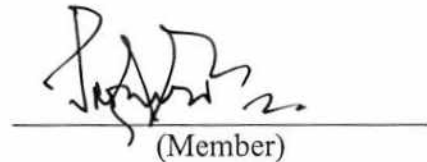


(Member)

Saad Rashid

Private Member SPPRA Board

Representative Transparency International

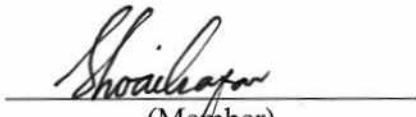


(Member)

Asadullah Soomro

Private Member

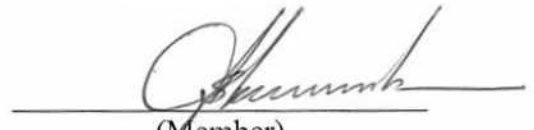
SPPRA Board



(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