



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-417/2018-19/3067

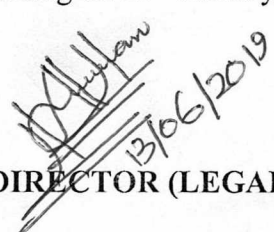
Karachi, dated the 13th June, 2019

To,

- The Vice Chancellor,
University of Sindh,
Jamshoro.
- Mr. Asif Bashir
General Manager – Takaful,
M/s Adamjee Insurance Company Limited,
Office # 101-102, Fayyaz Center, S.M.C.H Society,
Opposite FTC Building, Main Shahrah-e-Faisal,
Karachi.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S ADAMJEE INSURANCE COMPANY LIMITED VERSUS UNIVERSITY OF SINDH, JAMSHORO).

The undersigned is directed to refer to the subject cited above and to enclose a copy of the Authority's Review Committee's decision taken in its meeting on 24th January, 2019 for your information and further necessary action.


ASSISTANT DIRECTOR (LEGAL-II)

A copy along with enclosures is forwarded for information to:

1. The Secretary to Government of Sindh, Universities & Boards, Karachi.
2. The Registrar, University of Sindh, Jamshoro.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The P.S. to the Chairman Review Committee/ Managing Director SPPRA/ Review Committee Members (all).



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-----/2018-19 / 3067

Karachi, dated the 13th May 2019
June

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

(Appeal)

M/s Adamjee Insurance Company Limited
Versus
University of Sindh

(NIT ID # T00663-17-0001 dated 06.04.2018)

Facts and background

M/s Adamjee Insurance Company Ltd., Karachi (hereinafter referred to as the appellant) lodged a complaint vide letter dated 28.05.2018 addressed to the University of Sindh, Jamshoro (hereinafter referred to as the procuring agency), and copy endorsed to the Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority), regarding their technical disqualification under NIT # PID(H) 100681 dated 01.04.2018 floated for procurement of 'health care facilities for employees of University of Sindh'. In turn, the Authority also forwarded the appellant's matter vide letter dated 08.06.2018 to the procuring agency with an advice to redress the matter through complaints redressal committee (CRC) and furnish its decision to this Authority as well as the appellant within stipulated time as specified under Rule-31 of SPP Rules, 2010 (Amended Up to date). In response, the procuring agency vide letter dated 02.07.2018 furnished views/ comments to this Authority, which were forwarded to the appellant vide Authority's letter dated 06.07.2018.

2. Subsequently, the appellant vide letter dated 19.12.2018 lodged an appeal to the Review Committee in terms of Rule-31(5) read in conjunction with Rule-32 of SPP Rules, 2010 (Amended Up to date) whereby the appellant raised concerns/ allegations against the instant procurement process. Accordingly, the matter was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 15.01.2019 at 12 p.m. and notices were issued to the concerned parties vide this Authority's letter dated 11.01.2019 for appearing before the committee on scheduled date, time and venue. In compliance, Dr. Arbela Agha, Senior Medical Officer, University of Sindh (representative of the procuring agency) and Mr. Asif Bashir, General Manager, Adamjee Insurance Company Ltd. (representative of the appellant) appeared before the Review Committee.

3. During the hearing, the procuring agency requested the Committee to provide them opportunity for additional time period to prepare the case and bring/ present procurement record in next meeting, which was agreed upon by the Review Committee to schedule the matter for further hearing in next meeting on 24.01.2019. In this connection, notices were issued to the concerned parties [representatives] vide this Authority's letters dated 21.01.2019 for appearing before the Review Committee.

Review Committee Proceedings

4. The Chairperson of the Review Committee welcomed all the participants of the meeting and introduced the members of the Review Committee. Then, the chair asked the appellant to present his case/ version on the instant procurement before the committee.

Appellant's Version

5. Mr. Asif Bashir (representative of the appellant) while arguing his appeal apprised the Committee that:

- The procuring agency formulated technical evaluation criteria consisting of the following conditions in order to favor particular firm [their competitor namely M/s Jubilee Life Insurance]:

- *Sr. # 1 & 2 - Valid rating certificate with PACRA/ JCR-VIS with minimum 'AA' rating [10 marks] and JCR rating above 'AA+' or above [20 marks]:* There were no AA rated companies in Pakistan, however, the procuring agency allotted 10 marks under this criterion. Moreover, there were only three 'AA+' rated companies in Pakistan, however, the procuring agency allotted 20 marks in addition to 10 marks already assigned to 'AA' rated companies. The procuring agency should have provided marking slab rather than bifurcating the similar condition at Sr. # 1 & 2 of technical evaluation criteria;
 - *Sr. # 3 – Experience in the field of health insurance in Pakistan above 10 years [5 marks]:* They had experience in the relevant field for more than 10 years and they got full marks; whereas, their competitor did not have experience of 10 years and got zero marks;
 - *Sr. # 4 – Hospitals on panel all over Pakistan above 400 [15 marks]:* No insurance company, including the appellant as well as their competitor, in Pakistan had panel hospitals more than 400 and they had approximately 250 hospitals of the Pakistan on panel plus discount centers; even so the procuring agency awarded them zero marks and their competitor as 15 marks. The demand of the procuring agency for 400 panel hospital was irrational as they did not receive even a single claim outside of Sindh province;
 - *Sr. # 6 – Should have existing health insurance portfolio (above PKR 2.5 billion) [25 marks]:* They had total portfolio of approximately PKR 20 billion in general that included PKR 2.27 billion portfolio under health insurance. Whereas, their competitor had general portfolio of PKR 8 billion that included PKR 2.5 Billion under health insurance; even so the procuring agency awarded them zero marks and their competitor as 25 marks.
- The procuring agency even did not provide the details of employee [date of birth, sex, and marital status] and their exact number of dependents in the bid documents, which showed approximate quantity of 15,000 lives; they approached the procuring agency before submission of bids to provide the actual data of employees as well as change in the evaluation criteria whereby they were informed that the procuring agency would make slab in the scoring criteria at later stage;
 - The procuring agency entered into negotiation with M/s Jubilee Life Insurance despite having bar on negotiation under Rules-52 & 83 of SPP Rules, 2010 (Amended Up to date), that spell out 'save as otherwise provided there shall be no negotiation with the bidder having submitted the lowest evaluated bid or with any other bidder' and 'Notwithstanding the provisions under Rule-52 procuring agency to be complying'. Further, the applicability of Rule-83 was only valid in case of projects under public private partnership but not under the instant procurement. Resultantly, M/s Jubilee Life Insurance reduced the premium from PKR 80 million to PKR 71.496 million, which was also a violation of Rule-43 of SPP Rules, 2010 (Amended Up to date);
 - The procuring agency awarded the contract to M/s Jubilee Life Insurance at the cost of PKR 71.496 million by increasing the estimated/ allocated cost of PKR 50 million [an increase of 43% in the estimated cost] at their own level, without seeking approval of the Syndicate or Senate, by using Rule-16(1)(b)(e) of SPP Rules, 2010 (Amended Up to date), which was applicable at the time of renewal or extension of current running contract subject to increase up to maximum 15% of the original cost; moreover, the procuring agency reduced the number of beneficiaries/ lives from 15,000 to 11,000 during award of contract.

Procuring Agency's Version

6. Mr. Kamran, Procurement Expert (representative of the procuring agency) at the outset objected to the contents of the appeal being heard by Review Committee. According to him, Review Committee is an appellate forum against the decision of CRC. Therefore, complainant cannot add to or amend his original complaint made before the CRC. When both complaint and appeal were opened, it transpired that appellant had improvised his stance substantially by leveling additional allegations, which included: undertaking negotiation with the lowest evaluated bidder [M/s Jubilee Life Insurance] in violation of Rules-52 & 83; substantial modification in bid amount [premium] quoted by their competitor in violation of Rule-43(1); and decrease in quantity of employees/ beneficiaries exceeding 15% of the total quantity in violation of Rule-16(1)(e) of SPP Rules, 2010 (Amended Up to date).

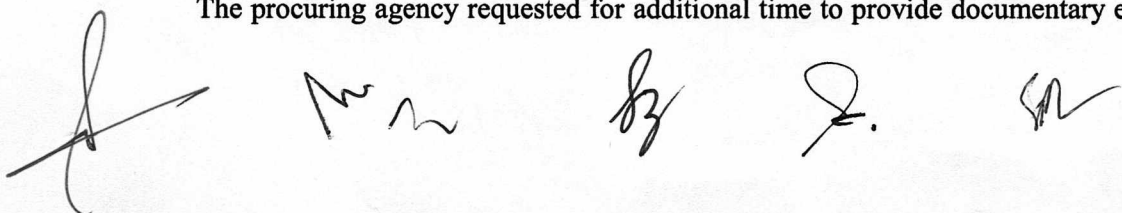
7. Dr. Arbeela Agha, Senior Medical Officer (representative of the procuring agency) while responding to queries raised by Review Committee clarified that:

- The procuring agency issued bid documents to all firms but no firm, including the appellant, raised even a single query or concern to the procuring agency before opening of the bids. The appellant's participation in the bid also endorsed that they had not any reservation over the criteria and other terms and conditions of bid documents; however, when the appellant got disqualified under the technical evaluation then they started to raise varied concerns to the procuring agency as well as the Authority;
- They received complaint from the appellant after the award of contract, which was issued on 11.06.2018; hence, the procuring agency's CRC could not redress the appellant's grievances as per rules;
- The procuring agency did neither enter into negotiation nor modify the bid submitted/ quoted by the lowest evaluated bidder after opening/ evaluation of bids; however due to typo mistake, the procuring agency mentioned in the bid evaluation report as '*PKR 70 million enhanced as per SPP Rule-16(1)(b)(e)*'; the procuring agency had prime responsibility to ensure that their employees/ beneficiaries get valued healthcare services across the country from this procurement and considering that factor they formulated evaluation criteria;
- Nevertheless, if a prospective bidder, including the appellant, had any concern then they could approach the procuring agency, which was bound to furnish clarification against these queries in terms of Rule-23(1) of SPP Rules, 2010 (Amended Up to date), which spells out that '*an interested bidder, who has obtained bidding documents, may request for clarification of the contents of the bidding document in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bids*';
- The appellant, during the procurement process, had spread rumors for the award of contract to them on the pretext to discourage other firms to participate and when the appellant could not exercise benefits of such rumors then they started to sabotage the procurement process through lodging complaints at various forums; however, two other firms [M/s Askari Insurance and M/s UIC Insurance] were also technically disqualified then why did they not file any complaint if they had observed any flaw or favoritism under the instant procurement process;
- The procuring agency conducted evaluation and awarded marks on the basis of required/ supported documents provided by the bidders along with their bids, without taking into consideration any favoritism or discrimination;
 - The Review Committee asked the procuring agency to clarify whether M/s Jubilee Life Insurance Company Ltd. and M/s Jubilee General Insurance Company Ltd. are two separate entities or a single entity. Moreover, it needs to be clarified how their turnover was calculated under the instant procurement;
 - The procuring agency, in response to the above, furnished clarification vide letter dated 11.02.2019 stating that M/s Jubilee Life Insurance Company and M/s Jubilee General Insurance Company Ltd. are two separate entities. Moreover, the procuring agency provided evidence of panel hospitals all over Pakistan as well as provided/ confirmed the lowest evaluated bidder's rating as Double AA+.

Review Committee Observations

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

- The contention of the procuring agency to the extent that appellant cannot improvise upon his original complaint is correct. However, there is no bar on Review Committee to ask for any information related to the procurement in question, and therefore, Review Committee asked the procuring agency to clarify its position regarding additional allegations leveled by the appellant. The procuring agency requested for additional time to provide documentary evidences reflecting

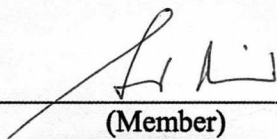


the said allegations, which was granted. Documentary evidences were received in the Authority after a month or so which resulted in delayed decision.

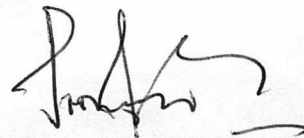
- The condition for change under beneficiaries/ employees number was explicitly mentioned in the notice inviting tenders; in case of any clarification required to the appellant, prior to opening of the bids, then the same was needed to be asked from the procuring agency in writing in terms of Rule-23(1) of SPP Rules, 2010 (Amended Up to date);
- The appellant got 30 marks under criterion listed at Sr. # 1 & 2; hence, they should not have any concerns over it; moreover, the annual report 2017 of M/s Jubilee Life Insurance confirmed their rating as well as health insurance portfolio as AA+ against which the procuring agency assigned marksⁱ;
- The appellant was required to approach the procuring agency and/ or its CRC with respect to the criterion, listed at Sr. # 4 & 6 of bid documents, for seeking clarification or redressing their grievances in terms of Rules-23 & 31 of SPP Rules, 2010 (Amended Up to date);
- The appellant was required to lodge complaint before CRC during the procurement proceedings i.e. prior to award of contract but in the instant case, the appellant approached CRC after the award

Review Committee Decision

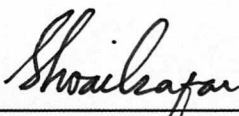
9. In light of the above observation, as under para-8, and after due deliberation, the Review Committee unanimously decides to reject the reference/ appeal lodged by the appellant in the light of SPP Rule-32(7)(a) of SPP Rules, 2010 (Amended 2019).



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



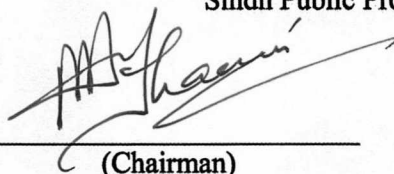
(Member)
Asadullah Soomro
Private Member
SPPRA Board



(Member)
Nominee of Director General Audit Sindh



(Member)
Khalid Mehmood Soormo
Former Managing Director
Sindh Public Procurement Regulatory Authority



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

ⁱ <https://jubileelife.com/wp-content/uploads/2014/05/Jubilee.pdf>