



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-18/2018-19

Karachi, dated the April, 2019

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

(Appeal)

M/s Q.A. Traders

Versus

Directorate of Animal Breeding Sindh, Livestock & Fisheries Department, Hyderabad

(NIT ID # T01148-18-0002 dated 03.12.2018)

Facts and background

M/s Q.A Traders, Hyderabad (hereinafter referred to as the appellant) lodged an appeal vide letter dated 27.02.2019 to Sindh Public Procurement Regulatory Authority (hereinafter referred to as the Authority) against the NIT # DAB/AC/TENDER/2018-19/2 [Item # I: General Overhauling of Liquid Nitrogen Gas Plant'] floated by the Director, Animal Breeding Sindh, Livestock & Fisheries Department Sindh, Hyderabad (hereinafter referred to as the procuring agency) wherein the appellant stated that the procuring agency opened the bids and announced its results under instant procurement on 10.12.2018 and 30.01.2019, respectively; subsequently, they lodged a complaint vide letter dated 19.02.2019 to the procuring agency's complaints redressal committee (CRC), which had failed to decide their matter within stipulated time of seven days as specified under Rule-31(5) of SPP Rules, 2010 (Amended Up to date).

2. The Authority vide letter dated 11.03.2019 forwarded the appellant's matter to the procuring agency with an advice to furnish its CRC decision. In response, the procuring agency vide its letter dated 15.03.2019 furnished minutes of the CRC meeting held on 13.03.2019 with decision [excerpts] reproduced below:

[Bid evaluation report giving reasons for acceptance or rejection of bids was hoisted by this Department on the website of SPPRA on 30.01.2019. The contract was awarded to M/s YJW Trading Co. Hyderabad as no complaint was received during 03 days period of time against the decision of Procurement Committee. Further, the complaint of Mr. Shamshad Ali (CEO) of Q.A Traders Hyderabad received to the Chairman CRC on 20.02.2019 after passing of 21 days. Mr. Shamshad Ali agreed with the fact that he did not approach the Chairman CRC in time as required under the relevant Rules of SPPRA 2010 as amended.]

In view of above facts, the Complaint Redressal Committee unanimously decided that the complaint is time barred as per the rules, hence merits no consideration.]

3. On the above decision of the CRC, the appellant vide letter dated 22.03.2019 lodged an appeal to the Review Committee of this Authority showing concerns/ dissatisfaction over the CRC decision in terms of Rule-32(1) of SPP Rules, 2010 (Amended Up to date). In turn, the Authority vide its letter dated 29.03.2019 advised the procuring agency to confirm that whether the appellant had withdrawn its bid security or not as required under Rule-32(1) of SPP Rules, 2010 (Amended Up to date) but the procuring agency did not furnish any response.

4. Subsequently, the Authority vide letters dated 03.04.2019 issued notices to the concerned parties for appearing before the Review Committee on 09.04.2019 at 01.00 p.m. In compliance, Dr. Abdul Qadir Junejo, Director General, Livestock Sindh, Hyderabad (representative of the procuring agency) and Mr.

Shamshad Ali, Chief Executive Officer, M/s Q.A Traders (representative of the appellant) appeared before the Review Committee.

Review Committee Proceedings

5. 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

6. Mr. Shamshad Ali (representative of the appellant) while arguing his appeal apprised the Committee that:

- They offered the lowest bid among other bidders against the NIT item at Sr. # 1: General Overhauling of Liquid Nitrogen Gas Plant but the procuring agency disqualified them under eligibility criteria on the reasons that they were not authorized dealer of Striling Cryogenics Holland; only a single firm - M/s TYW Trading Co., Hyderabad that won the contract – in Pakistan was authorized dealer of Striling Cryogenics Holland in Pakistan;
- General overhauling and rehabilitation of liquid nitrogen gas plant could be done by any company working under relevant field without having any authorization dealership; if the procuring agency intended to award the contract to only authorized dealer of Striling Cryogenics Holland, which had only single authorized dealer/ distributor in Pakistan, then why they [procuring agency] invited bids through open competitive bidding process;
- They were authorized dealer of M/s SAF International, which had enriched with a reputable engineering, procurement, construction working experience in Pakistan since 1990 and possessed a list of valuable clients, included but not limited to: Sui Southern Gas Company; Pak Arab Refinery Ltd.; Byco Petroleum Pakistan Ltd; WAPDA; and Engro; and they could provide mandatory services to procuring agency as per their requirement. That was the reason the procuring agency verified their authority letter from their principal firm and it was not required when they were disqualified under eligibility criteria.
 - The chair asked the appellant whether they had approached the procuring agency over the reasons for their disqualification;
 - The appellant stated that they did not approach the procuring agency regarding their disqualification's reasons as they already came to know about it through the bid evaluation report, posted on the Authority's PPMS website, wherein it was mentioned that '*[M/s Q.A Traders] the stirling cryogenics Holland has only one authorized dealer/ distributor in Pakistan [M/s Professional Systems Pvt. Ltd, Islamabad]; whereas the firm has submitted the authority which is not concerned stirling cryogenics Holland. Hence the bid has been technically disqualified.*'
 - The chair noted that the procuring agency communicated the reasons for disqualification, as inferred from the above.
 - The chair and Syed Adil Gilani (Member of Review Committee) asked the appellant to share the experience of their principal firm i.e. M/s SAF under manufacturing and/ or overhauling of the machine, for which the procuring agency solicited bids and appellant participated;
 - The appellant clarified that their principal firm neither manufactured that machine nor provided overhauling services. Similarly, the lowest evaluated

bidder did not possess such experience and capability to provide the required overhauling services to the procuring agency.

- Syed Adil Gilani asked the appellant about the quotation of parts, that were expected to be imported by them from the original equipment manufacturer (OEM);
 - The appellant clarified that they verbally got the quotation from OEM.
- The chair pointed out that the appellant should have asked the query from the procuring agency after publication/ posting of NIT or obtaining bid documents in terms of Rule-23(1) of SPP Rules, 2010 (Amended Up to date), which provides that '*an interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding documents in writing, and procuring agency shall respond to such queries in writing.....obtained bidding documents.*' The appellant could also have raised query or concern over discriminatory and difficult conditions in terms of Rule-44 of SPP Rules, 2010 (Amended Up to date), which provides that '*save as otherwise provided, no procuring agency shall introduce any condition which discriminates among bidders. In ascertaining the discriminatory nature of any.....particular procurement is related.*'
- Syed Adil Gilani opined that the bidders normally did not lodge complaint as they presume that the procuring agencies would not accept their bids if such action would be taken. In most of the cases, the bidders compromise over their genuine rights due to certain threats and considering them on receiving side. The chair added that the appellant had lodged complaint at this stage then why did they not made so at initial procurement stage when they were fully aware that they were not the authorized dealer.
- The chair asked the appellant why did they approach the procuring agency after twenty days of posting of bid evaluation report on the Authority's website;
 - The appellant stated that the procuring agency did not intimate them about the bid evaluation report as required under Rule-45 of SPP Rules, 2010 (Amended Up to date).

Procuring Agency's Version

7. Mr. Abdul Qadir Junejo, Director General, Livestock Sindh, Hyderabad (representative of the procuring agency) while responding to queries raised by the Review Committee clarified that:

- The procuring agency disqualified the appellant on solid reasons, after evaluating bids as per evaluation criteria and terms and conditions set forth in the bidding documents;
- The procuring agency owned a costly machine that required artificial insemination services through liquid nitrogen gas. After completion of ten years of warranty period of the machine, they invited tenders first time for the general overhauling of liquid nitrogen plant wherein two companies participated, including: M/s Q.A Traders [appellant]; and M/s YJW Trading Co. [the lowest evaluated bidder, which had been awarded contract];
- When the procuring agency evaluated the bids, they came to know that the appellant's principal firm, which issued the authority letter to the appellant, did not possess any experience to provide the services and rectify the faults, if occurs during the contracting period, to their machinery available to them and manufactured in Netherland. It was the key reason for disqualification of the appellant and same was also mentioned in the bid evaluation report posted on the Authority's website on 30.01.2019 in terms of Rule-45 of SPP Rules, 2010 (Amended Up to date).
- The appellant did not lodge any complaint to the procuring agency's CRC within the hiatus of one week and the procuring agency awarded contract to the lowest evaluated bidder i.e. M/s YJW

Trading in accordance with SPP Rules. Nevertheless, the procuring agency's CRC called its meeting and decided the case as time barred.

- Over a query/ concern raised by the appellant, the procuring agency clarified that there was only one firm in Pakistan [M/s Professional Systems Pvt. Ltd., Islamabad], which had been issued authorization by the machine manufacturer located in Netherland, and they had installed and commissioned the machine to the procuring agency. When the procuring agency solicited bids under instant procurement, M/s Professional Systems Pvt. Ltd. issued authority letter to only M/s YJW to offer bid on their behalf and they were found as lowest evaluated bidder. If the appellant had furnished such authority letter from the authorized firm then the procuring agency would have definitely considered it.
- Syed Adil Gilani asked the procuring agency whether such condition, as stipulated above, was mentioned in the bid documents;
 - The procuring agency clarified that the condition [*bidders having relevant experience in over hauling (StirLIN-2) made in Holland and authorized dealer in Pakistan*] was mentioned under the eligibility criteria of NIT and bid documents.
- Syed Adil Gilani asked the procuring agency about the total bid amounts quoted by bidders under the instant procurement;
 - The procuring agency stated that M/s Q.A. Traders [appellant] and M/s YJW Trading quoted bids as PKR 13,394,900 and PKR 13,450,000, respectively, with a difference of only PKR 55,100. They could not afford to take risk for machine's sustainability and operation for the sake of only PKR 55,000.
- Syed Adil Gilani observed that the eligibility criteria condition [*bidders having relevant experience in over hauling (StirLIN-2) made in Holland and authorized dealer in Pakistan*] as mentioned in the bid documents was favoring only a single firm, which was not allowed under SPP Rules. The manufacturing firms, outside of Pakistan, of any equipment did not allow more than one dealer in one country. This specific condition could be referred to as the foundation of sole or direct tendering. The chair also endorsed that when the procuring agency asked bid from or on behalf of authorized dealer then the resorting to competitive bidding did not serve any purpose. The chair further noted that it was strange that the difference in bid amount quoted by both bidders under the instant procurement was of only PKR 55,000.
 - The procuring agency clarified that they were expecting participation of more than one bidder [directly or through authorized dealer in Pakistan] in the instant bidding process as happened in the other procurement cases, for instance: procurement of medicines. While initiating procurement process through open competitive bidding, it was their cardinal purpose to boost the competition level among bidders. Moreover, the procuring agency did not have any planted intentions to award the contract to a particular bidder.
- Syed Adil Gilani asked the appellant as well as procuring agency about the estimated cost of parts required under instant procurement;
 - The appellant stated that they quoted machine parts of OEM and their cost was already incorporated with their total quoted bid. They could easily import machinery parts in Pakistan.
 - The procuring agency clarified that machinery parts were not easy to import from Netherland to Pakistan for firms except authorized dealer. The procuring agency further added that they were trying to import

machinery parts from Netherland from last two years but they could not made so because of certain conditions and ban on Pakistan.

- Dr. Khalid Mehmood Soomro (Member of Review Committee) opined that the procuring agency can impose any condition while conducting public procurement under SPP Rules and there was not such restriction over the procuring agency to impose the condition of authorized dealer. The chair disagreed that the procuring agency could not impose any discriminatory condition as per Rule-44 of SPP Rules, 2010 (Amended Up to date). *The chair further added that if the procuring agency required authorized dealer under the instant procurement and there is only one authorized dealer in Pakistan, then they could opt for direct contracting, which was alternative method of procurements in terms of Rule-16(1)(b) of SPP Rules, 2010 (Amended Up to date) subject to conducting proper market research and approval of the Competent Authority/ Head of the Department before opting such method of procurement.*
 - The procuring agency clarified that they were absolutely unaware about the number of suppliers in the market before undertaking the instant procurement.
- The chair instructed the procuring agency that they were required to conduct proper market survey to know the capable suppliers before undertaking instant procurement. This could have facilitated the procuring agency while formulating the effective eligibility criteria and/ or opt appropriate procurement method.
 - The procuring agency highlighted that they solicited bids through an open competitive bidding process wherein two bidders participated. After conducting scrutiny and evaluation of bids, they made bid evaluation report public through posting it on the Authority's website but no bidder lodged complaint over it and they awarded contract to the lowest evaluated bidder. The appellant lodged complaint after passing twenty days of hoisting bid evaluation report on the Authority's website; nevertheless they heard their grievances and found the appellant's case as time barred. In case the appellant had approached on the right time then they would have provided them the opportunity to present their case. At this point in time – when the contract has been awarded by the procuring agency – if they take any adversarial decision against the lowest evaluated bidder then the bidder would definitely approach the higher forum and it may linger on the procurement process, which is not appropriate in the public interest. It was primary fault of the appellant who approached the procuring agency's CRC after lapse of specified time.

Review Committee Observations

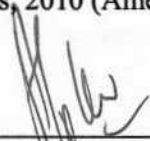
8. After hearing parties at length and perusal of the available record, the Review Committee observed that:-

- A prior market research including: survey and experts feedback before initiating the instant procurement process would have facilitated the procuring agency to opt for appropriate method of procurement including direct contracting – an alternative method of procurement – subject to proper justification and approval of the Competent Authority or Head of the Department as required under Rule-16(1)(b) of SPP Rules, 2010 (Amended Up to date);
- The appellant was required to lodge complaint within due time period i.e. prior to award of contract which was awarded after three days of announcement/ hoisting of bid evaluation report by the procuring agency in accordance with Rule-45 of SPP Rules, 2010 (Amended Up to date). However, the appellant lodged their complaint to the procuring agency after twenty days of

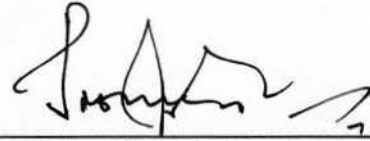
hoisting of bid evaluation report on the Authority's website when the procuring agency had already issued work order and signed contract with the lowest evaluated bidder. In case, the appellant had concerns over the condition of authorized dealership then they should have raised the same for clarification prior to the date of opening of bids in accordance with Rule-23(1) of SPP Rules, 2010 (Amended Up to date).

Review Committee Decision

9. In light of the above reasons, 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 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)
Khalid Mehmood Soormo
Former Managing Director
Sindh Public Procurement Regulatory Authority



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