



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-923/2019-20/1901

Karachi, dated the 26<sup>th</sup> February, 2020

To,

The Medical Superintendent,  
Sindh Government Lyari General Hospital,  
**Karachi.**

**Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY.**

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision [M/s Griffin Chambers (on application of M/s Al-Razzak Medical Store) v. Sindh Government Lyari General Hospital Karachi] held on 19<sup>th</sup> February, 2020, for your information and further necessary action under intimation to this Authority, at the earliest.

26/02/2020  
ASSISTANT DIRECTOR (LEGAL-II)

*A copy along with enclosures/ decision is forwarded for information to:*

1. The Secretary to Govt. of Sindh, Health Department, Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Assistant Director (I.T), SPPRA [with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010].
4. The Staff Officer to the Chairman/ Members Review Committee.
5. M/s Griffin Chambers, Suite No. 23, 2<sup>nd</sup> Floor, Fared Chambers, Abdullah Haroon Road, Saddar, Karachi.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-923/2019-20

Karachi, dated the February, 2019

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

(Appeals)

*M/s Griffin Chambers (on application of M/s Al-Razzak Medical Store)*

Versus

*Sindh Government Lyari General Hospital, Karachi*

(NIT ID # T01053-19-0003 dated 02.12.2019)

**Facts and background**

The appellant, Advocate G.A. Pathan, M/s Griffin Chambers Karachi, lodged a complaint on behalf of his client M/s Al-Razzak Medical Store (vide letter dated 11.01.2020) addressed to the Medical Superintendent, Sindh Government Lyari General Hospital/ Chairman Complaints Redressal Committee (CRC) and copy endorsed to this Authority against the NIT # LGHK/Pro/1884 dated 25.11.2019 floated by Sindh Government General Hospital, Karachi '*the procuring agency*' for procurement of '*drugs/ medicines, orthopedic implants/ OMF implants, lab tests/ biopsy reports/ plasma apheresis, CT scan/ MRI/ special tests, intra ocular lenses for ophthalmology departments & surgical/ disposable items – on 24/7 emergency basis (item # 3 of NIT)*'<sup>1</sup> whereby the appellant raised concerns over his client's disqualification under technical evaluation of the bidding process<sup>2</sup>.

2. In response to the above, the procuring agency (vide letter No.PF/LGHK/417 dated 14.01.2020) furnished clarification against each criterion, which lead to disqualify the bidder – this included the appellant's client failed to fulfill the requirement for *general sales tax (GST) certificate or its exemption; average annual financial turnover of PKR 5.00 million with bank certificate; an undertaking for supply of required items within stipulated time; relevant experience/ performance certificate for last three years.*

3. Subsequently, the appellant (vide letter dated 16.01.2020) preferred an appeal, in the absence of review appeal fee<sup>3</sup>, stating that the CRC had failed to redress the grievances and requested the Authority to place the case before the Review Committee. In turn, the Authority (vide letter dated 27.01.2020) forwarded the appellant's matter to the procuring agency with an advice to update/ confirm status of the appellant client's bid security, latest by 31.01.2020, in terms of Rule-32(1) of SPP Rules, 2010<sup>4</sup>, *for ascertaining the maintainability of the case*; however, the procuring agency failed to respond within prescribed time. Simultaneously, the Authority advised the appellant to submit review appeal fee that was submitted by the appellant vide letter dated 30.01.2020.

4. Accordingly, the appellant's case was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 13.02.2020 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 03.02.2020) to appear before the Committee on scheduled dated, time, and venue. In compliance, Advocate Ghulam Asghar Pathan, M/s Griffin Chambers '*the appellant*' appeared before the Review Committee; whereas, the representative of the procuring agency

<sup>1</sup> Detailed description/ nature of procurement can be accessed through instant procurement's NIT (item # 3) available on the PPMS website at ID # T01053-19-0003 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>2</sup> Single stage two envelope bidding procedure – See bid evaluation report containing technical evaluation report on the PPMS website at ID # BE01053-19-003-2 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>3</sup> Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

<sup>4</sup> Rule-32(1) provides that the a bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review Committee within ten (10) days of announcement of the decision provided that he has not withdrawn the bid security, if any, deposited by him.

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did not attend the meeting, due to which the Committee decided to provide an opportunity to the procuring agency to appear in next meeting, scheduled on 19.02.2020, for defending the position/ case and notices in this connection were again issued to the parties concerned (vide this Authority's letter dated 14.02.2020). In compliance, Dr. Abdul Rehman Dawood, Deputy Medical Superintendent, and Miss Naila Moubeen, Pharmacist, Sindh Government Lyari General Hospital, Karachi '*representatives of the procuring agency*' and Advocate Ghulam Asghar Pathan, M/s Griffin Chambers '*the appellant*' appeared before the Committee's meeting.

## **REVIEW COMMITTEE PROCEEDINGS**

5. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/ version on the instant procurement before the committee.

### **Appellant's Version**

6. Advocate Ghulam Asghar Pathan '*the appellant*' apprised the Committee of his client's submission of bid for item # 3 '*zakat tender*' whereby the procuring agency disqualified his client under technical evaluation process due to five reasons including: *GST certificate; average annual financial turnover of PKR 5.00 million; compliance to the terms & conditions of the bid documents; undertaking for supply of required items within stipulated time; and relevant experience/ previous performance of last three years*<sup>5</sup>. The appellant contended that the procuring agency formulated ambiguous evaluation criteria while asking bidders to submit GST certificate that was not required for supply of medicines; similarly, rest of the requirements under technical evaluation was also prejudiced to disqualify the appellant's client rather than boosting competition level. The appellant further contended that the procuring agency solicited bids from firms (medical stores) located within/ nearby hospital premises then why conditions for average annual financial turnover up to PKR 5 million was imposed, which does not seem practical for a local medical store to fulfill. The procuring agency could ask the bidder(s) to submit bank security or any other financial instrument up to certain level or estimated cost of procurement to cover the risk(s) till completion of procurement cycle.

### **Procuring Agency's Version**

7. Dr. Abdul Rehman Dawood, Deputy Medical Superintendent, and Miss Naila Moubeen, Pharmacist, Sindh Government Lyari General Hospital, Karachi '*representatives of the procuring agency*' clarified that the procuring agency (vide letter No.PF/LGHK/417/19 dated 14.01.2020) had already responded towards the appellant's concerns. The procuring agency disqualified the appellant's client not only on the single reason of GST registration but there were also other reasons including financial turnover and relevant experience etc. as mentioned under the technical evaluation report<sup>6</sup>.

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representatives whether GST registration was required under instant procurement as per law;
  - ◆ The procuring agency's representatives affirmed that the GST registration for bidders under instant procurement was **not mandatory**.
- Subsequently, the Committee asked the procuring agency's representatives as to why such condition – GST registration/ status – for bidder(s) was imposed when it was not required;
  - ◆ The procuring agency's representatives clarified that the Authority's PPMS requires particular information about bidder(s) legal status, including GST number, whenever the

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.



procuring agency uploads/ posts evaluation report otherwise the system does not process for next step. Considering such requirement, procuring agency imposed GST condition.


- *Deputy Director (A&F) instructed the procuring agency to put default numbers as zero, zero at the place of GST number, for moving to next step of the system, when the GST status is exempted/ not applicable.*
- Subsequently, the Committee asked the procuring agency's representatives about the current status of instant procurement;
  - ◆ The procuring agency's representatives confirmed that the procurement contract against instant procurement, where appellant's client participated, has not been awarded yet.


#### **Review Committee's Observations/ Findings**

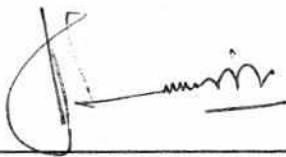
8. After hearing the parties at length and close scrutiny of the procurement record, the Review Committee is of view that the procuring agency's representatives have accepted their unilateral mistake for imposing a condition on bidders to have mandatory registration with GST for supply of medicines, when such conditions was not required as endorsed the procuring agency's representatives and appellant. It was the primary responsibility of the procuring agency to formulate clear and unambiguous evaluation criteria in the bidding documents in terms of Rule-21(A) read with Rule-4 of SPP Rules, 2010<sup>7</sup>.

#### **Review Committee Decision**

9. For the foregoing reasons/ findings, as at para-8, and after due deliberation, the Review Committee unanimously decides that since the procuring agency has not awarded or signed contract against instant procurement (item # 3 of NIT), therefore, the procurement proceedings for referred item may be terminated in terms of Rule-32(7)(f) of SPP Rules, 2010<sup>8</sup>, and fresh tenders be floated in terms of Rule-23(2) & 26 of SPP Rules, 2010. **Compliance of this decision shall be submitted to this Authority within fifteen (15) days of issuance of this decision.**

  
\_\_\_\_\_  
(Member)  
Syed Adil Gilani  
Private Member SPPRA Board  
Representative Transparency International

  
\_\_\_\_\_  
(Member/ Independent Professional)  
Engr. Munir Ahmed Shaikh  
(Rtd.) Executive Engineer  
Public Health Engineering Department  
Government of Sindh

  
\_\_\_\_\_  
(Chairman)  
Abdul Rahim Sheikh  
Managing Director  
Sindh Public Procurement Regulatory Authority

<sup>7</sup> Rules-21(A) & 4 provides that the procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide a clear and unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement. While procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

<sup>8</sup> Rule-32(7)(f) provides that [the Review Committee may] direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.