



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-780/2019-20/1204

Karachi, dated the 21<sup>st</sup> October, 2020

To,

- The Director,  
Animal Breeding Sindh,  
Hyderabad.
- M/s YJW Trading Company,  
Office No. 58, 1<sup>st</sup> Floor, Bismillah City,  
Block-A/3, Unit 10, Latifabad,  
Hyderabad.

**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 YJW Trading Company v. Animal Breeding Sindh Hyderabad*) held on 21<sup>st</sup> July 2020, for information, please.

21/10/2020  
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Government of Sindh, Livestock & Fisheries Department, Karachi.
2. The Director General Livestock Sindh, Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Assistant Registrar (C.P), High Court, Circuit Court, Hyderabad (C.P # D-82/2020).
5. The Assistant Director (I.T), SPPRA [*with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010, and delist the appellant from the blacklisted firms*].
6. Advocate Asif Ali Talpur, Suite No. 1, Mezzanine, Floor Venus Arcade, Opposite Ali Baba Restaurant, Civil Lines, Hyderabad.
7. The Staff Officer to the Chairman/ Members Review Committee.



GOVERNMENT OF SINDH  
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-780/2019-20/1204

Karachi, dated the 21<sup>st</sup> October 2020

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

REVIEW APPEAL

Between:

M/s YJW Trading Company

v.

Animal Breeding Sindh Hyderabad

NIT ID Number

T01148-18-0002 dated 03.12.2018

FACTS AND BACKGROUNDS<sup>1</sup>

The appellant, M/s YJW Trading Company Hyderabad, preferred an appeal along with review appeal fee<sup>2</sup> (vide letters dated 12.12.2019, 02.01.2020 & 04.02.2020) before this Authority in terms of Rule-35(4) read with Clause-I of Sub-Rule-2(1) of SPP Rules, 2010<sup>3</sup>, whereby the appellant requested to review and quash an order issued by the Livestock & Fisheries Department (vide letter dated 14.11.2019)<sup>4</sup> for blacklisting the appellant on a permanent basis in terms of Rule-35(1)(d) *ibid*<sup>5</sup>.

2. The brief facts giving rise to instant appeal are that the Directorate of Animal Breeding Sindh, Livestock & Fisheries Department, Hyderabad '*the procuring agency*' floated a notice inviting tender (NIT), through publication in newspapers as well as posting the same along with bid document on the Authority's PPMS website, to solicit bids for the procurement '*rehabilitation & renovation/ general overhauling of liquid nitrogen gas plant (Make: Stirling Cryogenics B.V, Model StirLIN-2 LN<sub>2</sub> Plant Job No. J-0500, Made in Holland)*<sup>6</sup>' under single stage one envelope bidding procedure in terms of Rules-17(1A), 17(2), 21(4) & 46(1)(a) *ibid*<sup>7</sup> read with the eligibility criteria *inter alia* as mentioned herein-below:

- The bidder must have registration with all the tax authorities;
- The bid should contain call deposit/ bid security of 2.5% of quoted bid in shape of pay orders;
- The bidder should have relevant experience in overhauling (StirLIN-2) made in Holland and authorized dealer or authorized distributor or authorized agent in Pakistan;

<sup>1</sup> Under this case, the procurement rules would be considered the Sindh Public Procurement Rules (Amended 2017) as were applicable when floating the NIT, without considering the retrospective effect of any later amendments within the rules.

<sup>2</sup> This Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasinhd.gov.pk/PPMS/>]

<sup>3</sup> Any party being aggrieved by the decision of the procuring agency may submit an appeal to the Authority, which shall refer the matter to the Review Committee, which shall decide the matter as provided in sub-rules (5) to (11) of Rule-32

<sup>4</sup> <http://pprasindh.gov.pk/blacklist/29BLivestockyHyd281119.pdf>

<sup>5</sup> [The following shall result in blacklisting of suppliers, contractors, or consultants, individually or collectively as part of consortium] willful failure to perform in accordance with the terms of one or more than one contract. Blacklisting means barring a bidder, contractor, consultant or supplier from participating in any future procurement proceedings by the procuring agency.

<sup>6</sup> Detailed description/ nature of the procurement can be accessed via instant procurement's NIT available on the PPMS website at ID # T01148-18-0002 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

<sup>7</sup> All procurement opportunities over one million rupees shall be advertised on the Authority's website as well as in the newspapers prescribed. The advertisement shall appear in at least three widely circulated leading dailies of English, Urdu and Sindh languages. All procuring agencies shall hoist the bidding documents on the Authority's website as well as on the website of the procuring agency, in case the procuring agency has its own website. Notice inviting tenders and bidding documents of this method shall contain the following eligibility criteria: i. relevant experience; turnover of at least three years; registration with Federal Board of Revenue (FBR) for Income Tax, Sales Tax, in case of procurement of goods. Registration with the Sindh Revenue Board (SRB), in case of procurement of works and services, and registration with Pakistan Engineering Council (where applicable); iv. any other factor deemed appropriate to be relevant by the procuring agency subject to provision of Rule-44.

- The bid must be quoted in Pak Rupees; and
- The bid must be supported with relevant literature, country of origin, make and brand etc.<sup>8</sup>

3. In response to the NIT, as mentioned earlier, the procuring agency received/ opened the bids on 10.12.2018<sup>9</sup> and then announced the bid evaluation results via the Authority's website<sup>10</sup>, whereupon the Procurement Committee (PC) recommended to M/s YJW Trading Co 'the appellant' for an award of the procurement contract in terms of Rule-45 ibid<sup>11</sup> as further summarized herein-below:

Bid Evaluation Report (PKR in Million)					
Sr. #	Name of Firm/ Bidder	Bid Offered	Financial Rank	Reasons for Acceptance/ Rejection	Remarks
I.	M/s Q.A. Traders	13.394	1 <sup>st</sup>	Not fulfilled all requirements of eligibility criteria	The Stirling Cryogenics Holland has only one authorized dealer/ distributor in Pakistan i.e. 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.
II.	M/s YJW Trading Co.	13.450	2 <sup>nd</sup>	Fulfilled all requirements of eligibility criteria	The rate of firm is 2 <sup>nd</sup> lowest but the authority submitted by the firm is related with Stirling Cryogenics Holland i.e. Professional Systems Pvt. Ltd. Hence, the procurement committee approves the bid.

4. Based on the PC's recommendations, the procuring agency issued a letter dated 11.02.2019 addressed to the appellant that reads as under:

M/s YJW Trading Company, Hyderabad

**Subject:** General Overhauling of Liquid Nitrogen Gas Plant under ADP Development Scheme No. 1061 'Rehabilitation & Renovation of Liquid Nitrogen Gas Plant'.

**Reference:** Tender for the Tender Notice INF/KRY/3888/18 during the year 2018-19

The rates mentioned in your aforesaid tender are hereby approved by the Procurement Committee. You are requested to complete the work of general overhauling of the Liquid Nitrogen Gas Plant installed at the Directorate of Animal Breeding Sindh Hyderabad accordingly on terms and conditions mentioned in the tender documents.

- The firm will pay general sales tax (admissible under rules) from the approved cost.
- The firm has to pay all taxes as admissible including stamp duty of Sindh Government as per rules before making payments and copy of the same may be provided to this Directorate.
- The firm will have to pay income tax and services tax (SST Rules 2012).
- The payment will be made in parts on the basis of work done.
- The final payment will be made after completion of work i.e. 95-100% production of LNG of the capacity, at least for six (6) months.
- 10% bank guarantee will be provided by bidder award of work.
- The bidder will ensure/ guarantee the 6000 hours, successful operating cycle as per standard or three (3) years guarantee of producing Liquid Nitrogen Gas in full capacity.
- All parts used for maintenance should be imported, and having not less than eighteen (18) months warranty.
- The bidder will ensure the completion of work within ninety (90) days.

<sup>8</sup> The detailed evaluation criteria/ essential conditions for bidders' qualification is available in the bid documents

<sup>9</sup> The procuring agency received and opened the bids on the prescribed scheduled date and time that was extended through publishing a corrigendum in newspapers (The News and Jang) on 25.11.2018.

<sup>10</sup> Bid Evaluation Reports at IDs # BE01148-18-0002-1 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/ber/>]

<sup>11</sup> Procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) days prior to the award of contract.

S. No.	Particulars/ Description	Rate	Amount
	Rehabilitation of LNG Plant Make: Stirling Cryogenics B.V; Model: StirlIN-2 LN-2 Plant Job No: J-0500, Made In: Holland		
1.	Air compressor model SK24 replacing parts	PKR 13.5 M	PKR 13.5 M
2.	Air dryer model DME025 GG volume 14.6 liters replacing parts		
3.	Cryogenerator No. 1 SINO112641 replacing parts		
4.	PSA MAXI Gas 104 ECBL Volume 105 liters replacing parts		
5.	Water chiller PCUS-050-HT-050-SPLIT replacing parts		
6.	Electric control panel/ panel command system		
7.	All other items required for smooth operation of LNG plant		
8.	The repair process may be made through Professional System Pvt. Ltd. which is authorized firm for repair of said plant in Pakistan		

(Rupees Thirteen Million Five Hundred Thousand only)

Sd/

(Dr. Zakir Hussain Subhupoto)

Director Animal Breeding Sindh Hyderabad

5. In response to the aforementioned letter, the appellant (vide letter dated 29.04.2019) requested the procuring agency to cancel the supply order and release the bid security on account of M/s Stirling Cryogenics, Netherland 'Original Equipment Manufacturer (OEM)' denial to provide the quotation and to supply the spare parts despite repeated requests made by the appellant. In turn, the procuring agency (vide letter dated 13.05.2020) rejected the appellant's request based on the given justification and further directed to explain the position within a week; otherwise, the procuring agency warned the appellant of its blacklisting and forfeiting of security as per governed rules.

6. Subsequently, the procuring agency (vide letter dated 01.11.2019) requested the Director General, Livestock Sindh Hyderabad, 'the PC's Chairman' to blacklist the appellant on account of its willful failure to perform the contract as envisaged under Rule-35(1)(d) *ibid*. In turn, the Director General forwarded the request made by the procuring agency to the Livestock & Fisheries Department 'administrative department', which issued an order (vide letter dated 14.11.2019)<sup>12</sup> for blacklisting the appellant's firm. The relevant portion of the blacklisting order is to the following effect:

WHEREAS, you vide letter No.YJW/DAB/LNG/225/18-19 dated 29.04.2019 intimated the Director Animal Breeding Sindh Hyderabad that supply order issued to you may be cancelled an government itself may perform the same and your bid security may be returned accordingly as you contacted Sterling Cryogenics Holland/ Netherland to provide quotation of spare parts required for functionalization of Liquid Nitrogen Plant Installed at office of Animal Breeding Sindh, but they denied to provide quotation and spare parts, due to their policy with any private firm except government institute.

WHEREAS, Director Animal Breeding Sindh Hyderabad found your reply unsatisfactory and directed you vide letter NO.DAB/AC/1988-9 dated 13.05.2019 to explain your position within a week that why your firm may not be blacklisted as per SPPRA Rules as completion of procedural requirement to get the spare parts and start the work was the responsibility of your firm.

WHEREAS, your firm neither responded to above letter dated 13.05.2020 not initiated the work within 90 days till yet. Resultantly, Director Animal Breeding Sindh Hyderabad vide letter No.DAB/AC/3953-57 dated 01.11.2019 and Director General Livestock Sindh Hyderabad vide letter No.DGL/AC/2019-20/8348-49 dated 05.11.2019 have recommended for blacklisting your firm as per SPPRA Rule-35(d).

Now, therefore, in exercise of powers under Rule-35(d) of Sindh Public Procurement Regulatory Authority, 2010 (Amended 2019) M/s YJW Trading Company, Hyderabad Office No. 58, 1<sup>st</sup> Floor, Block A/3, Bismillah City, Unit No. 10 Latifabad, Hyderabad, is hereby blacklisted as the firm failed to start the work as per order within 90 days i.e. up to 11.05.2019.

7. The appellant challenged the aforementioned order by filing a Constitutional Petition<sup>13</sup> dated 28.01.2020 in the Honorable High Court of Sindh, Circuit Court Hyderabad, whereby it was prayed i. to declare the administrative department's act for blacklisting the appellant as null and void being mala fide;

<sup>12</sup> *ibid*.

<sup>13</sup> C.P. No.D-82 of 2020



ii. to suspend the operation of the impugned letter dated 14.11.2019 till final disposal of the petition; iii. to direct the Review Committee for disposal of the appellant's case within one month; and that any other relief which may deem fit and proper. Subsequently, the Honorable Court passed an order dated 29.01.2020 with the following directions<sup>14</sup>:-

The case of Petitioner Company, as stated by learned counsel is, that the Petitioner was awarded a contract by Responded No. 2. Work Order dated 11.02.2019 is at page 17. Partially the Petitioner has completed the work, but it was unable to import Liquid Nitrogen Gas Plant from the specified supplier of Holland. In the intervening period vide impugned Order dated 14.11.2019 Respondent No. 1 blacklisted the Petitioner Company. Against this order an appeal was filed before the Committee in terms of SPPRA Rules 2010 which is still pending. Submissions made today require consideration. Issue notice to the Respondents as well as learned A.A.G. To be listed in the 2<sup>nd</sup> week of March 2020. However, the Respondents should decide the appeal of Petitioner in the intervening period within the parameters of SPPRA Rules 2010 after giving an opportunity of hearing to the petitioner.

8. Accordingly, the Authority referred the appellant's case to the Review Committee for hearing and further decision in its meeting scheduled on 21.07.2020 at 12.00 p.m. in terms of Rule-35(4) *ibid*. In this regard, the Authority (vide letter dated 08.07.2020) issued summons to the parties concerned to appear in person, or depute authorized representatives, well conversant with the matter in hand, along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time, and venue in terms of Rules-32(6), (8) & (10) *ibid*<sup>15</sup>.

9. In compliance, Dr. Muzaffar Ali Vighio (Director Animal Breeding Sindh Hyderabad), Muhammad Sadiq Khaskhli (Section Officer, Livestock & Fisheries Department) 'the procuring agency's representatives' and Muhammad Yasir Rajput (Proprietor, M/s YJW Trading Company) 'the appellant' appeared before the Committee.

#### REVIEW COMMITTEE PROCEEDINGS

10. The Chairperson of the Review Committee commenced the meeting by welcoming all the meeting participants. The chair then asked the appellant to present the version over the case in hand.

#### APPELLANT'S VERSION

11. Muhammad Yasir Rajput 'the appellant' apprised the Committee that they participated in the bidding process after seeking an official authorization from M/s Professional Systems Pvt. Ltd. 'official representative in Pakistan of M/s Stirling Cryogenics, the Netherlands', which initially installed the plant for the procuring agency in 2001. Secondly, the appellant submitted the bid based on estimation provided by M/s Professional Systems Pvt. Ltd. that, after due diligence, assured the appellant to offer complete technical support, other than the procurement of spare parts, under instant activity by issuing a letter dated 15.01.2019 to the procuring agency. Subsequently, the procuring agency issued a letter dated 11.02.2020 approving the appellant's bid/ offer under competitive bidding process.

12. The appellant further submitted that they along with the procuring agency had exchanged various emails with M/s Stirling Cryogenics Netherland to seek quotation against the plant's spare parts in favor of the appellant's firm; however, M/s Stirling issued the quotation having invoice/ consignee details in favor of the procuring agency. Subsequently, the appellant made repeated requests to M/s Stirling to issue afresh quotation in favor of (invoice/ consignee titled as) the appellant thus enabling to initiate the payment process but M/s Stirling denied to do so as per the company's internal policy. The appellant contended that his firm tried at best towards completing the awarded task on time that can be traced via a series of emails exchanged between the appellant and M/s

<sup>14</sup> Copy of the referred order received through the appellant's lawyer vide letter dated 29.06.2020

<sup>15</sup> On receipt of appeal, along with all requisite information and documents, the Chairperson shall convene a meeting of the Review Committee within seven working days. It shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee as and when called and produce documents, if required. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

Stirling from time to time. The emails, as originally received through the appellant, are reproduced herein below in chronological order for the sake of convenience and subsequent reference/ findings:

From: YJW Trading <yjwtrading@live.com>  
Sent: 07 March 2019 10:16  
To: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Subject: Quotation regarding Spare parts of StirLN LN-2 Plant

Dear Mr Wim,

Hope you will be fine.

Please find attached file of supply order of our company from Director Animal Breeding sindh regarding Rehabilitation of StirLN LN-2 plant and List of Require spare parts of StirLN LN-2 plant to operate and start production again.

Kindly send us quotation of above mention list as soon as possible so that we could move further. Thanks

Await your kind reply

Regards

Muhammad Yasir Rajput  
YJW Trading Company

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From: YJW Trading <yjwtrading@live.com>  
Sent: maandag 11 maart 2019 12:54  
To: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Subject: FW: Reminder of Quotation for regarding Spare parts of StirLN LN-2 Plant

Dear Mr Wim,

May you please send us quotation regarding Rehabilitation of StirLN LN-2 Plan as per list attached . kindly send us quotation as time is running out.

hope you understand our situation .thanks

Await your kind reply

Regards

Muhammad Yasir Rajput  
YJW Trading Company

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From: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Sent: maandag 11 maart 2019 13:20  
To: YJW Trading <yjwtrading@live.com>  
Cc: Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Subject: FW: Reminder of Quotation for regarding Spare parts of StirLN LN-2 Plant

Dear Mr. Rajput,

Few weeks ago you were in contact with PSYS. Mr. Saeed informed me.

Last week I already forwarded your email to our service department. I expect them to send the quotation soon. Sorry for the delay.

With best regards,

Whim

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From: Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Sent: 11 March 2019 14:59  
To: YJW Trading <yjwtrading@live.com>  
Cc: Service | Stirling Cryogenics; Wim vanRookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Subject: RE: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant

Dear Mr. Rajput,

See in attached file our quotation for the requested parts.

Items 1- 25 covers the parts you requested for in your Excel list as item 1 and 2. We do not carry those part numbers you requested anymore. Therefore we offered the sets as itemized parts.

Delivery of the parts might be subject to approval of the Dutch Government.

We also require an Irrevocable Letter of Credit (for 100% of the quoted amount), which is confirmed by a Dutch Bank.

In case any questions remain, do not hesitate to contact us.

Kind regards,

Hanneke van Hurck  
Sales Engineer Spare Parts  
Tel.: +31 40 26 77 321  
h.hurck@stirlingcryogenics.eu  
www.stirlingcryogenics.eu

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From: Executive Director Animal Breeding  
Sent: Wednesday March 20, 2019 11:24 AM  
To: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Subject: Issue of Quotation to M/s YJW Trading Company Hyderabad behalf of Directorate of Animal Breeding Sindh Hyderabad Pakistan

Dear Sir,

(Mr. Wim Van Rookhuijzen)

Customers reference No. JO-500 StirLIN-2 SO-500

It is to inform you that we, Directorate of Animal Breeding Sindh Hyderabad, Animal Sciences Complex Auto Bhan Road Hussalnabad Hyderabad Sindh Pakistan Phone: +9222-9260504 Fax No: +9222-9260505 has floated the tender in leading newspaper in Pakistan NIT No. INF-KRY 3888/18 for Rehabilitation & Renovation of Liquid Nitrogen Gas Plant. The firm M/s YJW Trading Company, Address: 58 1<sup>st</sup> Floor Block-A/3 Bismillah City Unit No. 10 Latifabad Hyderabad Sindh Pakistan has been awarded the contract after completing all codal formalities vide work order No.DAB/AC/631-34/Hyderabad on dated 11.02.2019 for Rehabilitation & Renovation of Liquid Nitrogen Gas Plant StirLIN LN-2 installed at Directorate of Animal Breeding Sindh Hyderabad.

It is therefore requested to issue the quotation to company name i.e. M/s YJW Trading Co Hyderabad Address: 58 1<sup>st</sup> Floor Block-A/3 Bismillah City Unit No.10 Latifabad Hyderabad Sindh Pakistan, so that they can move further regarding payment process at your company.

Please find attached file of work order which is issued by us.

Regards,

Directorate of Animal Breeding Sindh Hyderabad

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From: YJW Trading <yjwtrading@live.com>  
Sent: 22 March 2019 22:12  
To: Service | Stirling Cryogenics  
Cc: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Subject: Re: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant

Dear Wim van Rookhuijzen ,

Directorate of Animal Breeding Sindh Hyderabad has sent you mail regarding changing the consignee detail which is supposed to be Our company name M/s YJW Trading Company, Address: Office no:58 Block A/3 Bismillah City Unit No:10 Latifabad Hyderabad Instead of Directorate of Animal Breeding Sindh Hyderabad itself, because they have conducted a tender regarding Rehabilitation of LNG Plant and we have awarded work order from department.

So its therefore kindly request you to please send us quotation on our Company name which is mentioned above so that we could move forward for payment process. Hope you understand our situation at this moment because time is running out as they Directorate must need this Plant to operate and start production again.

I am looking forward to hear you soon with good positive response. thanks

Regards

Muhammad Yasir Rajput  
YJW Trading Company

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From: YJW Trading <yjwtrading@live.com>  
Sent: woensdag 27 maart 2019 11:25  
To: Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Cc: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Subject: Re: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant

Dear Wim van Rookhuijzen,



I am still waiting for your reply Mr Wim as time is running out. I am unable to process regarding payment unless I could receive quotation on our Company name. Please try to understand and send us quotation on our company name so that we may start process regarding payment. Directorate of Animal Breeding Sindh Hyderabad informed me that you will contact us.

So kindly help me out from here because we have very short time left as per tender. So please let me know what you can do for us? If you are not willing to send us quotation on our company name then I will request them to cancel my work order.

Await your kind early reply

Regards  
Muhammad Yasir Rajput  
YJW Trading Company

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From: Hanneke van Hurck <h.hurck@stirlingcryogenics.eu>  
Sent: 27 March 2019 15:03  
To: YJW Trading  
Cc: Wim van Rookhuijzen; Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Subject: RE: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant Jo500

Dear Mr. Rajput,

Please see attachment. This email was already sent to you on March 11th.

We cannot guarantee, without making a thorough inspection of the LN2 plant that it will operate and start production again. We have been in contact with Professional Systems in Pakistan. Apparently they have checked your system and they are confident to repair it with the quoted parts. Professional Systems informed me also that they would carry out a second recheck of the system at Sindh Hyderabad.

Hope this information is sufficient.

Kind regards

Hanneke van Hurck  
Sales Engineer Spare Parts  
Tel.: +31 40 26 77 321

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From: YJW Trading <yjwtrading@live.com>  
Sent: 27 March 2019 15:32  
To: Hanneke van Hurck <h.hurck@stirlingcryogenics.eu>  
Subject: Re: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant Jo500

Dear Mr Wim,

Thanks for your mail. You still not getting my point actually I need a Quotation on our Company name which is M/s YJW Trading Company Hyderabad. All I want is that you may change consignee detail / Payee's detail of Quotation you sent me instead of Directorate Animal Breeding Animal breeding Sindh Hyderabad.

Kindly send us quotation on our company name which is mentioned above so that we may arrange payment to you. The Directorate of Animal Breeding Sindh Hyderabad also sent you mail twice regarding this issue.

I hope you got my point now. Thanks

Regards

Muhammad Yasir Rajput  
YJW Trading Company

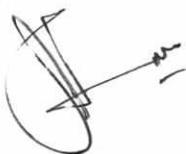
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From: Wim van Rookhuijzen <w.rookhuijzen@stirlingcryogenics.eu>  
Sent: woensdag 27 maart 2019 21: 39  
To: Hanneke van Hurck <h.hurck@stirlingcryogenics.eu>; YJW Trading <yjwtrading@live.com>  
Cc: Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Subject: Re: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant Jo500  
Importance: High

Hanneke,

Think there was some misunderstanding. The quotation is clear. But Mr. Rajput needs the quotation in name of YJW Trading so that he can arrange for purchase in name of YJW Trading. Not in the name of the Directorate of Animal Breeding.

Can you make the new quotation in name of YJW Trading?





Thanks in advance.

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From: Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Sent: 29 March 2019 12:29  
To: YJW Trading <yjwtrading@live.com>  
Cc: Service | Stirling Cryogenics <service@stirlingcryogenics.eu>  
Subject: Re: Reminder of Quotation for regarding Spare parts of StirLN LN-2Plant J0500

Dear Muhammad,

Thank you for your email and the efforts for transferring the money in our account.

We cannot offer a quotation directly on your company name because of our company policy, but having seen your interest in this plant we will forward your request to our sales and service department now let them to decide. If they are agree for sale spare parts of Stirling LN-2 plant to your company on behalf of Directorate of Animal Breeding Sindh then we can arrange quotation on your company name M.s YJW Trading Company.

Sorry for any inconvenience you may cause. Hope you can understand our situation at this moment.

Kind regards,

Leonie Ranshuijsen  
Service Coordinator & Sales Manager Spare Parts  
Tel: +31040 26 77 367  
Mob: +31 6 58817359

13. The appellant further contended that they could not import the spare parts required to make the plant functional/ operational within the contractual period; therefore, the appellant (vide letter dated 29.04.2020) requested the procuring agency to cancel the work order. After that, the procuring agency (vide letter dated 13.05.2020) rejected the appellant's work order withdrawal request by seeking an explanation to clarify the position against the failure to complete the contractual obligations. In response, the appellant (vide letter dated 20.05.2020) furnished the clarification with cogent reasons leading to the inability to import the spare parts; however, the procuring agency did not take into account the appellant's clarification before issuing the blacklisting order.

14. The appellant also asserted that the procuring agency/ administrative department passed the blacklisting order in violation of the rules, which required the procuring agency to undertake pre-qualification of the firms for such an expensive and complex nature of procurement; secondly, the procuring agency was required to obtain the performance security; thirdly, the procuring agency was required to sign a contract/ enter into an agreement in terms of Rules-2(1)(o), 21(d), 27(1)(a) & (c) *ibid.*<sup>16</sup>; however, the procuring agency failed to follow the referred provisions. Therefore, the appellant prayed before the forum to pass orders for cancellation of the blacklisting order, which adversely affected the appellant's reputation and also caused huge financial loss over the period of time.

### PROCURING AGENCY'S VERSION

15. Dr. Muzaffar Ali Vighio, Director Animal Breeding Sindh Hyderabad '*the procuring agency's representative*' submitted that the instant bidding process, including the appellant's bid acceptance with authorization to the complete the procurement's task within ninety days (refer to the para # 4), got finalized before his positing on the present position. Subsequently, the procuring agency received the appellant's request for withdrawal of the work order on near expiry of the contract period that (withdrawal request) was examined and found as implausible and irrational by the procuring agency, which recommended the higher-ups for blacklisting the appellant.

<sup>16</sup> Contract means an agreement enforceable by law and includes general and special conditions, specifications, drawings and bill of quantities. The bidding document shall include the [following information] amount and manner of payment of bid security and performance guarantee (where applicable). A procuring agency, may engage in pre-qualification of bidders in [the following cases]: a. In case of contracts for large and complex works and services related to, in which there are high costs of preparing detailed bids; c. in case of expensive and technically complex equipment and works with a view to ensuring that invitation to bids are extended only to those who have adequate capabilities, competence and resources.



16. The procuring agency's representative emphasized the blacklisting order contents and argued that the procuring agency suffered a lot due to the dysfunctional plant against which the appellant was awarded the contract through a competitive bidding process for making it operational within the contractual period, but the appellant failed even to initiate the work in that period.

- Syed Adil Gilani (Member of Review Committee) queried whether the appellant submitted the performance security (10% of the bid) as stipulated under the procuring agency's letter dated 11.02.2019<sup>17</sup> read with Clauses-1.1 & 1.9 & 9.2, 9.4 & 14 of the bid document<sup>18</sup> & Rule-39 *ibid*<sup>19</sup>.
  - ◆ The procuring agency's representative clarified that the appellant had not submitted the performance security in response to the referred letter. The appellant, when inquired by the forum, also confirmed a similar position by stating his bid security is still intact with the procuring agency.

## REVIEW COMMITTEE'S FINDINGS/ OBSERVATIONS

17. After hearing the parties at length and scrutinizing the facts/ documents placed on record, the Review Committee observed that the procuring agency floated the procurement tender by advertising in leading newspapers<sup>20</sup> on 09 & 10.11.2018 and then posting the same on the PPMS website on 03.12.2018, whereby the prospective bidders were allowed to seek the bid documents with effect from 09.11.2018 to 10.12.2018 thus covering the response time period of more than thirty (30) days as compared to the minimum time of fifteen (15) days in terms of Rules-17(1A), 17(2), 18, 21(4) & 24(2) read with Clause-eee of Sub Rule-2(1) *ibid*<sup>21</sup>. *An objective to ensure the minimum response time was to enable the bidder(s) to acquire and revise the bid document's terms & conditions and then seek the clarification, if required, from the procuring agency, as well as to conduct a proper analysis/ research before submitting a final bid/ offer to the procuring agency, which conversely could accept the bid subject to the appellant's qualification in conformance with the essential criteria prescribed in the notice inviting tender*

<sup>17</sup> 10% bank guarantee will be provided by bidder award of work.

<sup>18</sup> The bidding procedure shall be governed by the Sindh Public Procurement Regulatory Authority (SPPRA) 2010 (Amended 2017). The rates offered will be valid for ninety days extendable as per SPPRA Rules, 2010 (Amended 2017). The successful bidder's security shall be discharged upon signing of contract/ purchase order and furnishing the performance security. In case of a successful bidder, the bidder fails to sign the contract purchase order or fails to provide a performance security (if any). After signing of contract, the successful bidders shall furnish a performance security within a week, equivalent to 10% in the form of pay order/ demand draft of the total contract and the validity period of at least six months. Performance security shall be released to the supplier upon successful completion of the contract. Supplier bid security already submitted with the bid shall only be released upon satisfactory submission of a performance security. The bid security submitted by the bidder at the time of submitting its bid shall be returned to the bidder upon submission of performance security. Failure to provide a performance security by the bidder is a sufficient ground for annulment of the award and forfeiture of the bid security. In such event the procuring agency may award the contract to the next lowest evaluated bidder or call for new bid.

<sup>19</sup> The NIT published in newspapers (Dawn, Jang, Sobh, and Hilal Pakistan) on 09.11.2018 and subsequently a corrigendum was issued through advertisement in the newspapers (The News, and Jang) on 25.11.2018 for extension in schedule for submission and opening of the bids.

<sup>20</sup> Procuring agency shall, in all procurement of goods, works and services, carried out through open competitive bidding, require security in the form of pay order or demand draft or bank guarantee, an amount sufficient to protect the procuring agency in case of breach of contract by the contractor or supplier or consultant, provided that the amount shall not be more than 10% of contract price. The security shall be provided in an appropriate form and amount, as provided in the bidding documents. Validity of performance security shall extend at least ninety days beyond the date of completion of contract to cover defects liability period or maintenance period subject to final acceptance by the procuring agency.

<sup>21</sup> The procuring agency shall give due consideration to the scope, magnitude and nature of procurement, while deciding the response time, which shall not be less than fifteen calendar days in case of National Competitive Bidding, and thirty calendar days in case of International Competitive Bidding. Provide that in case of International Competitive Bidding, the head of Department may increase the response time by a further fifteen days (total 45 days), if he is of the opinion that thirty days may be insufficient for response by bidders; provided further that the Notice Inviting Tender shall be hoisted on Authority's website in case of procurements up to rupees one million and published in newspapers in case of over rupees one million on or before that date of issuance of bidding documents. The bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand. Response time means the period starting from the first date of issuance of bidding documents up to last date of issuance of bidding documents.



or bid document in terms of Rules-46(1)(c) & 49 read with Clause-v of Sub Rule-2(1) *ibid*<sup>22</sup>. This forum is of view that the appellant, without any demur, submitted his bid with the intention that it would become binding upon absolute acceptance as further negotiation or discussion was not allowed, particularly with reference to the procurement in question, in terms of Clause-d of Sub Rule-2(1) read with Rule-52 *ibid*<sup>23</sup>. Hence, the appellant's reservations over the procuring agency's bidding process to have been undertaken through the pre-qualification and so on (as at the para # 14) leads to a counter-offer, which do not merit any consideration once the bid was submitted, without any coercion, by the appellant.

18. It is glaring to note that this forum has perused the appellant's record (bid submitted along with the copies of relevant documents to the procuring agency on 10.12.2018), from where it has been evinced that the appellant possessed neither any relevant experience nor authorized dealership in Pakistan while submitting the bid on the scheduled date<sup>24</sup>, as mentioned/ required under the NIT (refer to the para # 2). Nevertheless, the PC recommended to for awarding the procurement contract to the appellant while a possible change (post-opening of the bids) under the evaluation criteria that vitiated the sanctity of the bidding process and (doing so) also restricted under the Rules-42(1) & 46(1)(c) read with Rule-43(1) & Clause-h & aa of Sub-Rule-2(1) *ibid*<sup>25</sup>. Strong reliance on this behalf has also been placed on the Honorable High Court of Sindh judgments reported as 2020 MLD 185<sup>26</sup> and 2020 CLC 410<sup>27</sup>.

19. The procuring agency, based on the PC's recommendation, issued the acceptance letter dated 11.02.2018 to the appellant with a condition/ direction to submit 10% performance guarantee for the award of work and complete the work within ninety (90) days. The procuring agency's representative maintained that since the appellant failed to comply with the contractual obligations as laid down under the referred letter; hence, the procuring agency/ administrative department had to blacklist the appellant in terms of Rule-35(1)(d) *ibid*. Conversely, the appellant established a plea that the referred letter could not be considered a concluding contract without submitting the performance security and signing of contract. To resolve such a controversial issue, the Review Committee perused the referred letter dated 11.02.2018 (refer to para # 4). A plain reading of the letter indicates that the acceptance of the appellant's bid was conditional and ambiguous based on the submission of the performance security and non-submission of which could amount to the appellant's bid security forfeiture as per Clause-14.3 of the bid document<sup>28</sup>. Secondly, the referred letter could only serve as a mere letter of intent but could not be treated as a valid concluded contract. Reliance on this behalf has also been placed on the Honorable High Court of Lahore judgment reported as PLD 2020 Lahore 565<sup>29</sup> and the Honorable High Court of Karachi judgment reported as 2019 CLC 93<sup>30</sup>.

<sup>22</sup> All bids received shall be opened and evaluated in the manner prescribed in the notice inviting tenders or bidding document. The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity. Lowest evaluated bidder means a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost.

<sup>23</sup> Bid means a tender, or an offer by a person, consultant, firm, company or an organization expressing willingness to undertake a specified task at a price, in response to an invitation by a procuring agency. Save as otherwise provided there shall be no negotiation with the bidder having submitted the lowest evaluated bid or with any other bidder.

<sup>24</sup> M/s Professional Systems Pvt. Ltd. Issued a letter bearing No. PS/LN/02/19/01 dated 15.01.2020 (after the deadline for submission of the bids) to the procuring agency for authorization to the appellant to participate in the bidding process.

<sup>25</sup> All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding document. No bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bids; provided that the procuring agency may ask the bidders for clarification needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid. Bidding Process means the procurement procedure under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract. Open Competitive Bidding means a fair and transparent specified procedure defined under these rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Bidding.

<sup>26</sup> C.Ps. NOs. 881 & 882 of 2019 (Otsuka Pakistan Limited v. Province of Sindh through Secretary and 6 others)

<sup>27</sup> C.Ps. NOs. D-7687 & D-8172 of 2017 (AssetLink Asia Pvt. Ltd. and others v. Federation of Pakistan through Secretary Finance and others)

<sup>28</sup> *Ibid*

<sup>29</sup> Writ Petition No. 426 of 2020 (Messers Bio-Labs Private Ltd. v. Province of Punjab and others)

<sup>30</sup> Suit No. 1235 of 2017 (Muhammad Sohail Tabba and another v. Pakistan through Secretary Ministry of Water & Power)







20 On the other hand, the record placed before this forum evinces that the appellant had initiated the contract's performance through conducting the procuring agency plant's site visits, along with M/s Professional System Pvt. Ltd., and then exchanging emails with M/s Stirling in an effort to seek quotation against the plant's spare parts (refer to the para # 12). However, the appellant could not seek the quotation directly in its company name (a vital part of the payment process) due to the company's (M/s Stirling) internal policy that was unknown to the procuring agency and the appellant at the time of acceptance of bid/ contract (also refer the this forum's observations in a similar procurement while deciding an appeal preferred by M/s Q.A. Traders)<sup>31</sup>, which lead the contract frustrated and impossible to perform and same cannot be attributed as a reason for the procuring agency to blacklist the appellant based on its willful failure to perform in terms of Rule-35(1)(d) ibid. The literal meaning of the word 'willful' in terms of Rule-2(2) ibid<sup>32</sup> is mentioned below:

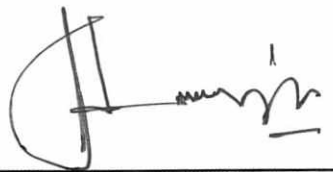
*"Willful means voluntary and intentional, but not necessary malicious"*<sup>33</sup>

### REVIEW COMMITTEE'S DECISION

21. In the sequel of the above findings/ observations, as at paras # 17-20, and after due deliberation, the Review Committee unanimously decides to dispose of the appeal by quashing and setting aside the procuring agency/ administrative department's decision/ order dated 14.11.2019 issued for blacklisting the appellant.

  
\_\_\_\_\_  
(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>31</sup> <http://www.pprasindh.gov.pk/rpdecisions/47RCANIMALBREEDHYD050919.PDF>

<sup>32</sup> The expression used but not found in these rules shall have the same meanings as are assigned to them in the Act and if not defined there, as in the ordinary usage of language.

<sup>33</sup> Black's Law Dictionary (9th ed. 2009) available at Westlaw.