

IN MEMORY OF SHAHEED MOHTARMA BENAZIR BHUTTO



SINDH INSURANCE

POWER TO THE PEOPLE

SIL/HO/CRC/2022-0433

31st May, 2022

Mr. Shahzad Jamal
Chief Executive Officer
M/s Health eConnex (Pvt.) Ltd.,
111-C, Jami Commercial Street 11,
DHA Phase VII,
Karachi.

**SUB: DECISION OF THE COMPLAINT REDRESSAL COMMITTEE(CRC)
MEETING/HEARING HELD ON THURSDAY MAY 26th, 2022 AT 11:00 AM**

Mr. Shahzad

Please find enclosed herewith the Decision of the CRC meeting/hearing held on Thursday, May 26, 2022 at 11:00 am in the registered office of Sindh Insurance Limited as per your complaint dated May 19, 2022 received to Sindh Insurance office on May 24, 2022.

Thanks & Regards,

Muhammad Faisal Siddiqui
Chairman
Complaint Redressal Committee
Sindh Insurance Limited

c.c: CRC Members
Procurement Committee
✓ SPPRA
The Complainant

Pls. Upload on SPPRA Web Site.

AD/C21

SETRA INWARD DIARY
NO. 4387 (A)
DATED 06-06-2022

DD (L-11)
AKH 06/06

Sindh Insurance Ltd.
Head Office: 1st Floor, Imperial Court,
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Reference No. SIL/HO/CRC/2022-0433

Dated: 31st May, 2022

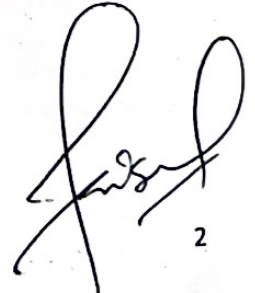
BEFORE "COMPLAINT REDRESSAL COMMITTEE" (CRC)

Decision of the CRC Meeting/hearing held on 26th May, 2022

Time and Date of Meeting	11:00 am Thursday May, 26, 2022
Complainant	M/s. Health Conex (Pvt.) Limited Mr. Shahzad Jamaal - Representative Mr. Muhammad Owais - Representative Mr. Mohsin Raza Rajani -Representative
Procurement Committee	Sindh Insurance Limited Mr. Nadeem Akhtar - Chairman Ms. Meher Dinshaw Khory - Member Mr. Adnan Shakeel - Member
CRC Meeting Venue	Sindh Insurance Limited, 01 st Floor, Imperial Court, Dr. Zia uddin Ahmed Road, Karachi.
CRC Committee Members	Mr. Muhammad Faisal Siddiqui - Chairman Mr. Sumair Ahsanullah - Independent Member Mr. Usama Kabir - Representative of AG Sindh

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The meeting was scheduled to be started at 10:00 a.m. but Mr. Sumair Abdullah, Member CRC requested on phone to extend the meeting time to 11:00 a.m. due to some personal emergency which was accepted by Chairman CRC. Meeting started at 11:00 am.

Mr. Shahzad provided the forum about the background of the case, the grievances and the decision of the SPPRA and retendering for fourth time.

Para wise complainant and CRC observations as follows:

Complaint comments	CRC Observations
<p>Procuring Agency issued a notice inviting tender on 15th September, 2019, the Complainant being a leading third-party administrator and due to non-fulfillment of qualification criteria on part of another bidder . The Procuring agency cancelled bid due to ambiguity in bidding documents.</p>	<p>The procuring agency made the TPA ("Third party Administrator") agreement in the year 2015, when the complainant was new entrant being licensed with SECP ("Securities and Exchange Commission of Pakistan" the Insurance regulator). The complainant had very small Pakistan medical insurance business volume. The procuring agency had confidence that the complainant acquired SECP license for TPA and the basic formality and checking has been made by the regulator. At that time the complainant was the only TPA working in medical insurance market. There was another license TPA in the market in the year 2015. However, the TPA was only working with its group insurance company. Therefore, practically there was only one TPA working in medical insurance market in Pakistan.</p>
<p>Thereafter the procuring agency issued a fresh notice inviting tender on 13th October, 2021, with minor changes in tender documents the bid was cancelled to facilities the other participants</p>	<p>In Summary that business was provided to the Complainant after their SECP registration having no prior business exposure in the health insurance market as TPA.</p>
<p>On 30th October 2021 the procuring agency issued a third notice inviting tender. The procuring agency addressed certain elements raised by the complainant (M/s Health eConnex) in the initial bid. The procuring agency cancelled the tender on 11th November, 2021 .</p>	<p>From 2015 till 2021, the procuring agency worked with complainant as no other competitor or company operating in the medical insurance market. In the year 2021 M/s. Crescent Care had acquired license for TPA from SECP. Being public sector company, the procuring agency being compliant company following SPP regulations in true letter and spirit, tender for TPA published on 15th September, 2021.</p>
<p>On 26th December, 2021 the procuring agency issued a fresh notice inviting tender, the selection criteria had been severely decreased, with the introduction of new unnecessary categories. The complainant filed complaint before CRC on 10th January, 2022. Despite the expiry of the prescribed time as provided under Rule 31(5) of SPP Rules, CRC failed to hold hearing. The complainant filed complaint to SPPRA and matter was heard by Review Committee, SPPRA on dated 27th January, 2022 and decision was passed on 09th February, 2022 the matter was remanded back to the CRC and the para is reproduced below:</p>	<p>As expected only two bidders submitted for the tender and new company being licensed from SECP won the first tender. The rate offered by M/s. Crescent Care was @ 7.5% and Complainant @ 9.00% which in turn bring saving of Rs. 0.825 million towards Procuring agency , being a Public Sector Company.</p>
<p><i>"Given the proceedings, findings/observation especially @para 6 to 12 and after due deliberation, the review committee decided to remand back the matter to the complaint redressal committee which shall decide the matter as per rules by affording fair opportunity of hearing and defence to the appellant within 15(fifteen) days. Needless to mention that the observation made in this decision are of tentative in nature which shall not in any manner influence the decision of the CRC in deciding the matter on merits as per rules.</i></p>	<p>Similarly in the fourth tender there were two bidder the price quote by Complainant was @9.00% and other bidder was @6.700% with saving of Rs. 1.60 million to the procuring agency.</p>

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The hearing of CRC was conducted on 17th February, 2022, dismissed the complaint with the arguments that no violation of SPP rules was made.

The complainant once again being aggrieved with the unfair manner and again complaint with SPPRA and subsequently hearing of Review Committee SPPRA was conducted on 08th March, 2022 and passed a decision dated 14th March, 2022 to terminate the procurement proceedings (Cancelled the Tender) and the para is reproduced below

"Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the rule 37(7)(f) of the SPP Rules, the review committee decided to direct the procuring agency to terminate the procurement proceedings as the procurement contract has not been signed."

Since the first tender we are the TPA for procuring agency under a contract which initially expired on 21st February, 2021, but has since then been renewed five (05) times, with the last extension expiring on 28th May, 2022. Our business plan and processes have been in a state of limbo, and we are not been able to make long term plans and commitments due to the absence of clarity in dealing with procuring agency.

It is evident of the facts that complainant although being old company, was not able to compete the price as it was previously working in monopoly environment. In order to avoid competition, the complainant start blocking the tendering process. All the efforts made by complainant showed the *mala fide* intention to delay the tendering process. From the first tender date of September, 2021, and because of blocking the tendering process the procuring agency was force to remain with the complainant and charging the higher price till date. The procuring agency was extending the contract monthly in order to avoid any long-term commitments.

From the first tender to fourth tender the matter was concluded by SPPRA vide its decision dated 14th march, 2022 by termination of previous procurement proceedings and provided guidelines for new tender.

The CRC is of the view the matter till fourth tender was concluded with decision of SPPRA and subsequently the procuring agency issued new tender with the guidelines provided by SPPRA decision and their letter dated 27th April, 2022.

In the common law jurisprudence, the principle of "Res judicata".

The general rule is that a plaintiff who prosecuted an action against a defendant and obtained a valid final judgement is not able to initiate another action against the same defendant where the claim is based on the same transaction that was at issue in the first action.

Therefore, no hearing can be made on the matter of complainant which have already been decided by the Review committee.

On the principle of Res judicata the complaint pertaining to tender 01 to 04 is not maintainable.

The complaint made reference to Rule 27 of SPP regulations that Pre- Qualification proceedings may be initiated prior to the actual bid for contracts for large and complex works and services to ensure that invitations to bid are extended to those who have adequately capabilities, competence and resource. Despite the fact that the current tender was the highest service procurement plan of procuring agency since 2016 with an annual premium of seventy million rupees and estimated cost of over 06 million rupees, procuring agency opted to forego prequalification proceedings, for no reasonable justification.

It is observed by CRC, that same observation was made by complainant in their written complaint dated 22nd October, 2021 and raised in hearings to SPPRA dated 27th January, 2022 and 08th March, 2022. The SPPRA during the hearings and in their decision dated 14th March, 2022 does not maintain the argument.

As the matter being already concluded by review committee therefore CRC are of the view that arguments are not maintainable.

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On 11th May, 2022, the procuring agency issued a fresh notice inviting tender for TPA. The complainant was not satisfied with the evaluation criteria of the tender. The whole evaluation criteria were designed to favoring inexperience companies, making it transparently clear that procuring agency was deliberately toying with evaluation criteria in order to allow the other participant the opportunity to pass the technical criteria by achieving a qualifying score.

The category of "Average yearly turnover of last 03 years which was a valid category was removed as compared to previous tenders.

Furthermore, the weightage of key elements from selection criteria have also been significantly changed.

1- Should have existing third-party administration of health insurance premium portfolio.

Comments: Double the marks from previous tenders to favour the other bidder.

2- Number of corporate /Group third party administration of health insurance clients

Comments: Double the marks from previous tenders to favour the other bidder.

3- Experience in the field of third-party administration of health insurance.

Comments: Lower the years to 01 year to favour other bidder.

It is evident that the selection criteria aim to decrease the weightage of key elements that measure the expertise and competence of an organization, and somehow grant qualifying marks to incompetent and new organizations, thus tilting the scales in the favour of the other bidder.

The selection criteria for the bid, in addition to being lenient and unjust, also appears to have been manipulated by the procuring agency in order to allow for achievement of qualifying scores by inexperienced organizations. Such marking is a direct violation of the prevailing rules and regulations, as it allows all organizations working in the sector to score the same amounts of marks, and hence in violative of the principles of competition set forth by the competition act, 2010.

It is observed by CRC that all objections related to other bidder, not a single objection was mentioned where complainant have proved or objected that any discrimination was made to the complainant. No evidence was provided that evaluation criteria was ambiguous, not clear or not relevant. All objections were targeting the other bidder qualification.

It was also evident that complaint was lodged before bid opening process which proves that complainant's only objective was to discriminate and discourage competition and delay the tendering process so that procuring agency bound to extend agreement. The complainant was able to extend the process for 09 months thus providing financial loss to procuring agency of Rs. 1.2 million.

The procuring agency used single stage -two envelope bidding procedure as per Rule 46(2) of SPP rules.

As per Section 21A read with section 44 of SPP regulations as also mentioned in SPPRA letter dated 27th April, 2022 guidelines provided. The selection criteria are the discretion of the procuring agency.

The complainant has mala fide intentions to discourage the competition and delay the tendering process. The objections raised by complainant did not provide any discrimination against the complainant. The evaluation criteria is unambiguous, clear and relevant.

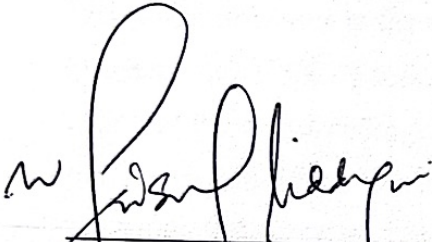
The CRC was formed under rule 31 of SPP rules and have jurisdiction for SPP rules. The CRC has no jurisdiction to hear the complaint under competition act, 2010.

Basis of decisions:


- Mostly arguments and references provided by complainant were on the matter already concluded and decided by review committee through their decision dated 14th March, 2022. Therefore, as per principle of res judicata the review for tender 01 till 04 was not maintainable.
- It is prerogative of the procuring agency to formulate a clear and unambiguous criterion subject to Rule 44 of SPP Rules, 2010. CRO found criteria to be relevant, unambiguous and clear with no discrimination to complainant.
- The complainant has *mala fide* intentions and using delaying techniques to force procuring agency to maintain contract with complainant.
- The complainant is causing financial loss to a public sector company wholly owned by Government of Sindh.

Decision:


Given the proceedings, finding/observations and after due deliberation, the CRC found that no violation of SPP Rules. No substance found in the objection raised by the complainant, the CRC is of the view that complainant has mala fide intention to sabotage the fair and competitive environment through using delay tactics causing loss to public exchequer.



Muhammad Faisal Siddiqui
Chairman- CRC



Sumair Ahsanullah
Independent Professional



Muhammad Usama Kabir
Representative of AG Sindh