



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1762/2020-21/3050

Karachi, dated the 26th February, 2021

To,

Director Procurement,
Dow University 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 Medequips v/s Dow University Hospital Karachi~~, held on 27.01.2021, for taking further necessary action in compliance of referred decision, under intimation to this Authority, at the earliest.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The P.S to Secretary to Government of Sindh, Board & University Karachi.
2. The P.S to Vice Chancellor, Dow University Hospital Karachi.
3. 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)
4. The Staff Officer to the Chairman / Members Review Committee.
5. The Appellant.

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

NO.AD (L-II)/SPPRA/CMS-1762/2020-21/

Karachi, dated the 3rd February, 2021

(Appeal)

M/s Medequips (Pvt.) Ltd., Karachi

Versus

Dow University Hospital, Karachi (Procuring Agency)

(NIT ID # T00582-20-0001 dated 24.09.2020)

FACTS AND BACKGROUND

1. The Review Committee in its decision NO.AD(L-II)/SPPR/CMS/1762/2018-19 / Karachi, dated 27th December, 2020 decided the appeal and passed the following decision:

Given the foregoing findings and after due deliberation, the Review Committee unanimously decided that the Procuring Agency, Dow University Hospital, Karachi shall immediately place the complaint before the Procuring Agency's Complaint Redressal Committee prior to opening of financial bids, as per Rule-3 1 (4)(a) of SPP Rules, 2010, to redress the grievances of the bidder within seven days and intimate the same to the Bidder and the Authority within three days.

2. Thereafter the appellant M/s Medequips submitted an application / complained that the procuring agency has not complied with the Review Committee Decision and requested to take necessary action as per rules. Therefore, the Authority listed the matter again in a meeting of the Review¹ Committee of SPPRA that was scheduled to be held on Wednesday, 27th January 2021 at 11.00 a.m. under the Chairmanship of Managing Director, SPPRA in Committee Room of Sindh Public Procurement Regulatory Authority, Barrack No.8, Sindh Secretariat Block-4-A, Court Road, Karachi, for hearing of the appeal of the appellant in terms of Rule-31(5) read with 32² SPP Rules, 2010(amended up-to-date). Notices in this regards were issued to the parties concerned.

¹ The bidder shall submit (following documents) to the Review Committee:- (a) a letter stating Ns wish to appeal to the Review

Committee and the nature of the complaint, (b) a copy of the complaint earlier submitted to the complaint redressal committee
² Rule-32(1) provides that for 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.

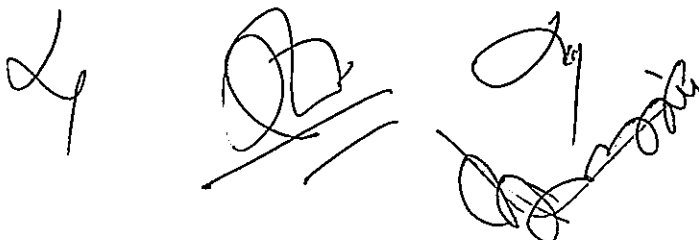
3. Accordingly the appellant's case was taken up by the Review Committee³ for hearing in its meeting scheduled on Wednesday, 27th January 2021 at 11.00 a.m. The meeting was attended by the Chairman, members of the Review Committee. Syed Shafqat Hussain (Director Procurement) DUHS, representatives of the procuring agency and Shaikh Danish Javed, representative of the appellant appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

Appellant's Version

4. The appellant submitted that the Review Committee in its decision directed the procuring agency to place the matter before the Complaint Redressal Committee. However, the procuring agency did not place the matter before the Complaint Redressal Committee and failed to resolve the matter accordingly.
5. The appellant further submitted that the procuring agency was bound to stop the procurement process until the final adjudication of the Review Committee as per SPP Rules. Nevertheless the procuring agency did not stop the process and continued without giving any chance of hearing to the complainant.
6. The complainant also contended that the procurement of the procuring agency does not bring best return for the money expended. It was argued that the evaluation of bids ignored quality timeliness reliability after sales service and life cycle cost. Therefore the appellant claimed that the procuring agency has not procuring according to rules.
7. The complainant also claimed that the procuring agency was bound not to sign the contract before the final adjudication by the Review Committee. However the procuring agency has awarded the contract without resolving the matter of the complainant. In addition to that the procuring agency was well aware of the fact that the matter was brought before the Review Committee and the Committee had clearly directed to the procuring agency not to proceed further until the complaint is resolved. Having been so the procuring agency continued the process and signed the contract in violation of SPP Rules and the decision of Review committee.
8. Mr. Riaz Hussain Soomro, Chairman, Review Committee asked the complainant whether he had approached to the CRC for the resolution of matter or not. The complainant submitted that as the Review Committee had decided that the procuring agency shall place the matter before the CRC, therefore, he submitted an application to the Director

³On 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 announces its decision within ten working days of submission of appeal. However, In case of delay, reasons thereof shall be recorded in writing.

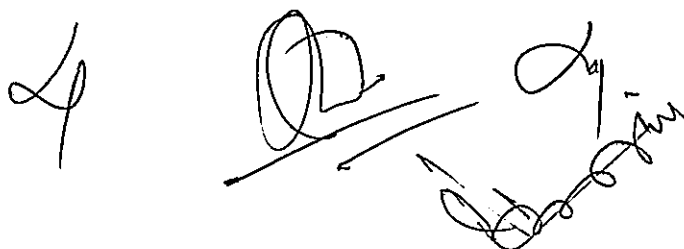


Procurement, Dow University of Health Sciences to place the matter in accordance with the decision of the Review Committee Therefore he did not approach directly to the Complaint Redressal Committee.

9. The complainant also argued that the Procuring Agency has not only violated the SPP Rules 2010 but also has not complied with the decision of the Review Committee that was binding upon the procuring agency to implement and comply with.

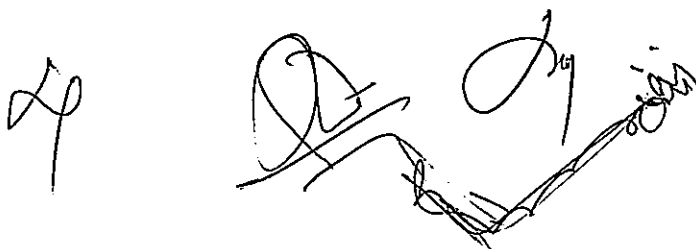
Procuring Agency's Version

10. The procuring agency said that the complainant did not approach to the CRC till now and he was going here and there but did not approach to the CRC in a proper way as per rules. The procuring agency said that the complainant claims to have approached Secretary Health Department for the resolution of the complaint but the reality is that the Secretary Health Department is not the head of the procuring agency. The procuring agency informed that the Secretary Health Department is not the Head of the Complaint Redressal Committee. The Notification of the CRC can be perused at the PPMS website accordingly.
11. The procuring agency further clarified that the Notification of the Complaint Redressal Committee issued by the Procuring Agency (Vide Notification No DUHS/Reg./2017/-2125 dated 9th May 2017) has not been superseded by the Health Department Government of Sindh's Notification No. SO(PM&1)2.1/2013 (CRC) dated 24 December 2018 as this CRC has been continued *exclusively* for the tenders invited by Central Procurement Committee, Health Department, Government of Sindh, Karachi whereas, the tender No. DUHS/DP/2020/113 was not initiated by the Central Procurement Committee. Therefore, the said CRC Notification does not apply to the instant procurement.
12. The procuring agency further clarified that the Technical specifications were designed by following the **Rule-13(1) of SPP Rules, 2010 (amended 20109)** in letter and spirit to ensure the widest possible competition, which is evident from the technical evaluation of the bids wherein all the bidders who quoted the CT Scan Machine were technically qualified. The agency further informed that the complainant has **quoted an amount of USD 414,000/- for 32 slices CT Scan Machine** including special software for Covid-19 (Aquiline lighting - 32 slices CT Scan) whereas complainant had **quoted USD 448,000/- for 16 Slices CT Scan Machine (Aquilion lightning – excluding special software for covid-19** in last tender invited for CT Scan Machine vide NIT No. DUHS/DP/2018/-31-32 dated January 18, 2018, depicting another indicator of healthy and economical competition which is the foundation of SPPRA Tender process.
13. The procuring agency further added that the complainant is actively marketing MRI Systems from M/s Neusoft from China in public and private sector and have previously supplied the radiology equipment of Chinese origin viz. MRI Machine to Lyari General



Hospital Karachi, Open MRI Machine to Ghulam Muhammad Mahar medical College, Sukkur and actively participated in a recent Tender of Dr. Ruth K.M Pfau civil Hospital for a 0.35T Open MRI System. All this indicates that the points put forward by the complainant regarding country of origin are baseless and selective. Besides this, Procuring Agency itself had purchased various radiology equipment of Chinese origin and users are very satisfied with the performance of these equipment.

14. The procuring agency also attracted the attention of the Review Committee to the complainant 's letter No. ME-365/2020 dated 03/11/2020 vide which he requested that "We objected that such specific points should not be made the basis of rejection of offer". Accordingly, their bid was considered and declared technically responsive and qualified in the spirit of widest possible competition and subsequently financial bid of the complainant was also opened which was USD 58,200 (PKR, 9,585,540.00 approx.) higher comparing to the lowest financial bid received for the CT Scan Machine. Moreover as per the Rule-21(A) of SPP Rules, 2010 (Amended 20109) an appropriate and unambiguous evaluation criterion was provided in the bidding documents.
15. The procuring agency also contended that it has completely safeguarded itself of performance of equipment, value for money, warranty etc. and details of these are already reflected in the Bid Evolution Report uploaded on SPPRA Website.
16. The procuring agency expressed that It is not understandable to the procuring agency that on what grounds the CRC meeting be convened and said that this equipment is desperately and urgently needed for better management and in turn save valuable lives of patients affected by this unforgiving and deadly COVID-19 disease.
17. The procuring agency was asked that why did Financial bids were opened whereas the Review Committee had restrained the Procuring agency to not proceed further. The Procuring Agency replied that there were no any clear direction and when the Decision was convened the Financial bids were already opened. The procuring agency also claimed that the financial bids were opened in transparent way and all the bidders were present including the complainant. The procuring agency was asked why did it proceed further when the decision was communicated. The procuring agency clarified that the controversy involved was resolved and the appellant was already declared **Technically qualified**. The procuring agency was asked why did not it stop the process when decision was convened. The procuring agency replied that the complainant had not approached CRC. Therefore, it was understandable that the complainant had no grievances.
18. The procuring agency also informed that the financial bids were evaluated in a transparent manner. The procuring agency was asked that the decision was convened to



the procuring agency and the complainant also approached the procuring agency to place the matter before CRC so why did the procuring agency did not place the matter before CRC. The procuring agency replied that the appellant had not approached the proper forum for CRC therefore the matter was proceeded.

19. The procuring agency was asked that in para 17 of the decision, the procuring agency was restrained not to proceed further why did it Awarded Contract without resolving the matter. The procuring agency claimed that the Bid evaluation was done on merit basis and all aspects were taken into account and the same may be perused at the financial bid evaluation report which is publicly available on PPMS website.

Review Committee Observations


20. From the perusal of record, statements, arguments and contentions the Committee observed the following points;

- I) The procuring agency was directed to place the matter before CRC for deciding the complaint. It was necessary for the procuring agency to place the matter before the CRC in light of the decision of the Review Committee. Rule 32(11) of SPP Rules which stipulates that:

“The decision of Review Committee shall be final and binding upon the procuring agency. After the decision has been announced, the appeal and the decision thereof shall be hoisted by the Authority on its website”

Therefore, it was necessary and binding upon the procuring agency to place the matter before CRC. However, the procuring agency failed to do so.

- II) The contention of the procuring agency that the complainant did not approach CRC for deciding the matter, Syed Adil Gilani was of the view that, in fact, the matter was brought before the review committee due to the same matter that the complainant had not approached the CRC. However when the Review Committee adjudicated the matter and directed the Procuring Agency to place the matter before CRC, it was binding upon the Procuring Agency to place the matter in accordance with the decision of Review Committee.
- III) The complainant had also requested to the Director Procurement, DUHS to place the matter before the Complaint Redressal Committee. Besides, the Authority vide it's letters also asked the Procuring agency to comply with the decision in letter and spirit but the Procuring Agency did not pay attention to the request of the bidder and to the letters of the Authority.

The bottom of the page contains several handwritten signatures and initials. On the left, there is a simple, stylized signature. In the center, there is a larger, more complex signature with a circular loop. To the right, there are several smaller initials and signatures, including one that appears to be 'Dy' and another that looks like 'K. S. Khan'.

- IV) The Procuring agency was restrained from further proceedings until the resolution of matter. However, the procuring agency not only opened financial bids but also completed financial evaluation without reporting to SPPRA. The procuring agency argued that there was no any clear direction for restraining of further proceedings. Mr. Manzoor Ahmed Memon attracted the attention of the procuring agency towards para 17 of the decision of Review Committee dated 31.12.2020 wherein it is clearly mentioned that during the meeting the procuring agency was asked not to proceed the procurement process further. The para 17 of the decision is reproduced below;

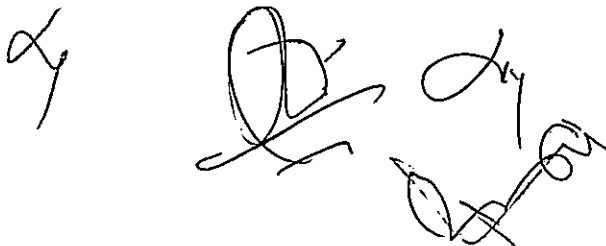
“Mr. Manzoor Ahmed Memon (Member of Review Committee) asked the procuring agency that why didn't PA respond the appellant's complaint regarding the clarification of specification of instant items in terms of Rule-23 (2) and what is the current status of the instant procurement process and not to proceed further on financial bids, till the decision of CRC is taken and communicated”

The above mentioned clearly mentions that the procuring agency was asked not to proceed further till the decision of CRC is taken and communicate. However, the Procuring Agency continued the work on financial bids.

- III) The Procuring Agency also argued that the financial bids were opened before the communication of the Review Committee Decision. The Committee is of the view that although financial bids were opened yet it is was binding upon the Procuring Agency not to proceed further on financial evaluation till the decision.
- IV) Syed Shafqat Hussain (Director Procurement), representative of DUHS was asked whether the evaluation report includes the impact of Life Cycle Cost in this procurement. He replied in negative, and asked what is it. Syed Adil Gilani, Member of RC read aloud Rule-4 with Rule-2(jj) of SPP Rules, 2010 which is mandatory for the evaluation of this procurement. Rule-4 is reproduced below;

Rule-4. Principles of 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.

Rule 2 (jj) “Value for Money” means best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, up-gradeability, price, source, and the combination of whole-life cost and quality to meet the procuring agency's requirements.



- V) Syed Adil Gilani also calculated The financial impact of combination of whole-life cost of 20 years on the two bids. results in following.

The life of this equipment CT Scanner is taken as 20 years.

- a) *Bios Evaluated Cost \$ 355,800 add 15 years post warrantee @ \$ 30,000/yr.
\$ 450,000.*

Net present value will be \$ 225,000.

Total \$ 355,800 + \$ 225,000 = \$ 585,000

- b) *Medequips Cost \$ 414,000 add 15 years post warrantee @ \$ 15,000/yr.
\$ 225,000*

Net present value will be \$ 112,500

Total \$ 414,000 + \$ 112,500 = \$ 536,500

Therefore the Lowest evaluated Cost is \$ 536,500, quoted by Medequips verses the cost quoted by the Medequips in 10% lower than the cost quoted by the M/s Bios which is declared lowest by the Procuring Agency. Hence, the Medequips is the lowest bidder.

The evaluation Committee did not properly evaluate the bids, and ignored to evaluate Life Cycle Cost.

- VI) The procuring agency contented that the matter of the firm was resolved by qualifying the firm technically and the firm did not submit the lowest bid therefore, the firm could not be considered for the award of the contract. The committee is of the view that the firm had reservations on the technical specifications and he had submitted application for clarification that were not resolved. It was binding upon the Procuring Agency to hear the complainants view for technical specifications before proceeding further to the financial evaluation. Hence, the procuring agency faild to the resolve the matter accordingly and awarded contract in violation of SPP Rules. The SPP Rules 31(6). The Procuring Agency shall award the contract after the decision of the complaint redressal committee. Hence, the procuring agency awarded the contract.

- VII) The Review Committee also observed that the procuring agency deliberately did not complying the decision of CRC and waited for the approach of the complainant for CRC. Furthermore the Procuring Agency also assumed that the issue of the bidder had been resolved accordingly and the same was communicated by the Procuring Agency to SPPRA that the matter has been resolved and there was no need to further linger on the procurement process. The

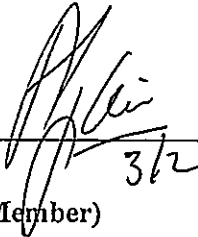
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procuring agency also did not take into account to the findings but solely depended on the “decision para” and ignored the findings of the Review Committee including Para 17.

Decision of the Review Committee

21. Given the proceedings findings / observations and after due deliberation, the review committee, in the exercise of statutory powers conferred upon it under Rule 32A(2) ibid read with Sub-Section (1) Section-2 of SPP Act, 2009 takes the following decision:

- a) Declares the instant Procurement as **Mis-procurement**.
- b) The procuring agency deliberately did not comply with the decision of the Review Committee.
- c) The procuring agency deliberately did not follow the SPP Rules, 2010 specially calculation of life cycle. *Cost.*
- d) The matter is referred to the Administrative Department as well as Sindh Enquiries and Anti-Corruption Establishment, Government of Sindh for initiating action against such officials in terms of-Rule 32A(2) ibid.



(Member)

Syed Adil Gilani

Member SPPRA Board

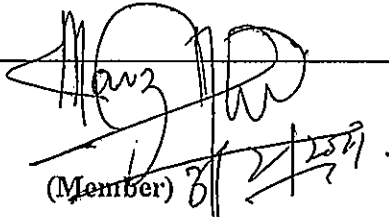
Representative of TI-Pakistan



(Member)

Engr. Munir Ahmed Shaikh

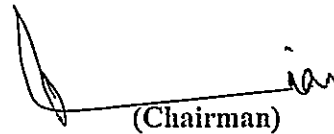
Independent Professional



(Member)

Manzoor Ahmed Memon

Member SPPRA Board



(Chairman)

Riaz Hussain Soomro

Managing Director

Sindh Public Procurement Regulatory Authority