GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

NO.AD (L-II)/SPPRA/CMS-2110/2020-21/4006 Karachi, dated the 16th March, 2021

To,

Provincial Program Coordinator,
Accelerated Action Plan for Reduction of stunning malnutrition,
Sehatmand Sindh Program, (Livestock Sector),
Livestock & Fisheries Department,
Animal Science Complex, Near Singer Chowrangi,
Government of Sindh,
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 Syed Mehboob Alam Shah Bukhari V/s** Provincial Program Coordinator Accelerated Action Plan (Livestock & Fisheries Department), held on 23.10.2020 & 10.03.2021, 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, Livestock & Fisheries Department.
2. 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)**
3. The Staff Officer to the Chairman / Members Review Committee.
4. The Appellants.

GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

No.AD(L-II)SPPRA/CMS 2110/2020-21/4605 Karachi, dated the 16 , March,2021

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

REVIEW APPEAL

M/s. Mehboob Aalam Shah Bukahri ***(Appellant)***

VS

Provincial Program Coordinator, Accelerated Action Plan (livestock & Fisheries Department)
Procuring agency

NIT ID Number T00915-20-0001 Dated: 26-11-2020

Facts and background

The appellant *M/s. Mehboob Aalam Shah Bukahri* ***(The Appellant)*** lodged a complaint to the Secretary Livestock & Fisheries Department "Chairman CRC" (copy endorsed to this Authority and others for necessary action) against NIT No. T00915-20-0001 Dated: 26-11-2020floated by the Provincial Program Coordinator, Accelerated Action Plan (livestock & Fisheries Department)**Procuring agency**.

2. The appellant therein complained that the procuring agency rejected the bid of the appellant without any sound and apparent reason and submitted that CRC meeting was held in which two members were not present and the procuring agency did not follow the transparency in the opening of bids.

3. Subsequently, the appellant preferred an appeal, along with the supporting documents and review appeal fee, before this Authority whereby the appellant stated that the CRC failed to decide the grievances within the stipulated time; hence, the appellant requested to place the case before the Review Committee in terms of Rule-31(5)[1] read with Rule 32(5) ibid[2].

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2 The committee shall announce its decision within seven days. The decision shall be intimated to the bidder and the Authority within three working days by procuring agency. In case of failure of the committee to decide the complaint, the Procuring Agency shall not award the contract;

4. Accordingly, the appellants' case was taken up by the Review Committee for hearing in its meeting scheduled on **23.2.2021 & 10.03.2021 at 11.00 a.m.** and in this regard, the Authority issued notices to the parties concerned to appear in person, or depute authorized representative, well conversant with the procurement in question, along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time and venue to present and/ or defend the case in terms of Rules-32(6), (8) & (10) ibid[3].

5. In compliance, Nazeer Hussain Kalhoro,(on 10.3.2021) Director General/Program Coordinator AAP ***'the procuring agency's representative'***, and appellant Ghulam Muhi-ud-din Soomro also appeared before the Review Committee.

REVIEW COMMITTEE'S PROCEEDINGS

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

7. The complainant submitted that the Provincial Program coordinator Accelerated Action Plan for reduction of stunning and malnutrition, Sehatmand Sindh Program (Livestock Sector) invited the interested person, contractors and companies to apply for the tender for works, to be completed under his control in Provincial Program coordinator, Accelerated Action Plan for reduction of stunning and malnutrition, Sehatmand Sindh Program (Livestock Sector) by way of publication on SPPRA Website with NIT No T00915-20-0001 Reference # INF-KRY No. 3273/2020 Dated:26.11.2020.

8. The complainant further submitted that tender documents along with all necessary supporting documents and requirement had been submitted by the appellant to the concerned office of Provincial Program coordinator, Accelerated Action Plan for reduction of stunning and malnutrition, sehtmand Sindh Program (Livestock Sector) on Dated: 12.12.2020 through courier service (TCS) and same was delivered before date and time of submission of bids.

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[2] The bidder shall submit [following documents] to the Review Committee:- (a) a letter stating his 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 of the Department and all supporting documents; (c) copy of the decision of procuring agency/ redressal committee, if any.

4 On receipt of appeal, along with all requisite information and documents, the Chairperson shall convena 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 nd 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.

9. The appellant further argued that the Provincial Program coordinator, Accelerated Action Plan for reduction of stunning and malnutrition, Sehatmand Sindh Program (Livestock Sector) got uploaded BER on official website of SPPRA/PPMS on 24.12.2020, and showing in minutes of meeting that complainant was rejected without apparent reason.

10. The appellant also claimed that the procuring agency Provincial Program coordinator, Accelerated Action Plan for reduction of stunning and malnutrition, Sehatmand Sindh Program (Livestock Sector) awarded these works to his favorite person and did not want to make open competition in the terms of rule – 15(1) of SPPRA Rules 2010 (amended 2019).

11. The bidder submitted that during CRC meeting 2 members of CRC were not present and the CRC decision is not taken impartially. The bidder submitted that the instant NIT may be cancelled and it may be started a fresh in accordance with the rules and regulation.

12. The bidder was asked whether he clearly mentioned the category of goods for which he had applied for. The bidder submitted that the category of goods was mentioned in the documents (on letter pad) that were affixed above the proposal documents.

13. The bidder submitted that earlier procuring agency had mentioned two reason for rejection. Lack of relevant experience and non-submission of tender fees and after lodging of complaint the procuring agency has described other reasons in addition to these two reasons.

14. The bidder also contended that the procuring agency did not provide an unsuccessful bidder a chance and fair opportunity to appeal under administrative review procedure. The bidder was disqualified and he lodged the complaint against rejection. The procuring agency opened financial bids and BER was made public wherein no opportunity was provided to the bidder to justify or contend the rejection. Above all the procuring agency closed the all opportunities for the bidder with signing of contract by issuing work orders.

Procuring agency version

15. The procuring agency submitted that the Government of Sindh has initiated the accelerated Action Plan (AAP) to reduce stunting and malnutrition in Sindh by ensuring the supply of diversified animal origin food and provision of veterinary public health services and general awareness for consumption of diversified and animal origin food to poor income household is 24 districts of Sindh province.

16. The agency further submitted that the Accelerated Action Plan for reduction of stunning and malnutrition, Sehtmand Sindh Program (livestock Sector) invited tender for purchase of various goods during current financial year 2020-21 through advertisement appeared in national newspaper via Daily Express Tribune, Daily Jang, Daily Kawish dated: 22.11.2020 respectively. The tender was also placed on the website of SPPRA for public view on dated: 26.11.2020 and till up closing date i.e. 15.12.2020. The tender were opened on dated:

15.12.2020 at 02:00 PM at committee rom of PMU AAP (Livestock sector). The goods to be procured under said tender were characterized in the various categories:

Sr. #	Description	Tender No.
01.	Medicine & Vaccines	PPC/APP/LS/2020/Medicine/20-21
02.	Plant & Machinery and Hardware items	PPC/APP/LS/2020/Plant/20-21
03.	Cost of other store & Miscellaneous items	PPC/APP/LS/2020/Others/20-21
04.	Stationary items	PPC/APP/LS/2020/Stationary/20-21
05	Livestock & Poultry	PPC/APP/LS/2020/Livestock/20-21
06.	Furniture & Fixture	PPC/APP/LS/2020/Furniture/20-21

17. The procuring agency further informed that thirty (30) firms purchased the tender document, out of which twenty-eight (28) firms submitted the sealed tenders. However, one firm M/s Mehboob Alam Shah Bukhari did not purchase the tender document nor submitted the tender fee Rs. 1,000 for each category but sent their proposal through mail (TCS) vide tracking ID No. 2066876815 which was received on dated:14.12.2020.

18. The procuring agency further contended that the proposal of M/s Mehboob Alam Shah Bukhari did not contain any technical information i.e. no covering letter, no any category mentioned above and also firm did not mention any interest in any of above category but only constructions company profile attached with irrelevant experience i.e. construction of roads and civil works, while the tender were invited for procurement of goods. The Procurement committee decided to open the tender to ascertain tender fee but it was not attached. The proposal contained no any information and financial call deposit was attached open with the proposal. All the other participants raised objection in written not to consider the proposal since it was total violation of SPPRA Rules,

19. The procuring agency also clarified that the proposal of M/s Mehboob Alam Shah was rejected on the following grounds (mentioned in table below) and no further evaluation was carried for that proposal and the same had been mentioned in the minutes of the meeting of Procurement Committee.

Mandatory Bidders Qualification criteria

Tender Fee of Rs. 1,000 for each category	Not Attached
Items specification meet the tender requirement	No specification of any tender items e.g. technical brochures, names, any written proof of neither what you firm is offering nor any specification or mention about any item or category tender
Proof of relevant Experience	Not provide for any of tender category but only irrelevant work orders of different construction works submitted.
Income Tax certificate (NTN), valid GST Registration certificate	Attached but does not allow the bidder to participate in supplies of goods. NTN was only issued for work/services by the relevant agency. However, the current tender is only for supply of goods.
Annual Sales Turn over	Attached (but irrelevant)
Letter of authorization	Not Provided
Earnest money	Attached (but original pay order attached in technical bid, showing amount of Rs. 690,000, violating the secrecy of tender
Undertaking for not have been barred / black listed	Not Provided in the bid
Affidavit to the effect that all documents / particulars / information given with technical proposal are true.	Not Provided in the bid
Affidavit to the effect that the firm is not presently involved nor has been in the past in litigation with its employers	Attached (but not acceptable sine it is five years old, stamp paper is 02.09.2015
Client & contact details list of minimum 03 Institutes (From of tender document)	Not Provided in the bid
Tender Document duly signed and stamped each page by the bidder	Not Signed & stamped, nor bidding document attached in the bid.

20. The procuring agency also informed that the procurement committee evaluated the technical bids of other bidders as per set criteria in the bidding documents and decided to open the financial proposal of technically qualified bidders on dates: 22.12.2020 and prepared Bid Evaluation Report and same was hoisted on the SPPRA website on dated: 24.12.2020 in compliance of SPPRA Rule 45 and awarded the contract after three working days which completed on: 29.12.2020.

21. M/s Mehboob Alam Shah Bukhari filed complaint on 30.12.2020 and informed to the Procurement Committee on 04.01.2021 after the specified timeline of three days, however, the query of M/s Mehboob Alam Shah Bukhari was entertained to ensure the transparency.

22. The procuring agency also submitted that the tenders were invited for procurement of **goods but not for works** under AAP (Livestock Sector). The complainant is construction company and even failed to read or understand that tender is for supply of goods for which did not qualify.

23. The agency also submitted that No tender documents or supporting document for tendered goods were submitted. The procuring agency denied any kind of illegal support for any bidder and argued that no works were awarded to the on any collusion or illegal way. Tender was advertised as per SPPRA Rules and opened for all national manufacturers, importers, sole agents and general suppliers and wherein twenty eights (28) national firms participate in the tender.

24. **The procuring agency denied** any violation of rules and submitted that no any violation of any law and rules was occurred during the tender process. The procuring agency vehemently denied all allegation and submitted that work orders were issued to only successful bidders who had complied with all the tender requirements and their bids also were declared as lowest / best evaluated bid as per SPPRA Rules. The complainant did not comply with any instruction of tender and was disqualified technically.

25. The procuring agency submitted that the bidder had approached CRC and CRC rejected the complaint of the complainant and announced decision on 8th January 2021 and the same was shared with the bidder and SPPRA vide letter NO:SO(G)/L&F/3(342)/2021 dated 11th January 2021.The operative part of CRC decision is reproduced as under

> **After going through the relevant record and hearing the both parties,CRC unanimously decided that there is no violation of SPPRA Rules (Amnded 2020) in terms of observations raised by the bidder,Hence turned the request of complainant i.e M/S Mehboob Aalam Shah being untenable.**

26. The Procuring agency further submitted that the bidder sent the bidding documents without mentioning any category of goods for which he was submitting the bid.

27. The procuring agency was asked whether the disqualification of the bidder was communicated or not. The procuring agency submitted that the disqualification of bidder was clearly mentioned in the Bid Evaluation Report and a letter was also on 12.2.2021 for further communication and information to the bidder.

28. The procuring agency denied the **non-availability of two members of CRC**.it was informed that the member of Accounts office was not present because the Accountant General office representatives or District Accounts officer representatives do not participate in CRC due to the legal controversy related to the inclusion of their representative in CRC.

Findings of the Review Committee

29. From the perusal of record, statements of the procuring agency and appellant, scrutiny of documents and facts, the Review Committee finds that there is one controversy involved in the bidding process among the parties

30. The procuring agency has disqualified the bidder due to the non-fulfillment of mandatory requirements as mentioned in the bidding documents. The bidder contends that his firm was disqualified with out sound and justified reasons and claims to have fulfilled the complete mandatory requirement.

Observations of the Review Committee

31. Before proceedings its better to describe the way of evaluation of bids and disqualification of the bidder due to the non-fulfillment of mandatory requirement. SPP Rules through light on the evaluation of bids and importance of fulfillment of eligibility criteria and meeting the mandatory requirement.

41. Evaluation of Bids

(1) **All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents;**

32. The rule makes clear that the bids will be evaluated in accordance with the evaluation criteria mentioned in the bidding documents whereas the committee find that the bidder was disqualified during the technical evaluation because the bidder had not fulfilled the evaluation criteria.

33. The committee is of the view that when government entities procure goods, works or services, they are generally required to consider and award contracts only to bidders who complied with the specifications and conditions of tender as laid down in the tender invitation. Tenders received must in other words be conforming, compliant or responsive. This enables procuring entities to compare tenders on an equal footing and ensures equal treatment amongst bidders. Whereas, in the instant procurement the bidder was unable to prove that he had

submitted all the required documents and mandatory requirements. The bidder did not submit pay order, relevant experience and non-submission of NTN registration because the NTN submitted by the bidder was only issued for work/services by the relevant agency. However, the procurement in question relates to goods. Hence, the bidder could not be declared as technically qualified because he does not conform the requirement already mentioned in the bidding documents. The same has been mentioned in SPP Rules that a bid that does not fulfill requirements will be rejected.

Rule 46(2)

procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements;

34. The definition of lowest evaluated bid as mentioned in SPP Rules also supports the idea that a bid not only should be lowest in terms of cost but also needs to conform and fulfill other conditions and mandatory requirements as described in the bidding documents whereas the lowest submitted price is that price which is lowest in submission but does not fulfill the criteria.

"Lowest Evaluated Bid" means a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost;

"Lowest Submitted Price" means the lowest price quoted in a bid, which is otherwise not substantially responsive;

35. Furthermore, the bid which does not confirm the terms, conditions and mandatory requirements shall not be considered as best evaluated bid as described in SPP Rules and same is mentioned at para above in the decision. As the rules are binding that **bid found to be the lowest evaluated or best evaluated bid shall be accepted. (SPP Rule),** the bid that does not meet the terms, conditions and mandatory requirements shall not be considered as best evaluated bid nor will be accepted. In the instant procurement, the bidder does not meet the mandatory requirement hence will neither will be considered nor his bid will be accepted.

36. Similarly, it was noted that the procuring agency had also clearly mentioned in the bidding documents that if a bid does not conform to the terms & conditions and does not fulfill the mandatory requirement will disqualified. The operative para is reproduced as under:

Procuring Agency reserve the right to reject any bid if any one of the above-mentioned criteria is not fulfilled. Procuring agency shall disqualify the applicant at any stage, if it finds that the information submitted for qualification was either significantly inaccurate or incomplete. Incomplete or lacking the required information proposal shall not be entertained and shall be liable to rejection

37. The above-mentioned excerpt from the bidding documents makes clear that procuring agency has right to reject any bid if any one of criteria is not fulfilled as described in the bidding documents. Furthermore, in case of submission of inaccurate and incomplete information will be liable to rejection. In the instant matter, it was noted that the bidder submitted incomplete information. He neither mentioned any category of goods for which he had applied nor provided required mandatory requirement even the bidder did not submit the technical proposal in an appropriate manner. Therefore, the rejection of bid by the procuring agency is in accordance with the terms and conditions mentioned in the bidding documents.

Decision of the Review Committee

38. Given the proceedings findings/observations, and after due deliberation, the review committee, In exercise of statutory powers conferred upon it under Rule 32(7)(a) ibid read with Sub-Section (1) Section-2 of SPP act 2009 declares the instant review appeal dismissed.

(Member)	(Member)
Syed Adil Gilani	Chief Engr(R). Haji Parpio
Private Member SPPRA Board	Independent Professional
Representative Transparency International	
(Member)	(Chairman)
Manzoor Ahmed Memon	Riaz Hussain Soomro
Member SPPRA Board	Managing Director
	Sindh Public Procurement Regulatory Authority