



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2193/2020-21/4028 Karachi, dated the 19th March, 2021

To,

Section Officer (PM & I Cell),
Health Department,
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 Easa Business Group) V/s Section Officer PM & I Cell Health Department, held on 03.03.2021 & 10.02.2021 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, Health Department.
2. The Additional Secretary (PM & I CELL), Health Department 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 Appellants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY



NO.AD (L-II)/SPPRA/CMS-2193/2020-21/

Karachi, dated the 16th March, 2021

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

(Appeal)

M/s Easa Business Group(appellant)

Versus

The Section Officer PMI cell Health Department, Government of Sindh (Procuring Agency)
(NIT T00911-20-0001 dated 23.07.2020)

Facts and background

1. The appellant¹ **M/s Easa Business Group**, lodged a complaint (vide letter dated **17.12.2020**) addressed to the Secretary Health Department, Chairman Complaint Redressal Committee, against the **NIT T00911-20-0001** dated **23.07.2020** that was floated by the Section Officer PMI Cell Health Department "procuring agency". (under Central Procurement Committee). The appellant complained that the procuring agency rejected the appellant's bid due to mistake of mentioning **imported instead of local manufacturer**. The appellant submitted that all documents of manufacturing of the quoted products were in hard copies but could not be submitted on online submission. Therein the procuring agency called the CRC wherein the complaint of the appellant was not accepted ~~CRC~~ and same was rejected.
2. Subsequently, the appellant (vide letter dated **10.02.2020**) preferred an appeal before the Review Committee of SPPRA and submitted review appeal fees². He stated that CRC rejected the complaint. The Authority listed the matter in a meeting of the Review³ committee of SPPRA that was scheduled to be held on **Wednesday, 25th February & 3rd March 2021 at 11.00 a.m. & 10th February 2021** 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 32⁴ SPP Rules, 2010(amended up-to-date).**

M/s Easa Business Group, House No A-9 Ground Floor Evacuee Society Gulshan e Iqbal Karachi.

²This Authority's Office Order No. Dir(A&FVSPPRN18-1910325 dated 26.07.2019 [<https://fpms.pprasindh.gov.pk/PPMS/>]

³The 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

⁴Rule-32(1) provides that foe a bidder not satisfied with decision of foe procuring agency's complaints redressal committee may lodge an appeal to foe Review Committee within ten (10) days of announcement of foe 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 Committee⁵ for hearing in its meeting scheduled on 25.02.2021 & 03.03.2021 at 11.00 a.m. and notices in this regard were already issued to the parties concerned as mentioned above. The meeting was attended by the Chairman and the members of the Review Committee. Ms. Faiza Fakhar (Pharmacist) & Mr. Munawar Ali Shah (Pharmacist) attended the meeting being the representative of procuring agency (Central Procurement Committee of Health Department). The meeting was also attended by Syed Umair Ahmed CEO M/s Easa Business Group.

REVIEW COMMITTEE PROCEEDINGS

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

*

5. During the hearing the Review Committee noted that the procuring agency had called the tender on Quality and Cost based Selection method which is only applicable for the hiring of consultancy Services. Therein the committee decided to not hear the appeal because the method adopted by the procuring agency was against the rules of SPP Rules 2010(amended-up to-date). The committee deliberated on the method of procurement adopted by the procuring agency.

Procuring agency's version

6. The procuring agency submitted that the procurement of drugs/medicines is highly sensitive issue especially for the procurement of life saving drugs. Therefore, the procuring agency adopted the QCBS method for the procurement of medicines.
7. The procuring agency further submitted that tenders were invited by the CPC on QCBS method as allowed by the Sindh Cabinet in the year 2018-19 and allowed for such amendments in rules in its meeting held on 24.8.2019.
8. The Procuring agency was asked whether any approval was sought from the competent authority regarding the adoption of QCBS method instead of Lowest cost method. The procuring submitted that Cabinet in its meeting held on 22nd July 2020, allowed the procuring agency to adopt such method.
9. The procuring agency was asked whether the observations made by SPPRA on QCBS were replied or not? The representatives of the procuring agency remained silent and did not satisfy the Review Committee.

Findings of Review Committee

10. From perusal of record, statement of the procuring agency, the committee noticed that QCBS method adopted by the procuring agency must be deliberated whether it was as

⁵On 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.



per rules or not and whether the procuring agency sought the approval of the competent Authority for the adoption of such method or not?

OBSERVATION OF THE REVIEW COMMITTEE

11. The committee observed that the procuring agency adopted Quality & Cost Based Selection method for the procurement of medicines whereas the Quality & Cost based selection method is applicable only for the procurement of consultancy Services. The QCBS selection method is described under Part III of SPP Rules 2010(amended UpToDate). The Rules are eloquently stating that Part III is applicable for the procurement of consultancy services.

Part III - PROCURING CONSULTING SERVICES **GENERAL PROVISIONS**

Applicability

- (1) **Subject to provisions of Part I and II, Part III shall apply only to consulting services;**
(2) **In case of any conflict in provisions or their interpretation within the rules, for consulting services, rules under this part shall take precedence over rules in other parts.**

12. The applicability of Part III makes clear that part III shall apply only to the procurement of consulting services. These rules and procedures of Part III cannot be applied and adopted for any procurement except consultancy Services.

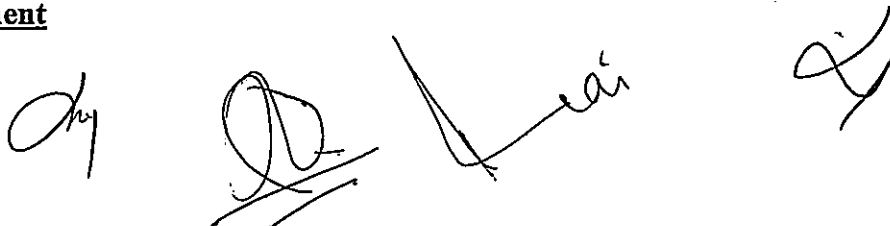
13. The procuring agency adopted QCBS method for the procurement of medicine/medical equipment which is against the rules. The procuring agency was required to award the contract to the technically qualified and financially lowest/best evaluated responsive bidder as SPP Rules. However, the procuring agency adopted combined scoring system of Quality & Cost Based Selection Method. The adoption of QCBS method is against SPP Rules.

14. The committee also observed that the procuring agency was also intimidated by the Authority regarding the adoption of such method.

Additional Comments

In single stage two envelope procedure, the financial bids of all the technically qualified bidders are opened and the lowest evaluated bid amongst technically qualified bids is recommended for award. Whereas, PA has mentioned Merit Point Evaluation in which the Weightages are assigned to technical and financial proposals and contract is awarded to the firm acquires the highest combined marks in technical and financial bids, which is applicable under QCBS method for hiring consultancy services. PA is required to rectify the same

iii. **It is the responsibility of Procuring Agency (PA) to strictly observe the SPP Rules, 2010 in letter and spirit. Violation of any SPP Rule/Act/Instruction will tantamount to mis procurement**



15. It may be noted that the Authority had intimated to the procuring agency that the method adopted is not applicable and it was also intimated that It was the duty of Procuring Agency (PA) to strictly observe the SPP Rules, 2010 in letter and spirit. Violation of any SPP Rule/Act/Instruction would be tantamount to mis procurement. However, the procuring agency neither rectified the mistake nor got the approval of Competent Authority in the adoption of Quality and Cost Based Selection method which was clear violation of Act and SPP Rules.

16. The committee further observed that Cabinet of Sindh in its meeting held on 24th August 2019, granted exemption u/s 21(1) of Sindh Public Procurement Act 2009 to procure drugs/medicines, surgical items & equipment under Rule 72(3) of SPPRA for the year 2019-20 on Quality and Cost Based Selection Method basis. The exemption was granted only for the year 2019-20. Then after no any exemption has been granted by the Competent Authority. Hence, procurement made on QCBS without getting exemption from the competent Authority is against the rules.

Review Committee Decision

17. Given the proceedings, findings/observations and after due deliberation, the review committee, in the exercise of statutory powers conferred upon it under Rule 37(7)(g) *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 contractor and procuring agency have incurred loss to the exchequer by violating the rules and therefore according to the commitments of integrity pact 10 times of procurement amount shall be recovered by the Department.
- c) The matter is referred to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials in terms of-Rule 32A (2) *ibid*.

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

(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