



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1601/2020-21/6096 Karachi, dated the 21st April, 2021

To,

Medical Superintendent,
Peoples Medical College Hospital,
SHAHEED BENAZIR ABAD.

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 Ashraf & Co V/s Medical Superintendent, Peoples Medical College Hospital, Shaheed Benazir Abad, held on 01.04.2021, 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 Secretary to Government of Sindh, Health Department Karachi.
2. The Deputy Commissioner, Shaheed Benazir Abad.
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- /2020-21

Karachi, dated April 2021

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

REVIEW APPEAL

Between:

M/s Ashraf & Co

VS

The Medical Superintendent Peoples Medical College Shaheed Benazir Abad/Nawabshah

(NIT#T00816-20-0001 Dated 07.07.2020)

The appellant, M/s Ashraf & Co lodged a complaint to the Chairman Complaint Redressal Committee vide letter NO ref.425-08 dated 22.08.2020 against T00816-20-0001 Dated 07.07.2020 floated by The Medical Superintendent Peoples Medical College Shaheed Benazir Abad/Nawabshah” **The procuring agency**”. The bidder submitted that the procuring agency has rejected the bidder by fraudulently inserting the Photocopy of call deposit in which rates are disclosed.

2. Meanwhile, the appellant approached the Honorable High Court, Circuit court, Hyderabad. The Honorable High Court, Circuit Court Hyderabad had been pleased to pass the following order in C.P NO D-968/2020 dated 04.03.2021. The operative part is reproduced as under:

It is an admitted position that the petitioner has not availed his remedy under the Sindh Public Procurement Rules 2010. Therefore, the petition is not maintainable. Accordingly, the petition and all pending applications are dismissed with no order cost leaving the petitioner at liberty to avail his remedy, if any before the competent forum in accordance with the law.

3. Subsequently, the appellant submitted Review Appeal before the Review Committee on 15.3.2020 and prayed to accept the bid furnished by the appellant or call the bids afresh or any other relief may deem fit.

4. Consequently, the appellant's appeal was enlisted by the Review Committee for hearing in the meeting of the Review Committee as he submitted an appeal, along with the supporting documents and review appeal fee as required under rules.

4. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on **01.04.2021 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 matter 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*¹.

5. In compliance, on **01.04.2021** **Mr. Shamim Haider**, Deputy Medical Superintendent, Peoples Medical College Hospital Nawabshah/SBA '*the procuring agency's representative*', and Mr. Saifullah, representative, M/S Ashraf & Co '*the appellant*' appeared before the Review Committee.

REVIEW COMMITTEE'S PROCEEDINGS

6. The Chairperson of the Committee commenced the meeting with the recitation of Holy Quran and by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/version over the instant matter of blacklisting in question before the committee.

The Appellant's Version

7. The firm submitted that his firm namely **M/S ASHARAF ALI & Co.** is a government approved contractor and is a regular tax payer and also registered with the Federal Board of Revenue.

8. The bidder also submitted that the Medical Superintendent Peoples Medical College SBA/Nawab shah invited tender Notice NO. PMCHN/SBA/Account/3032/34 dated 30.6.2020 which was published in daily newspaper whereby the procuring agency called invitation for certain work.

9. That the applicant in response to such advertisement applied and deposited fees for the tender Work **diet for the tenure 2020-21.**

¹ 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 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.



10. The appellant also informed that an applicant was also submitted along with all deposit of rupees 650, 000/= and participated in the above said tender but the official respondents Mala-fidely accepted the tender in the name of Jalaludin lakho whose bid was lesser than the applicant's bid and was below the applicant. He further submitted that consequently the applicant appeared before the Medical Superintendent, Peoples Medical College, Hospital Nawab Shah/SBA and filed a complaint along with necessary documents wherein he clearly stated that the applicant is an experienced person and before this tender he has performed the previous contracts diligently & honestly. Given the quality work that the procuring agency every time disqualified due to this conduct that was considered as guiltiness.
11. The appellant further submitted that the medical Superintendent then without considering the material of the record in the with put factual and legal position rejected the application for the bid of the applicant on technical grounds. The appellant submitted that disqualifying the firms on technical grounds is against the merits.
12. The appellant further submitted that then after that the applicant approached the legal advisor and then filed a petition before The Honorable Court circuit court at Hyderabad on 10th September 2020 the same was dismissed with the observation directing to the applicant to approach the proper forum. During the proceedings of the constitutional petition number D 968/2020 the Director health officer in Director General Health services filed comments in response of the petition such comments fully support in it with the plea taken by the applicant in his petition.
13. The appellant further submitted that after, compliance of the order dated 4th March 2021 passed by the Honorable Court the applicant applied for issuing certified copy on 6th March 2021 in the same was issued on 11th March 2021 hence this appeal review was filed.
14. The appellant also submitted that an application for condonation of delay is also filed herewith as the applicant had approached wrong forum.
15. The applicant submitted that the Review Committee may be pleased to accept the bid furnished by the applicant being highest bid in response to tender notice and reject the bid of Jalaludin & Co which was lower than the bid furnished by the applicant.



16. The bidder also pleaded that if the authority arrives at the conclusion that the prayer of accepting bids of the appellant cannot be allowed in these circumstances. Therefore, call for the fresh bid of the subject tender to be awarded to the highest bidder.
17. The bidder was asked whether he had approached CRC and waited for the decision of CRC or not. The bidder submitted that he had approached CRC meanwhile he approached the Honorable High Court, Circuit court Hyderabad.
18. Regarding time barred, the appellant submitted that he had approached wrong forum, hence the time condonation may be allowed under Section 5 of Limitation Act. The appellant also relied on the Judgement of Honorable Supreme court of Pakistan regarding time condonation in case of approaching wrong forum accordingly.
19. The appellant also admitted that he had approached the Honorable High Court before the Decision of CRC.

The Procuring Agency's version

20. The procuring agency submitted that tenders were invited from eligible firms for the procurement of various items including Dietary items. The bids were called on **Single Stage Two Envelope bidding procedure.**
21. The Procuring agency evaluated the Technical proposals of the bidders were evaluated in accordance with the terms and conditions mentioned in bidding documents and NIT.
22. The procuring agency further submitted that as per terms & conditions on page No2 of the bidding documents, it is clearly mentioned in Directions (Evaluation Criteria) in para iii that the bidder should submit Photostat copy of pay order/Bank Draft of Earnest money and the rates shall be concealed. The operative para is reproduced as under:
"Photostat copy of Pay Order/Bank draft of Earnest Money showing without rates".
23. In contradiction to the Directive, the bidder had enclosed/submitted pay order/Bank Draft NO.CDR:00151802 dated 22.7.2020 issued by Bank Islami Pakistan Limited call deposit showing an amount of 650,000(Rupees Six Hundred fifty thousand only)which is clear violation of the Direction NO iii referred para.
24. The procuring agency also submitted that the bidder had approached CRC. However ,he did not wait for the decision of CRC nor approached Review Committee of SPPRA for the redressal of grievances.



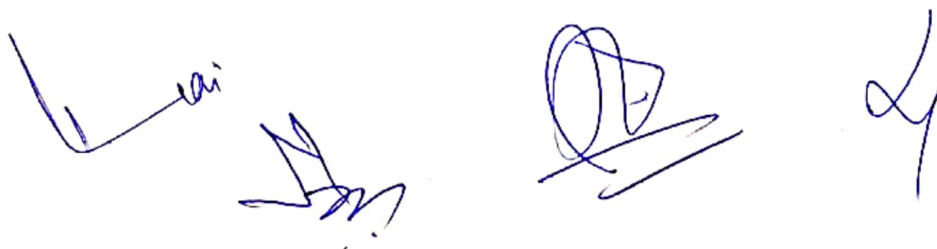
25. The procuring agency also submitted that the financial bid opening was held publicly and all the qualified firms were informed regarding financial opening in advance.
26. The procuring agency also contended that as the bidder violated the terms and condition, he was rejected.
27. The procuring agency also submitted that complete process was done in accordance with the SPPRA Rules and terms and conditions mentioned in the bidding documents.
28. The procuring agency also informed that BER was uploaded on PPMS and minutes of the meeting were also issued in accordance with rules.
29. The procuring agency also informed that Contract was signed with the successful bidder after observing all legal requirements.

Findings of the Review Committee

30. From the perusal of record, scrutiny of record available, statement of bidder and contention of the procuring agency, the Review Committee finds that there is contention regarding the rejection of bid by the procuring agency. The procuring agency claims that the bidder submitted a photostat copy of cheque of earnest money which was revealing the amount whereas the bidder was required not to disclose the rates. The bidder claims that his cheque was **mala-fidely replaced and inserted.**

Observations of the Review Committee

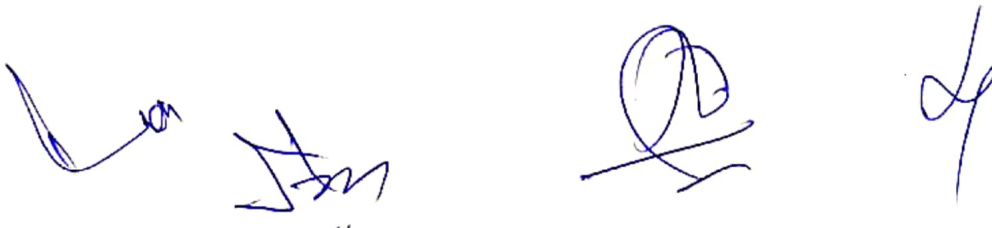
31. The Review Committee observed that the bidder had enclosed/submitted pay order/Bank Draft NO.CDR:00151802 dated 22.7.2020 issued by Bank Islami Pakistan Limited call deposit showing an amount of 650,000(Rupees Six Hundred fifty thousand only). Whereas, it was mandatory upon the bidder to conceal the amount at the stage of technical opening.
32. The Review Committee also observed that It is settled principle that when an essential condition of tender is not complied with, it is open to the person inviting tender to reject the same.



33. Another aspect of the case that must be appreciated is that, as mentioned above, the bidder was certainly not new or inexperienced. Like every bidder, He was required to conceal the amount at the technical stage. The excuse was given by bidder that the cheque was replaced and inserted. The Committee was of the view that the cheque of the bidder was in his own custody how another person can take, replace and insert somewhere?
34. The committee also observed that when government entities procure goods or services, they generally consider and award contracts only to the 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.
35. The committee was of the view also of that the procuring agency reserve the right to reject any bid if any one of the mandatory criteria is not fulfilled. Furthermore, the procuring agency may reject the applicant at any stage, if it finds that the information submitted for qualification was either significantly inaccurate or incomplete. In case of incomplete or lacking the required information, proposal may not be entertained and shall be liable to rejection. In the instant procurement the bidder failed to comply with the mandatory condition as described in the bidding documents on Page 2,

Photostat copy of Pav Order/Bank Draft of Earnest Money showing with out rates

36. The Committee also observed that under SPP Rules, the bidder was required to approach Complaint Redressal Committee for the redressal of grievances. In case of failure of CRC to decide the matter within stipulated time or dissatisfaction with the CRC decision, the bidder was required to approach the Review Committee within ten days' time accordingly. However, the bidder failed to approach the Right forum at right time.
37. The Committee also observed that the Honorable court of Sindh had dismissed the petition and left the petitioner to avail any remedy available in accordance with the law. The operative part is reproduced as under;
Accordingly, the petition and all pending applications are dismissed with no order cost leaving the petitioner at liberty to avail his remedy, if any before the competent forum in accordance with the law.
38. It may be noted that the honorable court did not pass any order for the Review Committee to hear the matter instead it was ordered that the matter may be dealt with in



accordance with the law. Whereas, the SPP Rules are clear in this regard. The Rule 31(5) & 32(1) provide the time limit for any bidder to approach the Review Committee.

Rule 31(5)

The complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32,]2 [if the aggrieved bidder files the review appeal within ten (10) days of such transfer;]3

Rule 32(1)

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.

39. It may be noted that in either of the cases whether failure of CRC to decide the matter or dissatisfaction of the bidder from CRC decision, the bidder was required to approach the Review Committee within 10 days. In accordance with the rules, any appeal received after 10 days' time shall not be maintainable. In the instant matter, the bidder was not successful to approach the right forum at right time. He approached the Review Committee after lapse of about 7 months which is not allowed as per SPP Rules.
40. Regarding the condonation under Section 5 of the Limitation Act, Mr. Riaz Hussain Soomro, Chairperson of the Review Committee, observed that for the purpose of filing an appeal, in case an appeal is barred by time, the provisions of section 5 of the Limitation Act can only be invoked and that too, by showing sufficient cause. In the instant matter, the appellant on 12.8.2020 came to know that he had been rejected. The appellant appeared before the honorable High Court and appeal was preferred before the court on 10-09-2020, the same was dismissed by the honorable High Court whereas the instant appeal before this forum was preferred on 15-3-2020, after a delay of 6 months and a week. These crucial 6 months and a week were neither mentioned nor explained by the appellant. It is well-established law, while determining the question, whether there is sufficient cause under section 5 of the Limitation Act to condone the delay in filing appeal/revision/application/review etc., the condonation of delay under section 5 of the Act, the appellant/petitioner is required to explain each day. Reliance in this respect is placed on

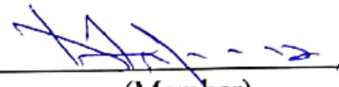
1999 SCMR 1892 (2) and 2012 SCMR 377. Hence, the appellant is not able to prove sufficient cause of delay in preferring the appeal before the Review Committee

Decision of the Review Committee

41. Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(a) of SPP Rules, the Review Committee unanimously declares the instant Review Appeal dismissed which is not maintainable legally due to time barred because the appellant approached the Review Committee after the lapse of 7 months' time and the appeal is devoid of merits thereof.



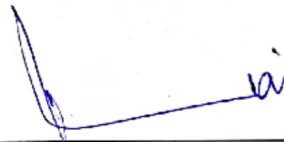
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member)
Chief Engr®. Haji Parpio
Independent Professional



(Member)
Manzoor Ahmed Memon
Member SPPRA Board



(Chairman)
Riaz Hussain Soomro
Managing Director
Sindh Public Procurement Regulatory
Authority