



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3165/2021-22/1084

Karachi, dated the 20th April, 2022

To,

The Secretary to Government of Sindh
Health Department
Karachi.

The Section Officer (PM & I Cell),
Health Department,
KARACHI.

Subject: DECISION OF THE 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 Hakimsons (PVT) Limited v/s The Section Officer, PM & I Cell Health Department** held on 06.04.2022, (6th April 2022) for information & necessary action.


ASSISTANT DIRECTOR (Legal-II)

A copy is forwarded for information and necessary action to:

1. The Additional Secretary, PM & I Cell Health Department Karachi
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 Appellant M/S Hakimsons.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3165/2020-21/1084

Karachi, dated the 13th April, 2022

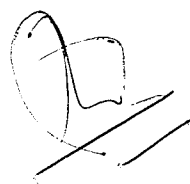
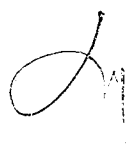
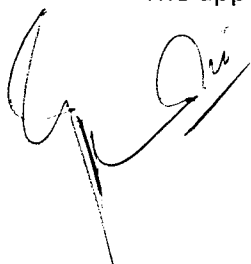
BEFORE REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY UNDER RULE-32 OF SPP RULES 2010

Decision of the Review Committee Meeting Held on 16.04.2022 (6th April 2022)

Appellant	M/s Hakimsons (PVT) Limited
Procuring Agency	The Section Officer PM&I Cell Health Department Karachi.
PPMS ID # Reference No.	T00911-21-0002 /KRY.NO./3299/2021 dated
Appeal Received in Authority Dated	28.3.2022
Complaint of the Appellant Addressed to the Secretary Health Department, (Chairman Complaint Redressal Committee)	Dated: 18.3.2022
Dated of Posting Notice Inviting Tender	26-08-2021
Date of Opening of Bids Technical Opening Date of Opening of Bids Financial Opening	17.09.2021 20.10.2021
Date of Posting Bid Evaluation Report	03-11-2021
Date of Posting Contract Documents	11.1.2022
SPPRA Observations communicated on	11.1.2022
Estimated Cost of NIT Total	Not mentioned in NIT, Contract will be signed under frame work contract agreement
Total works in NIT	Total No of Work are 8
Appellant Related work	Work No 1. Medicine). (codes MBV 0011
Issue involved	Non-Acceptance of the bid of the bidder
CRC Decision received to the Authority	20.3.2022

The appellant's Version:-

1. The appellant submitted that the Central Procurement Committee had recommended his firm M/s Hakimson (Impex) (Private) Ltd. for the award of contract after detailed evaluation of bids. However, the Complaint Redressal Committee substituted its own decision wherein M/s Huzaifa was awarded 10 marks, which paved the way for the award of work to M/s Huzaifa against the recommendation of the Central Procurement Committee.
2. The appellant also submitted that the decision of CRC was without legal authority as it was decided after the lapse of legal time of 7 days in terms of Rule 31 (5) of the SPP Rules.
3. The appellant further submitted that the procuring agency changed the Bid Evaluation Report secretly before the announcement of decision of the Compliant Redressal Committee and awarded the work to M/s Huzaifa without giving the fair opportunity of hearing and defense to the appellant.
4. The appellant contended that the decision of CRC and subsequent change in BER and issuing of work orders were without lawful authority of law and were of no legal effect and same might be set aside and his firm might be considered for the issuance of work order as recommended by the Central Procurement Committee.
5. The appellant submitted that the Product Abhayrab had been granted 5 points by Compliant Redressal Committee, without providing source of raw materials duly approved by USFDA.
6. The appellant further submitted that Biological Material is different from Pharmaceutical Company; Biological product bulk for the ARV is produced by the manufacturer at their designated sites, which in case of Abhayrab, is india. Abhayrab is neither WHO prequalified nor is the product strain available in the USA/USFDA. The appellant relied on the web verifiable list of WHO prequalified vaccines, as well as the list of currently available Anti Rabies Vaccine that are USFDA approved, wherein the name of Abhryab is missing.
7. The appellant also informed that his product Vaxirab is WHO prequalified as the manufacturing site and product are both WHO prequalified. The appellant claimed that the vaccine strain of Abhayrab L. Pasteur 2061/Vero Rabies Strain, is not present in the USFDA list of products and as such cannot have possibly been manufactured as per USFDA accreditation.
8. The appellant further informed that the product Abhyrab is a Lyophilized product, which means that this procedure of Lyophilization which can only be performed at their own manufactured site. There is no way of transporting lyophilized bulk form any external USFDA approved facility.
9. The appellant further claimed that the manufacturing site of Indian immunological/Human Biologicals institute are neither WHO prequalified, nor are USFDA approved. The Appellant relied for verification of data on USFDA i.e website (<https://www.accessdata.fda.gov/scripts/cder/drills/default/cfm>).
10. The appellant further submitted that CRC in their decision awarded points to Abhayrab for being present in RRA countries whereas the product Abhayrab is not present in RRA countries. The appellant relied on the official list of RRA countries as per DRAP regulation. The appellant also questioned if Abhayrab was not approved by any RRA country/authority,

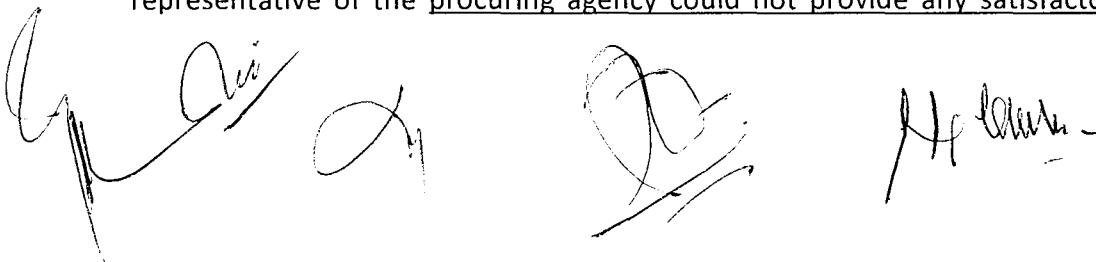


how it could possibly be Registered or available in the market of any SRA/RRA country.

11. The appellant also claimed that the score awarded to the unit price of Vaxirab, appellant's product, was also unjust as the total number of doses for intra dermal usage is 5 per vial, as compared to the number of IM doses for Abhayrab. The appellant claimed that in the comparative costing Abhayrab had been given 20 marks whereas 12.9 points were awarded to Vaxirab,"the appellant's product". The appellant claimed that the price per dose of Vaxirab is 240 which is much lower than the price per dose of Abhayrab.
12. The appellant further submitted that Eight months had already gone by in the year 2021-22 and there had still not been any availability of this life saving vaccine in any of the government institute in Sindh.
13. The appellant prayed to the Review Committee to review the decision of complaint Redressal Committee.

The procuring agency's Version:-

1. The procuring agency submitted that four bidders had participated in the item objected by the complainant namely M/s Hakimsons (Impex) (Pvt) Ltd, M/s Paras Enterprises ,M/s Huzaifa Enterprises and M/S Imperial Traders Inc and bids of all bidders were evaluated in accordance with the criteria mentioned in the bidding documents.
2. The procuring agency also informed that M/s Hakimsons (Impex) PVT Ltd was declared as successful bidder by getting highest marks during the evaluation of bids.
3. It was also informed that after hoisting of BER on SPPRA website, M/s Huzaifa submitted grievances against the Bid Evaluation Report. After hearing the parties, the Complaint Redressal Committee decided to award 10 marks to M/s Huzaifa.
4. The procuring agency also informed that according to the decision of CRC, the Central Procurement re-evaluated the bids and awarded 10 marks to M/s Huzaifa. Consequently, M/s Huzaifa was awarded the work as recommended by the CPC vide its letter dated 8.3.2022.
5. The procuring agency submitted that the product Abhayrab is being supplied to more than 20 RRA/SRA Countries and its product source is USFDA approved therefore 10 score was awarded to M/s Huzaifa subsequently M/s Huzaifa stood lowest evaluated responsive firm whose product ranked higher in the combined Evaluation.
6. The procuring agency also clarified that not only Abhayrab vaccine but Vaxirab "The Appellant's product" is also imported from India.
7. Regarding the rates calculations of Multi-dose vials, the representatives of the Procuring Agency submitted that the Multi-dose vials submitted by the appellant, in general, sell at a lower per-dose price and occupy less cold-chain capacity than single-dose formats. However, higher wastage rates may offset these benefits, especially for more expensive vaccines. Single-dose formats offer several important programmatic benefits, such as increased vaccination opportunities and improved vaccine safety, especially in rural areas where a few cases are reported.
8. The procuring agency was asked why the Central Procurement Committee had not awarded marks to M/s Huzaifa if M/s Huzaifa had submitted the required documents. The representative of the procuring agency could not provide any satisfactory answer to the



question.

9. Replying to a question regarding the recommendation of M/s Huzaifa by the CPC, the representatives of the procuring agency submitted that CPC recommended M/s Huzaifa in compliance to the orders of the Complaint Redressal Committee.
10. The procuring agency further submitted that accordingly the items awarded to M/s Huzaifa Enterprises instead M/s Hakimsons (Impex) PVT LTD. Vide letter dated 18.3.2022.

Observations of the Review Committee:-

Illegal Decision of the Complaint Redressal Committee:-

1. The Review Committee observed that the decision of Complaint Redressal Committee was illegal and without legal authority, as the decision was taken after 04 months & days i.e after the lapse of time limit of Seven days, as provided under Rule-35(5). Besides, the CRC composition was also against Rule 31(2) provides the composition of CRC while and subsequent remedy of approaching the Review Committee in case the Complaint Redressal Committee fails to decide the matter within the stipulated time. For convenience and easiness, the Rule 31(2) and 31(5) are reproduced as under:

31(2) The committee shall be headed by head of the procuring agency or an official of the procuring agency, at least one rank senior to the head of the procurement committee and shall include the following;

(a) **District Accounts Officer, or his representative, in case of the local governments or provincial line departments at district level, or a representative of the Accountant General, Sindh in case of Government departments at the provincial level;**

(b) **An independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency;**

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

2. As provided in Rule 32(2), the Compliant Redressal Committee shall include an Independent Professional whereas in the instant matter, the Complaint Redressal Committee included 3 Independent Technical members.
3. The Review Committee also a observed that the presence of two extra members during the meeting of the Complaint Redressal Committee was against the SPP Rules.
4. Besides the illegal composition of CRC, the Complaint Redressal Committee had no legal authority to decide the complaint of M/s Huzaifa after seven days of the receipt of the complaint. After the lapse of seven days, the complaint had stood transferred to the Review



Committee and the Complaint Redressal Committee no more competent to listen to the complainant whereas M/s Huzaifa was required to approach the Review Committee within 10 days of the transfer of the Review Appeal. However, M/s Huzaifa had never applied to the Review Committee within legal time of ten days. Hence there was no legal worth of the complaint of the bidder after the expiry of appeal period. Interestingly, the Complaint Redressal Committee announced its decision on the complaint of M/s Huzaifa on 18.03.2022 after the lapse of about 04 months which was illegal and without legal Authority.

Lack of publication of BER:-

5. The procuring agency had not announced the change in BER publicly nor hoisted the changed BER on PPMS website even the same was not communicated with the appellant which is against the SPP Rules. The procuring agency is under legal obligation to intimate the Bid Evaluation Report to the all bidders who participate in the procurement process. The Rule 45 is reproduced as under:

45. Announcement of Evaluation Reports – Procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least three (3) working days prior to the award of contract.)

6. As the intimation of change in BER was not given, the bidder was deprived of knowing the reasons for non-acceptance of his awarded bid which is violation of Rule 51 of the SPP Rules 2010 (amended up-to-date) which stipulates for debriefing meeting in case the bidder wanted to know the reasons for the non-acceptance of his bid.

Expiry of Extended Bid Validity Period:-

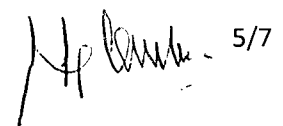
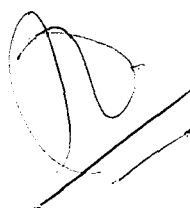
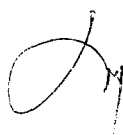
7. The Review Committee observed that the procuring agency illegally awarded the work after the expiry of extended bid validity period. Bid Validity means the period in which bids submitted remain valid for comparison, evaluation, approval and subsequently for contract award. Rule 38 of the SPP Rule discusses and delineates the bid validity period, Extension of bid validity and subsequent method for extending the bid validity period. Rule 38 (5) states that if the procuring agency fails to evaluate the bids during the Extended Bid Validity the procuring agency is under legal obligation to cancel the bids and call the bids afresh. Rule 38 (5) of the SPP Rules is reproduced as under:

In case the procuring agency fails to finalize the bid evaluation within the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated;

8. Similarly, Rule 49 of the SPP Rules stipulates that contract shall be awarded during the original bid validity period or extended Bid Validity period.

49. Award of Contract - The bidder with the most advantageous bid , but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity.

9. In the instant matter, the procuring agency opened bids on 17.9.2022. The bid validity period expired after 90 days on 15.12.2021 (14+31+30+15). Thereafter, the procuring agency extended

 5/7

the validity period for ninety days in terms of Rule 37 of the SPP Rules. The extended bid validity period expired also on 15.3.2022(16+31+28+15). The Procuring agency was required to cancel the bids in terms of Rule 38(5) of the SPP Rules. However, the procuring agency awarded the contract by open, blatant and clear violation of the SPP Rules. Such disregard to the rules and procedures is highly objectionable uncalled for and harmful to the institutional working and transparency.

Violation of Transparency:-

10. The Review Committee observed that the procuring agency had openly violated the transparency and had not followed the transparent mechanism while the procuring agency was changing the BER and was awarding the contract to M/s Huzaifa instead of appellant as recommended by the CPC. The committee noted that Government has set up and maintained a Public Procurement Portal accessible to the public for posting and exhibiting matters relating to public procurement. Subject to the provisions of rules, each procuring entity is required to cause the procurement related information to be exhibited as required under the SPP Act or the rules made there under on the Portal referred above. However, in the instant matter the procuring agency failed to upload the changes on the public portal "PPMS".

Lack of Justification for providing 10 marks to M/s Huzaifa by Complaint Redressal Committee

11. The Review Committee observed that Compliant Redressal Committee awarded 10 score to M/s Huzaifa for submission of required documents such as registration with US/FDA or WHO prequalification.

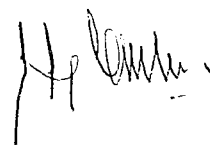
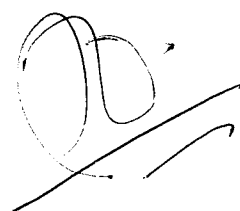
12. The representative of the procuring agency could not present any valid documentary proof that may satisfy the Review Committee that awarding 10 score to M/s Huzaifa for submission of required documents, was justifiable and reasonable.

Violation of Natural Justice by disregarding the legitimate expectation of the appellant

13. The Review Committee observed that the announcement of Bid Evaluation Report and subsequent declaration of lowest bidder had created a legitimate expectation for the appellant. Although mere reasonable or legitimate expectation of an appellant may not by itself be a distinct enforceable right yet failure to consider and give due weight age to it may render the decision arbitrary.

14. The Review committee was of the view that if the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter. However, in the instant matter, the appellant who was declared as a successful bidder by the CPC when the Bid Evaluation Report was made public.

15. "It is further noticed with the lots of concern that CPC declared the appellant successful on 03.11.2021 when BER was announced. However, contract was not awarded. Later on after about 04 months CRC decision was announced against the appellant. The appellant approached the Review Committee /SPPRA. The appeal of the appellant was listed for hearing before the Review Committee. The procuring agency was under obligation not to sign the contract under proviso of Rule-31(7) of the SPP Rules. The procuring agency issued work orders even the complaint of M/s Hakimsons was not resolved and the matter of the appellant was pending before the Review Committee. Such signing of contract before the decision of the Review Committee is against the Rules, procedure and very obviously malafide




16. The Review Committee held that rescinding the earlier Bid Evaluation Report without hearing the affected appellant was clear violation of the principle of natural justice.

Decision of the Review Committee:-

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7) (g), of the SPP Rules 2010 (amended 2019 up to date) the Review Committee:

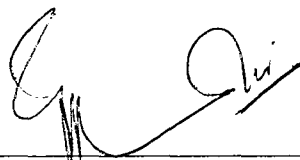
1. Declares the decision of CRC illegal and void ab-initio and subsequent change in BER and signing of contract against the SPP Rules.
2. Declares the instant procurement (Codes Related to the appellant XCM 0011 of Work **No.1 Drug Medicine**) as Mis-Procurement under Rule-32 (7)(g).
3. Declares that the procuring agency is in breach of its obligations under the Act, Rules and Regulations and orders the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of bid in terms of Rule 32(7)(e) of the SPP Rules 2010(amended up-to-date)
4. Decides to refer the matter to the Competent Authority i.e. Secretary Health Department Karachi for initiation of disciplinary action against the official(s) of the procuring agency responsible for Mis-procurement.
5. The Department shall recover any loss or damage incurred by it on account of its corrupt business practices and pay compensation to Government of Sindh (GoS) in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by Contractor as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form, from (GoS) due to Mis-procurement under Integrity Pact.



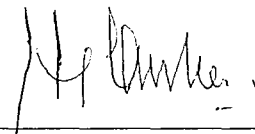
Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



Member
(G. Mohiuddin Asim)
Representative of P & D Board ,P&
Development Department Karachi



Chairman
(Abdul Haleem Shaikh)
Managing Director
(Sindh Public Procurement Regulatory
Authority)