



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3205/2021-22/ 1245

Karachi, dated 13th June, 2022

TO,

The Medical Superintendent,
Chandka Medical College Hospital,
LARAKANO.

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 namely **M/s Shabir Ahmed Abbasi v/s Medical Superintendent Chandka Medical College Hospital Larkano** held on 09.06.2022, for information & necessary action.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for necessary action to:

1. The Secretary to the Government of Sindh, Health Department Karachi.
2. The Director Health Services Larkano.
3. The PS to Chairman / Members of the Review Committee.
4. Assistant Director I.T. SPPRA (with advice to post the decision on authority website in terms of Rule-32(11) of SPP Rules, 2010).
5. The Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3205/2021-22

Karachi, dated the, 13th June, 2022

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

Decision of the Review Committee held on 09.06.2022

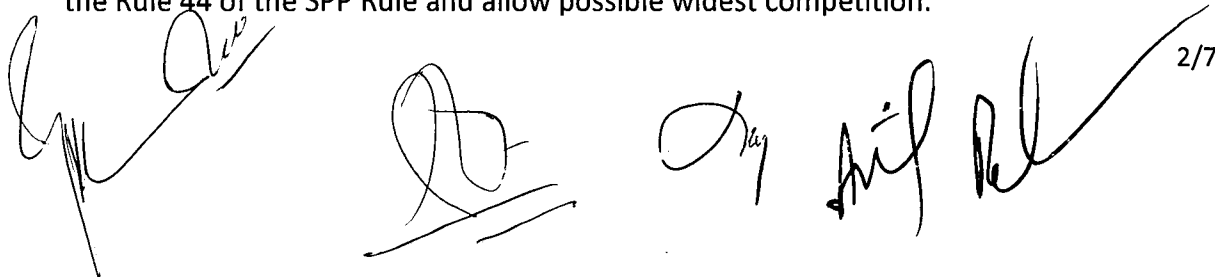
Name of Appellant	M/s Shabbir Ahmed Abbasi
Procuring Agency	The Medical Superintendent Chandka Medical College Hospital Larkana
PPMS ID # Reference No.	T00738-21-0006 NO/CMCL/ACCTS/5506/8 DATED: 12-04-2022
Appeal Received in Authority Dated	09.05.2022
Complaint addressed to the Director Health Larkana Chairman CRC	06.05.2022
Dated of Posting Notice Inviting Tender	0 = 24-04-2022 1 = 11-05-2022
Date of Opening (First Opening)	10.05.2022
Date of Posting Bid Evaluation Report	Not posted
Date of Posting Contract Documents	Not posted
SPPRA Observations communicated on	30-05-2022
Estimated Cost of NIT Total	Not mentioned in NIT
Total works in NIT	1 Works
Appellant Related work	1 Work
Issue involved	Against CRC composition & Powers
Complaint addressed to the Director Health Larkana Chairman CRC	06.05.2022
CRC Decision	30 th April

The Appellant's Version:-

1. This appeal was preferred by the appellant M/S Shabbir Ahmed Abbasi, hereinafter referred as "the Appellant" in terms of the Rule 32(1) of the SPP Rules against the decision of the Complaint Redressal Committee of the procuring agency hereinafter referred as "The Medical Superintendent Chandka Medical College Hospital Larkana .
2. The appellant submitted that the Procuring Agency called bids wherein the Evaluation Criteria for Technical Evaluation asked for the submission of experience of at least three contracts of similar nature and cost during the last three financial years; 2018-19, 2019-20 & 2020-21. However, the evaluation criteria of the procuring agency was challenged by four intending bidders, namely M/s Jala ud Din , M/S Asghar Ali, M/s Mujeeb ur Rahman Tunio and M/s Ashraf Ali , before the complaint Redressal Committee of the procuring agency.
3. The CRC decided to change the Evaluation Criteria whereby the experience of last three consecutive years was modified as "Three years of working experience on similar assignments in any government or semi-government institution".
4. The appellant considering himself as the aggrieved by the decision of the Complaint Redressal Committee approached to CRC and subsequently to the Review Committee of SPPRA and challenged the CRC decision on the grounds that the CRC was partial, it acted beyond its powers and composition of CRC was not as per the SPP Rules.
5. The appellant also objected that the representative of District Accounts Officer Larkana was of grade 14 so the appellant believed that he could not be regarded as legally competent to be the member of Complaint Redressal Committee.
6. The appellant stated that the CRC included Mr. Mehboob Ali Shah, Ex- Medical Superintendent CMCH Larkana, The appellant believed that Mr. Mehboob Ali Shah, Ex-Medical Superintendent CMCH Larkana, could not be considered as Independent Professional in terms of Rule 31 of the SPP Rules.
7. The appellant also challenged the authority of the CRC and opined that the CRC could not alter, modify or insert anything in the Evaluation Criteria, against the decision of procuring agency.
8. The appellant also complained that the modification of Evaluation Criteria would reroute many ineligible contractors, who have been disqualified by other procuring agencies, towards participating in the bidding process.
9. The appellant also submitted that the CRC has modified the evaluation criteria in contravention to the decision of the Review Committee dated NO.(LII) SPPRA/CMS-2996/2020-21 Karachi dated 03rd March 2022.

The Procuring Agency's Version:-

1. The Procuring Agency submitted that condition of Experience of last three consecutive years was restricting the competition which is the sole purpose of public procurement. Therefore, the CRC decided to change the Evaluation Criteria in order to comply with the Rule 44 of the SPP Rule and allow possible widest competition.



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2. The Director Health Service, Larkana submitted that the supply of diet did not require any technicality or complexity. Hence, he believed that putting **difficult conditions** could have restricted the open competition and would have favored a few contractors and disfavored the majority of contractors.
3. The Procuring agency also informed that the change in evaluation criteria was widely circulated and the same was modified on the direction of CRC by observing all legal and codal formalities.
4. It was also contended that Mr. Mehboob Ali Shah, Ex-MS CMCH Larkana had been retired from service and he was no more government employee and he was notified as the member, Independent Professional, of the CRC by the Secretary to Government of Sindh, Health Department Karachi.
5. Regarding the representative of the DAO Larkana, it was informed that the nomination was received from the DAO Larkana and the representative was fully authorized to participate in the CRC meeting as per rules.
6. It was informed that the decision of the CRC to alter the evaluation criteria was not in contravention of the earlier decision of the Review Committee of SPPRA.

Findings of the Review Committee of SPPRA:-

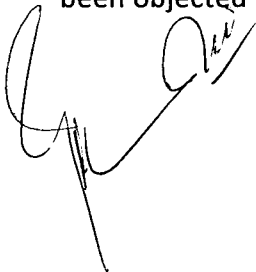

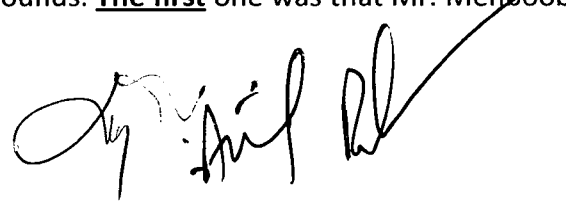
From the perusal of record available and the statements and arguments of the appellant and the Procuring Agency, the Review Committee found that there were four controversies involved in the appeal which are as under:

1. The Appellant claimed that the Composition of CRC was against the SPP Rules whereas the Procuring Agency maintained otherwise.
2. The Appellant complained that the CRC acted beyond its authority while changing the Evaluation Criteria whereas the Chairman CRC defended that the decision was in accordance with the Rules and was aimed at motivating open competition in the bidding process.
3. The Appellant also contended that change in the Evaluation Criteria paved the way in eligible bidders and the same was aimed at malafide whereas the Procuring Agency claimed otherwise
4. The Appellant complained that the decision of CRC was in contravention with the earlier decision of the Review Committee but the Procuring Agency pleaded otherwise.

Observations of the Review Committee:-

1. Legality of the Composition of the Complaint Redressal Committee

1. The Review Committee observed that the legality of the composition of the CRC had been objected by the appellant on two grounds. **The first** one was that Mr. Mehboob Ali

Shah, Ex-MS CMCH Larkana could not be considered as an Independent Professional as he had already served in Larkana as the Medical Superintendent of the Procuring Agency and the second ground was that the representative of District Accounts Officer

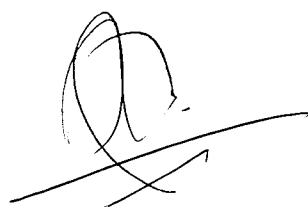
Larkana was of grade 14 so he was not legally competent to participate in the meeting of the CRC.

2. The Review Committee observed that the objection against Mr. Mehboob Ali Shah, Ex-MS CMCH Larkana was not rational and logical one. It was an admitted position from both the parties that Mr. Mehboob Ali Shah had been retired from the government service. Therefore, there must not be any objection regarding his independence in professional decision making. Furthermore, his service as the Medical Superintended provided him edge to be preferred for such nomination because he had remained well cognizant of the professional matters of the hospital. Hence, questioning the impartiality and professional independence of the member of the CRC was not appropriate.
3. Regarding the representative of the DAO Larkan, it would be appropriate to reproduce Rule 31(2) of the SPP Rules which describes the composition of CRC;

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;

4. The Rule mentioned above, describes that one of the members shall be respective District Account Officer or his representative without describing the grade or rank of the representative. The apparent reading of the Rule makes clear that there would no bar of grade on representative of the District Account Officer. Furthermore, it is clarified that wherever in the SPP Rules any bar of ranks and grade has been described, it has been described clearly. For instance in case of the head of CRC, it has been clearly described that he must be one rank senior to the head of the procurement committee. Likewise, in terms of the Rule 32(8), the nominee of any Procuring Agency must not be below the rank of BS-19 to appear before the Review Committee. Whereas, in the Rule 32(a), no such strict grade or rank limitation has been provided for the representative of DAO in CRC.



2. Powers of CRC to change the Evaluation Criteria for Experience

5. The committee observed that the CRC is fully authorized to alter and change any decision of the procurement committee including but not limited to change the Evaluation Criteria. The Rule 31(4) delineates the powers of the CRC which is as under:

- (1) The complaint redressal committee upon receiving a complaint from an aggrieved bidder may, if satisfied;
- (a) prohibit the procurement committee from acting or deciding in a manner, inconsistent with these rules and regulations;
- (b) annul in whole or in part, any unauthorized act or decision of the procurement committee; and

Provided while re-issuing tenders, the procuring agency may change the specifications and other contents of bidding documents, as deemed appropriate.

- (bb) [recommend to the Head of Department that the case be declared a mis-procurement if material violation of Act, Rules Regulations, Orders, Instructions or any other law relating to public procurement, has been established; and.]'
- (c) reverse any decision of the procurement committee or substitute its own decision for such a decision;

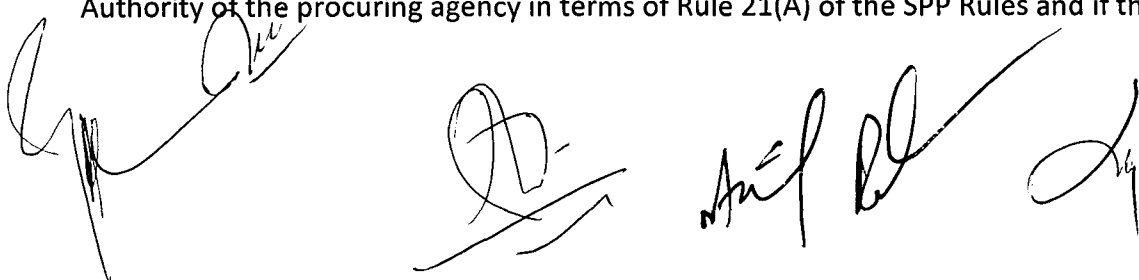
Provided that the complaint redressal committee shall not make any decision to award the contract.

6. The Rule 31(4)(c) provides that CRC is fully authorized reverse any decision of the procurement committee or substitute its own decision for such a decision. In the instant the CRC reversed the decision of the procurement committee for the experience requirement and substituted it own decision for experience requirement. Thus, the decision of the CRC reverse the decision of the procurement committee was in accordance with the SPP Rules.

7. The committee also observed that change in terms and conditions were carried for all bidders equally. It was observed that the addendum was issued before the submission of bid documents and; thus, the appellant had sufficient time to prepare its bid. Such change in terms and conditions was the Authority of the procuring agency which could modify the bidding terms and conditions.

3. Change in Evaluation Criteria and apprehensions of Mala-fide intention

8. The Review Committee also observed that the formulation of Evaluation Criteria is the Authority of the procuring agency in terms of Rule 21(A) of the SPP Rules and if the



procuring agency changed the evaluation on the recommendation of the CRC, it could not be questioned by any bidder on subjective apprehensions of mala-fide intention.

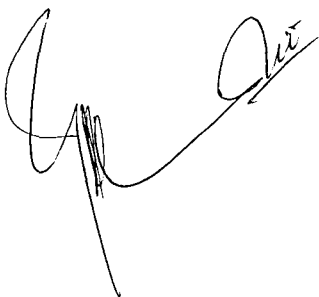
9. The Review Committee also observed that the procuring agency having authored the tender documents and the evaluation criteria is the best entity to understand and appreciate its requirements and interpret its documents. The Review Committee and Authority have got nothing to with the tender documents and the evaluation criteria, unless there is any ambiguity, difficult condition or discrimination among the bidders. It is also possible that any procuring agency may give an interpretation to the tender documents that is not acceptable to the bidders but that by itself is not a reason for interfering with the interpretation given by the any procuring agency. In the instant matter, the Review Committee did not find any ambiguity, difficult condition or discrimination among the bidders.

10. The Review Committee also observed that all actions taken by executive authorities are considered to be bona fide unless proven otherwise. Furthermore, a mere allegation that an action has been taken malafidely is not sufficient to establish that it is mala fide. It must be specific. The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. In the present case the appellant's plea that the impugned decision of the CRC was actuated with malice was vague and unsubstantiated. It had no legs to stand on.

4. **Whether the CRC decision was in contravention with the earlier decision of the Review Committee or not**

11. The appellant also contended that the procuring agency had cancelled the tender and subtly tried to change the evaluation criteria in order to accommodate the favored contractors and claimed that changing the evaluation criteria was **in contravention with the earlier decision of the Review Committee.**

12. The Review Committee observed that the decision of the Review Committee decision **NO.(LII) SPPRA/CMS-2996/2020-21 Karachi dated 03rd March 2022** relied upon by the appellant was of different nature and the same was adjudicated on the grounds that the procuring agency had not complied with the observations of the Authority and had not finalized the tender as per terms and conditions. Consequently, the bids were cancelled by the procuring agency on the direction of the Review Committee. Hence, the Review Committee did not observe any violation of and **contravention with the earlier decision of the Review Committee.**



13. The Review Committee also observed that the Appellant could not establish any violation of rules during the procurement process and decision of the CRC was legal and with lawful authority.

Decision of the Review Committee

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(a) of the SPP Rules, the Review Committee rejects the appeal as the Appellant could not prove any violation of rules during the procurement process.



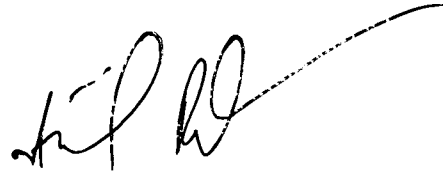
Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



(Member)
G. Muhiuddin Asim
Representative of DG, UP&SP, P&DD
Board, Planning & Development
Department Karachi



Chairman
(Atif Rehman)
Managing Director
(Sindh Public Procurement Regulatory Authority)

