



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1161/2019-20/0165

Karachi, dated the 22th July, 2020

To,

The Chairman,
Sindh Revenue Board,
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 Vision Security v. Sindh Revenue Board*) held on 07th July, 2020, for information and further necessary action, please.

22/07/20
ASSISTANT DIRECTOR (LEGAL-II)

A copy along with enclosures/ decision is forwarded for information to:

1. The Registrar, High Court of Sindh, Karachi (w.r.t. C.P.No.D-7103/2018).
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Assistant Director (I.T), SPPRA [with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010].
4. The Staff Officer to the Chairman/ Members Review Committee.
5. M/s Vision Security (appellant) and M/s Geneko Middle East Fze (petitioner).



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-1161/2020-21/0165

Karachi, dated the 22nd July, 2020

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

(APPEAL)

M/s Vision Security
Versus
Sindh Revenue Board

(NIT I.D # T00629-17-0001 DATED 10.04.2018)

FACTS AND BACKGROUND

The Sindh Revenue Board, Government of Sindh *'the procuring agency'* solicited bids, through International Competitive Bidding (ICB), for procurement of *'planning, designing, supplying, installing, customizing/ configuring, deploying and commissioning end to end Online Fiscal Point of Sale Integration with Tax (OFPOSIT) system fully integrated with Online Fiscal Data Controller (OFDC) and allied services on a turnkey basis having an estimated cost of PKR 656.42 million'*¹ that were scheduled to be received and opened on 10.05.2018.

2. In connection to the aforementioned NIT, M/s Vision Security *'the appellant'* purchased the bid documents through paying the prescribed tender fee to the procuring agency in terms of Rule-20 of SPP Rules, 2010² and after examining the document, the appellant (vide letter dated 25.04.2018) raised various queries in terms of Rule-23(1) of SPP Rules, 2010³, which were responded/ clarified by the procuring agency as under⁴:

Sr. #	Queries raised by the appellant	Clarifications made by the procuring agency
I.	Will SRB ensure that the selected taxpayers for the pilot phase (550 units) will cooperate to start using this system effectively so the bidder will not have any difficulties to install commission and perform the system?	Please refer to 'Preconditions for System Acceptance' in the bid document.
II.	The specification requires that the OFDC device has built-in 3G/4G communication, is it also ok to access the internet via Ethernet and or GPRS? For example during Muharram when the government suspends mobile communications then how will OFDC device function?	OFDC should work with preferred 3G/4G Telecom SIM Card connectivity.
III.	Two following states in requirements are in contradiction: "Once online mode of operation is available, all unsent RPs from OFDC internal secure memory has to be sent in consecutive order to TSS and	No such retention required for 5 years in OFDC.

¹ Detailed description/ nature of the procurement can be accessed through instant procurement's NIT available on the PPMS website at ID # T00629-17-0001 dated 10.04.18 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

² Rule-20 provides that the procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the NIT; the procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

³ Rule-23(1) provides that an interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding document in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bid.

⁴ The procuring agency's clarifications circulated against the bidders' queries raised in Pre-bid Conference held on 23.04.2018

retained for 5 years in OFDC internal secure memory and EJ”

“Once OFDC gets in online mode, all RPs from secure memory should immediately be sent to TSS. OFDC should keep RPs in secure memory until it receives a message of successful transmission from TSS. OFDC does not have to keep RPs that are submitted and successfully stored on the TSS.”

IV. An evaluation criterion in Annex-A allows the committee to assign a large number of points according to their evaluation criteria (Good, Average, Below average). How are transparency and access to the committee reports provided in that aspect?

The evaluation criteria provided vide Annexure-A is a comprehensive one exhibiting both quantitative and qualitative features, in line with the applicable government rules and procedures. The qualitative evaluation of the technical solution, features will be made by reviewing the best international practices and currently available benchmarks. The entire bidding process is so designed as to ensure maximum transparency and fairness for all participating bidders.

V. 15 points go to ‘live demonstration of the proposed POS solution/ model’, please clarify if presentation alone (any functionality) brings 15 points, no presentation results in 0 points or there are other evaluation criteria which will scale from 0 to 15, how is this resolved?

The live presentation will demonstrate the ability of bidder for readiness levels of IT products and areas and what they will need for its customization/ development. If the bidder’s proposed IT Solution is substantially in ‘Readily Available State’ and ‘Closely match BD Requirements’ with minimum work of customization/ development, that technical proposal will be awarded higher marks by the Procurement Committee ranging from 0-15 marks.

VI. Since the bidder is required to provide a turnkey (end-to-end) solution, how strict is to confirm 100% with technical specification if presented solution performs equally if not better than specified requirements (can CIS be a mobile phone with a special POS application)?

IT solution requirements are flexible to some extent for bidders for providing end to end IT solutions. If such provided devices and systems substantially addressing the required needs of functional areas, and key requirements in the OFPOSIT system.

VII. Part One – Section I – Instruction to Bidder – Point 30 – SRB’s right to accept any bid and to reject any or all bids – 30.1: *“The SRB reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the SRB’s action.”* This clause is not as per the SPPRA Rules 2010. As per Clause 31 of SPPRA – Point I – Mechanism for Redressal of Grievances: The procuring agency shall constitute a committee for complaints redressal comprising an odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings.

In pursuance of Rule-45 of SPP Rules, 2010, SRB shall announce the result of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on the website of Authority and that of procuring agency and intimated to all bidders at least 3 days prior to award of contract.

Point 3 of the same clause says: *Any bidder being aggrieved by any act or decision of the procuring agency during procurement proceedings may lodge a written complaint after the decision causing the grievance has been announced.*

3. Subsequently, the appellant (vide letters dated 07 & 10.05.2018) raised averments concerning to the terms & conditions and products’ specifications, as prescribed under the bid

documents, leading to restrict the competition and also favoring a particular firm; hence, the appellant requested the procuring agency to place the matter before the Complaints Redressal Committee (CRC) to resolve the issues for the sake of ensuring procurement's transparency and fairness in terms of Rules-31 of SPP Rules, 2010⁵. In response, the procuring agency (vide letter No.SRB/DC(Admin)/POS/CRC/308384/2018 dated 14.05.2020) conveyed the CRC decision/ observation to the appellant as reproduced hereunder:

"The committee considered the complaint submitted by Manager Operations of M/s Vison Security dated 07.05.2018 and subsequent letter dated 10.05.2018. The Committee unanimously agreed that the firm which has submitted complaint is not a bidder for the contract regarding procurement of 'Online Fiscal Point of Sale System and Allied Services' and that under Rule-31 of Sindh Public Procurement Rules 2010 it is specifically provided that the committee has to consider grievances of a BIDDER, therefore the complaint is not maintainable before this forum. For this purpose, the committee did not agree with the contentions of the complainant firm that his complaint be considered by this forum."

4. Giving the CRC's aforementioned observation/ decision, the appellant preferred an appeal (vide letter dated 30.05.2018) before the Authority's Review Committee⁶ in terms of Rules-32(1) & (5) of SPP Rules, 2010⁷, whereby the appellant stated that the procuring agency's decision is not based on good faith and contradicts the basic principles of fairness and transparent procurement; therefore, the appellant made the following prayer/ request to this Authority:

"That it will be fair and just that this Honorable Review Committee may call for the record and proceedings of subject procurement and allow this appeal in the interest of justice. Any other relief/ decision deems fit and proper under the circumstances of the case."

⁵ Rule 31 provides that (1) The procuring agency shall constitute a committee for complaint redressal comprising odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings; (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 department 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; (3) Any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint; (4) 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 of decision of the procurement committee; and Provided while re-issuing of 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 may be declare 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; (5) The complaints 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; (6) The procuring agency shall award the contract after the decision of the complaint redressal committee; (7) Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings; Provided that in case of failure of the complaint redressal committee to decide the complaint; the procuring agency shall not award the contract.

⁶ Comprising of: Managing Director SPPRA; Director General Audit Sindh or his nominee not below the rank of BS-19; Two private members represented on the SPPRA Board; An independent professional having an expertise of relevant field concerning the procurement in question to be nominated by the Managing Director [Rules-32(2) to (4) of SPP Rules, 2010]

⁷ Rules-32(1) & (5) provides that a bidder not satisfied with the decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review Committee provided that he has not withdrawn the bid security, if any, deposited by him. 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 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/ complaint redressal committee.

5. Accordingly, the appellant's case was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 02.08.2018⁸ whereof the representatives of the parties concerned were afforded ample opportunity to present/ defend their case along with supporting documents/ evidence in terms of Rules-32(8) & (10) of SPP Rules, 2010⁹, and subsequently the Committee, after taking into account the following observations, unanimously decided/ directed the procuring agency to terminate the instant procurement's proceedings and re-invite the same by ensuring the products' specifications are generic and general in nature attracting wider competition for the sake of transparency and in the best interest of public in terms of Rule-32(7)(f) of SPP Rules, 2010¹⁰:

*"After hearing the parties at length and perusing the technical specification and nature of the said procurement, the Review Committee observed that the contention of CRC that the complainant was not a bidder, therefore his complaint was not maintainable at CRC level, is incorrect as it was admitted by the procuring agency that the complainant had obtained bidding documents after paying a prescribed tender fee but he did not submit his bid due to serious reservations on tailor-made product specifications which would ultimately result in his disqualification on technical grounds. The premise of the appellant seems logical as no other company except M/s GENECO participated in the bidding process fearing technical disqualification. In view of the above, the Review Committee is of the opinion that it would be more appropriate and in the public interest to make this procurement more transparent and fair. It is interesting to note that there were one hundred six (106) queries received by the procuring agency but only one bidder had participated in the bid whereas the estimated cost is approximately US \$ 6 to 8 million. Since there is a single bidder, compliance of Rule-48 by the procuring agency would not be possible as this is one of its kind procurement ironically accepting to the documents presented by the procuring agency showing one hundred six (106) queries and their replies, the procuring agency has mentioned them as 'queries by bidders' which negates the stance of CRC that complaint is not a bidder."*¹¹

PETITION FILED AGAINST THE DECISION

6. M/s Geneko Middle East Fze 'the petitioner', being the sole bidder under procurement in question, filed a Constitutional Petition under Article 199 of the Constitution of Pakistan, 1973, before the Honorable High Court of Sindh, Karachi, whereby the petitioner made prayers before the honorable Court to direct the procuring agency for awarding the procurement contract while setting aside the Review Committee's decision, etc.¹² As per averments of the petition, the petitioner submitted technical and financial proposals along with supporting documents and bid security that (technical proposal) was opened and found technically qualified by the procuring agency. Meanwhile, the appellant who had not participated in the bidding process approached the CRC that rejected the appellant's matter being not maintainable, and subsequently, the appellant approached the Review Committee, which held its decision for termination of the procurement process without

⁸ The instant matter for hearing was scheduled on 18.07.2018/ 23.07.2018 and then it was rescheduled on 02.08.2018 upon the request made by the procuring agency (vide letter No.DC/Admin/POS/PC/327063/2018 dated 23.07.2018).

⁹ Rules-32(8) & (10) provides that 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 announce its decision within ten working days of submission of appeal.

¹⁰ Rule-32(7)(f) empowers the Review Committee to direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.

¹¹ <http://www.pprasinhdh.gov.pk/MS%20vision%20security%20khi%20050918.PDF>

¹² C.P. No. D-7103 of 2018 dated 09.10.2018

[http://202.61.43.37:8082/ekioskv2/\(S\(vf10gfk1jppqrrgas1bzbw3c\)\)/CaseProfile.aspx?1=283166&2=7103&3=0&ps=0&t=1&from=1cEv5pFb/1f/MzrYel1dFsQ](http://202.61.43.37:8082/ekioskv2/(S(vf10gfk1jppqrrgas1bzbw3c))/CaseProfile.aspx?1=283166&2=7103&3=0&ps=0&t=1&from=1cEv5pFb/1f/MzrYel1dFsQ)

affording any opportunity of hearing to the petitioner. Thereafter, the Hon'ble Court passed an order dated 04.03.2020 – excerpt of which is reproduced below:

*"After arguing at some length, all learned counsel forwarded a reasonable proposal to us that the order dated 31.08.2018 passed by the Review Committee of the Sindh Public Procurement Regulatory Authority may be set aside with directions to them to decide the matter afresh after providing ample opportunity of hearing to the petitioner and they will also consider the definition of 'bidder' properly in accordance with law keeping in view the entire circumstances of the present case. Order accordingly. The Review Committee shall decide the matter afresh within fifteen (15) days' time after issuing notices to the petitioner and respondent No.4 as well as the procuring agency. Pending application is also disposed of."*¹³

REVIEW COMMITTEE'S PROCEEDINGS

7. The Authority, in compliance of the referred orders to decide the matter afresh, convened the Review Committee's meeting on 20.05.2020 and then rescheduled on 03.06.2020 by issuing the notices (vide letters dated 11 & 18.05.2020)¹⁴ to the concerned parties – *the procuring agency, the appellant, and the petitioner* – to appear along with relevant record to present/ defend the matter in terms of Rules-32(8) & (10) of SPP Rules, 2010¹⁵. In compliance, the procuring agency's representative appeared before the Review Committee, whereas, the representatives of the appellant and the petitioner did not attend the meeting and submitted a letter/ email as reproduced hereunder:

M/s Vision Security (the appellant): This is with reference to your letter No.AD(L-II)/CMS-1161/2019-20 dated 18.05.2020, on the abovementioned subject. We wish to inform you that our company lawyer who was supposed to attend the subject meeting on 03.06.2020 at the office of Sindh Public Procurement Regulatory Authority, he has got high fever and is not feeling well therefore would not be able to attend the said meeting, due to which we would like to request you to please extend the said meeting for 7-10 days so that he can recover and attend the meeting. Looking forward to have a favorable respond from your side (letter signed by Manager dated 02.06.20).

M/s Geneko Middle East Fze (the petitioner): I would like to inform you that the person that was supposed to represent us today Mr. Husnain Farooq is down with fever and is awaiting test thus he is not able to attend today the hearing (email sent by Milenko Trojanovic dated 03.06.20).

8. The Review Committee, on account of the aforementioned requests as well as ensuring compliance of the orders passed by the Honorable Court in letter and spirit, unanimously decided to provide an opportunity to the parties concerned to appear in next meeting that was scheduled on 23.06.2020 and notice, in this regard, were issued by this Authority (vide letter dated 08.06.2020) to the parties concerned. In compliance, the procuring agency's representative and the appellant appeared before the Review Committee, whereas, the representative of the petitioner did not attend the meeting without any verbal or written intimation to this Authority.

9. The Review Committee, in view of the above position, unanimously decided to provide a last opportunity to the petitioner to appear and present/ defend their case on 07.07.2020 otherwise it was

¹³ <http://202.61.43.34:8056/caselaw/view-file/MTQOMjQwY2Zzcy1kYzgt>

¹⁴ Meeting notice issued to the parties concerned via postal and instantaneous communication channel (mail, email, whatsapp).

¹⁵ Ibid.


held that the matter would be decided ex-parte in terms of Rule-32(9) of SPP Rules, 2010¹⁶ and notice, in this regard, were issued by this Authority (vide letter dated 25.06.2020) to the parties concerned. In compliance, the procuring agency's representative appeared before the Review Committee, whereas, the petitioner's representative did not attend the meeting and the appellant submitted a letter as reproduced hereunder:

M/s Vision Security (the appellant): This is with reference to your letter No.AD(L-II)/CMS-1161/2019-20/4074 dated 25.06.2020, on the abovementioned subject. Without prejudice to our rights and interest we hereby withdraw our complaint (letter signed by Manager dated 06.07.2020).


REVIEW COMMITTEE'S DECISION

10. The Review Committee, in the instant case, afforded ample opportunities to the appellant and the petitioner to appear and present their cases enabling to decide the matter afresh in compliance with the orders of Honorable Court. Resultantly, the appellant being an aggrieved party voluntarily withdrew the case and the petitioner failed to appear before the Committee despite serving notices three times. The Committee is of the considered view that any decision at this stage in the absence of any aggrieved bidder/ appellant does not serve the purpose. Furthermore, it is also uncertain whether the procuring agency's actual demand against which the bids were solicited exists at this stage or not. Secondly, the Committee is also unaware about the procuring agency's availability of capital budgeting or viability of the project at this moment.


11. In view of the aforementioned position, the Review Committee unanimously decides to refer the instant matter to the head of the procuring agency i.e. Chairman Sindh Revenue Board to discharge the tender, as per terms and conditions of the bid document and in compliance of the Rules-38(4) & (5) of SPP Rules, 2010.



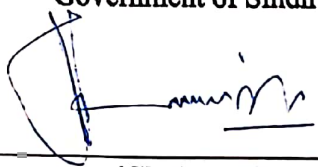
(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
(Rtd.) Executive Engineer
Public Health Engineering Department
Government of Sindh



(Member)
Sheeraz Siddiqui
Director (Audit)
Nominee of Director General Audit Sindh



(Chairman)
Abdul Rahim Sheikh
Managing Director
Sindh Public Procurement Regulatory Authority

¹⁶ Rule-32(9) provides that in case the appellant fails to appear twice despite the service of notice of appearance, the appeal may be decided ex-parte.