


FORM OF ORDER SHEET

Court of _____

Appeal No. 2169/2024


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/10/2024	<p>The appeal of Dr. Shaukat Ali resubmitted today by Mr. Babar Khan Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 05.11.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman  REGISTRAR</p>

The appeal of Dr. Shaukat Ali received today i.e on 28.10.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal are not in sequence.
- 2- Annexure-M attached with the appeal is incomplete.
- 3- In the memo of appeal, the term "petitioner" is used; however, there is no provision in the Khyber Pakhtunkhwa Service Tribunal Act or its rules for using the word "petitioner" in the memo of appeal.
- 4- Copies of original or final order are not attached with the appeal.

No. 988 /Inst./2024/KPST,

Dt. 28/10 /2024.



ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Babar Khan Yousafzai Adv.
High Court at Peshawar.

Sir,

That the instant appeal is against the inquiry proceedings, therefore, the final order is not available. Moreover the Annexure-M attached is not so relevant, it is just for reference. Rest of the objection has been removed.

File resubmitted after completing necessities.


Babar Khan Yousafzai
Advocate Supreme Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 2/69 /2024

Dr. Shaukat Ali. APPELLANT

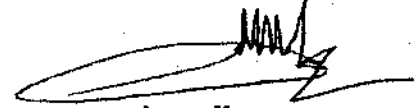
VERSUS

Govt of KP & others. RESPONDENTS


I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memorandum of Service Appeal		1-6
2.	Application for interim relief along with affidavit		7-8
3.	Copy of the notification	A	9-10
4.	Copy of the letter dated 19.04.2023	B	11-12
5.	Copy of notification	C & C/1	13-14
6.	Copy of the notification dated 27.04.2023	D	15
7.	Copy of the letter	E	16-17
8.	Copy of the notification dated 30.03.2024	F	18
9.	Copy of the letter dated 30.05.2024	G	19
10.	Copy of the notification dated 30-May-2024	H	20
11.	Copy of the decisions	I	21-77
12.	Copies of the impugned notification & representation	J & K	78-79
13.	Copy of notification dated 22.07.2024	L	80
14.	Copy of the initiation of inquiry	M	81-87
15.	Copy of the suspension order	N	88
16.	Copy of the transfer order dated May 16 th 2024	O	89
17.	Copy of the letter dated 07.06.2024	P	90-91
18.	Copy of the letter along with Questionnaire	Q	92-94

19.	Copy of the order dated 6 th September 2024	R	95
20.	Copies of the notices and charge sheet	S & T	96-102
21.	Copy of the office order for formation of Committee	U	103
22.	Wakalatnama		104


Appellant

Through


BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 2169/2024

Dr. Shaukat Ali S/o Gul Nawaz Khan
Officer of Health Services Management Cadre.
Warsak Road, Peshawar.

..... APPELLANT

VERSUS

- 1- **Government of Khyber Pakhtunkhwa,**
through Chief Secretary Civil Secretariat, Peshawar.
- 2- **Director General Anti-Corruption Establishment,**
Khyber Pakhtunkhawa, Peshawar.
- 3- **Government of Khyber Pakhtunkhwa,**
through Secretary Health, Civil Secretariat, Peshawar
- 4- **The Director General Drug Control and Pharmacy**
Services, through Dr. Abas Khan Serving as Member of
the Committee Constituted via Notification dated
04.06.2024.
- 5- **Special Secretary to Chief Minister on Anti-Corruption,**
Khyber Pakhtunkhwa, Peshawar.
- 6- **Director General Health Services,**
Dr. Muhammad Saleem Director General Health Services,
warsak Road, Peshawar.

..... RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE
SERVICE TRIBUNALS ACT, 1973, AGAINST
THE IMPUGNED NOTIFICATION DATED 4TH OF
JUNE 2024 WHERE A BIASED COMMITTEE
HAS BEEN CONSTITUTED ALONG WITH TORS
TO HAVE AN ENQUIRY AGAINST ONLY UPTO
THE EXTENT OF APPELLANT SERVING AS
DIRECTOR GENERAL HEALTH. WHEREBY
SUBSEQUENTLY THE REPRESENTATION OF

THE APPELLANT HAS BEEN FILED BUT IN THE STIPULATED STATUTORY PERIOD OF TIME THE SAME IS NOT DECIDED AS YET. IN THE INSTANT APPEAL, THE IMPEND NOTIFICATION ALONG WITH SUB-COMMITTEES AND SUBSEQUENT EVENTS/ ACTIONS MAY ALSO BE SET ASIDE.

Respectfully Sheweth:

- 1- That the Appellant being an employee of Government of Khyber Pakhtunkhwa Health Department whereas he served in different cadres and his current position is well described in the heading of this appeal.
- 2- That during the course of his Services the then Secretary Health Government of Khyber Pakhtunkhwa (Respondent No.3) formulated a procurement committee comprising of 13 Members on 15.03.2023. (Copy of the notification is attached as annexure "A").
- 3- That against the formation of committee the appellant via letter No. 850-53/DGHS dated 19.04.2023 the appellant as a capacity of Director General Health Services requested the competent authority for de-notification of the procurement committee as the same is formulated against the policy of the Government. (Copy of the letter dated 19.04.2023 is attached as annexure "B").
- 4- That upon the receipt of the letter from the appellant Committee constituted on 15.03.2023 was de-notified on 27.04.2023 as well as the competent authority was also pleased to held in abeyance the process of procurement till further formation of committee. (Copy of notification annexure "C" & "C/1" respectively).
- 5- That the competent authority vides notification No.SOG/HD/1-35/Gen, notification/2023 dated 27.04.2023 a committee was constituted to Re-examine the procurement process along with its TORs. (Copy of the notification dated 27.04.2023 is attached as annexure "D")

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- 6- That vide Notification No. SOG /HD/ 1-35 /Gen. notification /2023 Dated 28/4/23, a committee was constituted for the purpose of selection and Rate contracting committee (S & RCC) and technical committee MCC in Public interest for frame work contracting as per KPPRA Act and Rules was constitute d to which the Appellant was also member in the instant letter the earlier Notification 15/3/2023 has been recalled. (Copy of the letter is attached as annexure "E").
7. That vide notification No. SO (Drugs)/ HD/ 7-1/ MCC- 2024 (S & RCC) Dated 30/5/2024, similar Kind of committee with same function and TOR was constituted for year 2024 and 2025, the Appellant was also member of that committee- (Copy of the notification dated 30.03.2024 is attached as Annexure "F").
8. That on 30.05.2024 via notification No.SO(Drugs) /HD /71 /MCC/2024(T&E) a Committee for technical and evaluation was also constituted. (Copy of the letter dated 30.05.2024 is attached as annexure "G").
9. That another bias Committee comprising of 5 members, known as inspection committee was also constituted on 30 May 2024 for inspecting the period of year 2024 and 2025 respondent No.4 being having a rivalry with the appellant is part of this one sided Committee. (Copy of the notification dated 30-May-2024 is attached as annexure "H").
10. That there were severe complaints against the Respondent No. 4, who was involved in Mal-practice in the process of Prepayment to whom the faith of ~~Appellant~~ has been handed over vide impugn notification Date 22-7-2024. (Copy of the decisions is attached as annexure "I").
11. That vide impugned Notification No. DS (C)/CMS/ KPS/ 2024-4/June/2024/121, a committee was constituted comprising of 6 members, to which the Respondent No. 4 is

4

also a member, who is also allegedly charge with complaint himself is to be a member of this Committee. The Appellant the strongly opposing the constitution of committee and the same was also agitated through a proper representation as duly required by law (Copies of the impugned notification and representation are attached as annexure J and K).

12. That Subsequently a sub- committee was also constituted on 22-7-2024 bearing No.8426-29/Admin to which the Respondent No. 4 was again nominated as a member, to which had previously been, strongly opposed by the appellant. (Copy of notification dated 22.07.2024 is attached as annexure "L").
13. That the constitution of a committee and then subsequent sub committees with a different term of reference is against the principle of natural justice and beyond the scope of E&D Rules provided a complete mechanism for such kind of enquiries.
14. That astonishingly respondent no.4 is also a member of the premier committee and also a member of the sub sequent committee formulated with different TORs.
15. That the appellant being a civil servant is tried by a special secretary to chief minister on anti-corruption Khyber Pakhtunkhwa who is respondent No.5 in the instant Appeal.
16. That the respondent had also initiated a disciplinary proceeding against the appellant without giving a chance to present himself before the bias Committee. (Copy of the initiation of inquiry is attached as annexure "M").
17. That on 26th April 2024 via Notification No. SOH(H-V)14-4/2024 the Services of the appellant has been suspended due to pendency of inquiry. (Copy of the suspension order is attached as annexure "N").

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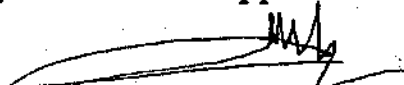
18. That on May 16th 2024 via Notification No.SO(E-I)/E & AD/9-133/2024 the appellant been transferred from the post of Director General Health Services and asked to report to Directorate General Health Services. (Copy of the transfer order dated May 16th 2024 is attached as annexure "O").
19. That the Composition of impugned Committee via letter dated 04.06.2024 headed by Respondent No.5 is against the principles by letting the Civil Servant at the hands of such Public functionaries. Similarly the appellant is having a strong observation over the respondent No.4 who is also member of the said Committee.
20. That the biased Committee while probing into the matter had limited its scope only to the period in which the appellant was serving as Director General. This is just because of the fact that respondent No.4 and 5 are having strong conflict of interest. (Copy of the letter dated 07.06.2024 is attached as annexure "P").
21. That on 19th of August 2024 via letter dated 19th Aug 2024 the illegally biased Committee constituted by the Chief Minister a Questionnaire been sent to the appellant. (Copy of the letter along with Questionnaire is attached as annexure "Q").
22. That the impugned Committee constituted on 4th June 2024 had further reduced to sub Committee on 6th September 2024 and respondent No.4 was again a member to this new sub Committee. (Copy of the order dated 6th September 2024 is attached as annexure "R").
23. That the notices were issued by the bias Committee for probing into matter and even the procedure held continue by issuing of charge sheet to the appellant. (Copies of the notices and charge sheet are attached as annexure "S" & "T").

6

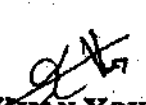
24. That for further analyzation another sub Committee was also constituted to analyze the demand, stock position of medicine of District health Officers and Medical Superintendents of DHQ Hospitals. (Copy of the office order for formation of Committee is attached as annexure "U").
25. That the appellant is a Grade BPS-20 Officer and the subcommittee constituted by the biased committee are much junior to the appellant.
26. Any other grounds with the permission of this Honourable Tribunal may be raised at the time of hearing of the present appeal.

It is, therefore, most respectfully prayed that on acceptance of this appeal, the impugned Committee constituted on 4th June 2024 may please be set aside along with subsequent events.

Any other relief deemed appropriate in the circumstances may also be granted to the Appellant.


Appellant

Through


BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

CERTIFICATE:

Certified that as per information furnished by my client no such like Service Appeal on the subject has earlier been filed before this hon'ble Tribunal.


ADVOCATE

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

C M No _____/2024
In
Service Appeal No. _____/2024

Dr. Shaukat Ali. APPELLANT

VERSUS

Govt of KP & others. RESPONDENTS

APPLICATION FOR INTERIM RELIEF

Respectfully Sheweth:

- 1- That the above titled Service Appeal has been filed before this Honourable Tribunal wherein no date has been fixed.
- 2- That the Appellant prays for interim relief on the following amongst other grounds:

GROUND

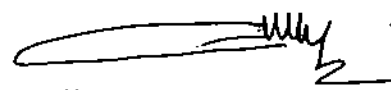
- A- That the grounds of the main Appeal may be read as an integral part of this application. Hence, the applicant has a good prima facie case and is sanguine about its success.
- B- That the balance of convenience also leans in favour of the Applicant and if the interim relief as prayed for is not granted he will suffer irreparable loss.
- C- That the Respondents are pressurizing the Applicant to obey the illegal impugned orders.
- E- That the Respondents want to make sure that the interest and right accrued to the Applicant by law is wasted.

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F- That more grounds/documents if any, will be submitted at the time of arguments with the permission of this Honourable Tribunal.

PRAYER:

It is, therefore, humbly prayed that on acceptance of this Application, the Committee constituted on 4th June 2024 along with Sub-committees and subsequent events/actions may kindly be restrained from further proceedings in to the matter and may be suspended till the final disposal of main appeal.



Applicant/Appellant

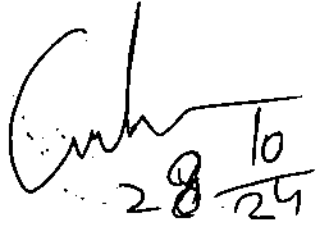
Through



BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

AFFIDAVIT!

I, Babar Khan Yousafzai Advocate, as per instructions of my client, do here by affirmed and declared on Oath that all the contents of this **application** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.


DEPONENT
28/10/24



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated: Peshawar, the 15/03/2023

9

Am² - A

NOTIFICATION:

No. SO (Drugs)/HD/7-1/MCC/2023. In supersession of all previous Notifications issued in this behalf, the Selection & Rate Contracting Committee (S&RCC) of Government Medicine Coordination Cell (MCC), Khyber Pakhtunkhwa is hereby constituted for the year 2023-2024 for framework contract as provided under KPPRA Rules, 2014 with the following composition and with immediate effect in the broader public interest:

S. No.	COMPOSITION (Name with Designation of officer)	STATUS
1.	Director General Drug Control & Pharmacy Services (DGDC&PS) Khyber Pakhtunkhwa	Chairman
2.	Additional Director General Health Services	Vice Chairman
3.	One Professor of Cardiology from any MTI of Peshawar	Member
4.	One Professor of Medicine from any MTI of Peshawar	Member
5.	One Professor of Surgery from any MTI of Peshawar	Member
6.	Chairman Department of Pharmacy University of Peshawar	Member
7.	Director Govt. MCC, Directorate General Drug Control & Pharmacy Services (DGDC&PS) Khyber Pakhtunkhwa	Member
8.	Director Quality Assurance (DGDC&PS) Peshawar	Member
9.	Director Finance, DOHS Peshawar	Member
10.	One District Health Officer, Khyber Pakhtunkhwa	Member
11.	Deputy Director (Drugs), DG DC&PS Khyber Pakhtunkhwa	Secretary/ Member
12.	Add. Director (Pharmacy Services), DG DC&PS Khyber Pakhtunkhwa	Member
13.	Any Co-Opted member/s	Member/s

Terms of Reference of the S&RCC, Government MCC includes the following:

1. To review the proposed changes/amendments in the Draft Bid Soliciting Documents (BSDs), if any, as submitted by the Technical Evaluation Committee Govt. MCC, as deem appropriate, for approval of the final BSDs of the Govt. MCC FY 2023-24.
2. To advertise tender/invite bids for centralized rate contracting of drugs/medicines, medical devices, surgical disposables, cotton related and non-drug items etc., through national competitive bidding as per approved BSDs of the Govt. MCC FY 2023-24.
3. To review the Bid Evaluation Report and Comparative Statement of the received bids, respectively, as submitted by the Technical Evaluation Committee for its final approval, in response to the advertisement published by the Selection & Rate Contracting Committee through its chairman.

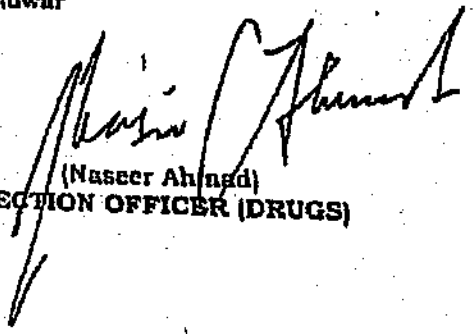
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4. To constitute sub-committee/s, evaluation team/s of experts, survey team/s and co-opt additional member/s, if required, for smooth conduction of its assigned tasks.
5. Fifty percent of the notified members or their representatives shall be the quorum of the S&RCC for its meeting.
6. Decisions shall be taken on the basis of simple majority of the Chairman and members present or their representatives, including the Co-opted member/s, through voting. The Chairman S&RCC shall have an additional casting vote which he/she may exercise to resolve a deadlock in case of decision making.
7. To approve and notify the final list of drugs/medicines, medical devices, surgical disposables, cotton related and non-drug items etc., as enlisted in the approved BSDn Govt. MCC FY 2023-24, via centralized rate contracting, for all the health institutions, vertical projects of the health department and all health facilities in the Prisons of Khyber Pakhtunkhwa to make purchases, according to their budgetary allocation/need.
8. In absence of the Chairman, the Vice Chairman will be responsible to carry out the tasks assigned to the Chairman.

SECRETARY HEALTH

Endorsement of Even Number and Dated:

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. All Hospital Directors, Medical Teaching Institutions, Khyber Pakhtunkhwa.
3. All DHOs/MSs of Health Institutions, Khyber Pakhtunkhwa.
4. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar
5. Members concerned.


(Naseer Ahmad)
SECTION OFFICER (DRUGS)



**DIRECTORATE GENERAL HEALTH SERVICES,
KHYBER PAKHTUNKHWA, PESHAWAR**

No. BSO-53/DGHS

Dated: 19/04/2023

To:

The PSO To Honorable Chief Minister,
Khyber Pakhtunkhwa, Peshawar.

Subject:

**REQUEST FOR DE-NOTIFICATION OF THE PROCUREMENT COMMITTEES OF
THE MCC AND CANCELLATION OF NOTICE INVITING TENDERS (NIT).**

R Sir,

I am pleased to solicit your attention to one of the most important issue regarding the subject captioned above that the Health Department vide its Notification No: SO (Drugs)MID/7-1/MCC/2023 dated 15th March 2023 wherein the department superseded all the previous Notifications issued on the matter, notified the Technical & Evaluation Committee (T&E) and Selection and Rate Contracting Committee (S&RCC) for the procurement of Medicines, Drugs and Non Drug Items for the Health Institutions of Khyber Pakhtunkhwa for the Financial Year 2023-24.

As in accordance with the Government of Khyber Pakhtunkhwa Notification vide No: SOI (N)9-5/1996(MCC) dated 16 May 1996, the Director General Health Services Khyber Pakhtunkhwa has been declared as the Officer In-Charge of the Govt. MCC and used to lead the Procurement Process of the MCC since then till 2022-23 and ought to continue the same practice.

Contrary to the Previously established practice, unfortunately this process was derailed and was unlawfully assigned to a Sub-ordinate Office in the created i.e. the DG Drug Control and Pharmacy Services, keeping aside the legitimate role of Director General Health Services Khyber Pakhtunkhwa, for the Implementation Units / Health Institutions of whom the procurement is deemed to be conducted for the Financial Year 2023-24.

This, if not managed properly and routed back to the legitimate Desk of Director General Health Services Khyber Pakhtunkhwa, will lead to infinite litigations, Intervention by the accountability Institutions and violation of the KPPRA rules, leading to hampering of the Effective Health Care Services Delivery across the Province and putting the Department to unnecessary pressure from the Stakeholders and Public.

Foregoing in view, it is humbly submitted that the Committees made so far, may kindly be De-notified immediately and the Notice Inviting Tender (NIT) Process carried out so far may be cancelled and put to an end. Further to that, the Proposal for Committees may please be retrieved from DGHS, and Notified by the Department, accordingly.


Director General Health Services
Khyber Pakhtunkhwa

C.C

1. PSO to Chief Secretary Govt. Of Khyber Pakhtunkhwa.
2. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Health Department.

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**CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA, PESHAWAR**
TEL: 091-9211728 FAX: 0210718

No. PSO/CMS/KP/1-2/2023
Dated Peshawar the 20th April, 2023.

To

The Secretary to Govt of Khyber Pakhtunkhwa
Health Department

2450
26-4-23

Subject: REQUEST FOR DE-NOTIFICATION OF THE PROCUREMENT
COMMITTEES OF THE MCC AND CANCELLATION OF NOTICE
INVITING TENDERS (NIT).

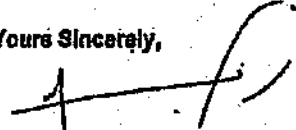
Dear Sir,

I am directed to refer to the subject cited above and to enclose herewith a letter received from DG Health Services wherein he has requested to De-notify the Procurement Committees of the MCC and cancellation of Notice Inviting Tenders for the procurement of Medicines, Drugs and Non-Drug Items for Health Institutions of KP for the Financial Year 2023-24.

The Honorable Chief Minister has directed to strictly examine the subject case in light of rules and submit a report.

You are therefore requested to please examine the case strictly and submit a report, please.

Yours Sincerely,



(Dr. Adnan Khan Behtani)
Principal Staff Officer to
Chief Minister
Khyber Pakhtunkhwa

Enclosed As Above:

Copy forwarded to:

1. DG Health Services, Khyber Pakhtunkhwa
2. PS to Principal Secretary to Chief Minister Khyber Pakhtunkhwa.

26/4/23

put up today
SO - project ✓

26/4


Principal Staff Officer to
Chief Minister
Khyber Pakhtunkhwa

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 27th April, 2023

NOTIFICATION:


No.SOG/HD/1-35/Gen.Notification/2023: The Competent authority is pleased to de-notify this Department Notifications No. SO(Drugs)/HD/7-1/MCC/2023 dated 15.03.2023 till final decision/recommendations of the inquiry committee constituted in this regard for re-examination of the Selection and Rate Contract Committee and MCC Technical committee in the public interest.

SECRETARY
GOVT: OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Endst. No. & date even:

Copy forwarded for information/necessary action to the:

1. Principal Staff Officer to Chief Minister Khyber Pakhtunkhwa, Peshawar.
2. PSO to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Director General Drugs Control and pharmacy Services Khyber Pakhtunkhwa.
5. PS to Secretary Health Department Khyber Pakhtunkhwa, Peshawar
6. PS to Special Secretary (B&D/E&A), Health Department


(SALEEM-ULLAH KHAN)
Section Officer (General)
(091-9210863)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 27th April, 2023

NOTIFICATION:

No.SOG/HD/1-35/Gen.Notification/2023: The Competent Authority is pleased to hold in abeyance the process of Procurement as well as Notice Inviting Tenders (NIT) till decision/recommendations of the committee for the procurement initiated vide notifications No. SO(Drugs)/HD/7-1/MCC/2023 dated 15/03/2023 for Medicines, Drugs and Non-Drug items for Health Institutions of Khyber Pakhtunkhwa with immediate effect in the public interest.

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Endst. No. & date even:

Copy forwarded for information/necessary action to the:

1. Principal Staff Officer to Chief Minister Khyber Pakhtunkhwa, Peshawar.
2. PSO to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Director General Drugs Control and Pharmacy Services Khyber Pakhtunkhwa.
5. Chief Planning Officer, Health Department Khyber Pakhtunkhwa, Peshawar.
6. Director, IMU Health Department Khyber Pakhtunkhwa, Peshawar.
7. PS to Secretary Health Department Khyber Pakhtunkhwa, Peshawar.
8. PS to Special Secretary (B&D/E&A), Health Department.
9. Master File.

(SALEEM ULLAH KHAN)
Section Officer (General)
(091-9210863)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Dated Peshawar, the 27th April, 2023

NOTIFICATION:

No.SOG/ID/1-35/Gen.Notification/2023: The Competent authority is pleased to constitute the following Committee to re-examine the Procurement Process as per the directives of Honorable Chief Minister Khyber Pakhtunkhwa against the S&RCC alongwith its terms and condition for procurements of medicines constituted vide this Department's Notifications No. SO (Drugs)/ID/7-1/MCC/2023 dated 15.03.2023. The Committee shall submit a detail report to this Department within a week time positively:-

- | | |
|---|----------|
| 1. Chief Planning Officer Health Department | Chairman |
| 2. Director, IMU Health Department | Member |
| 3. Deputy Secretary (Budget) Health Department | Member |
| 4. Section Officer (General) Health Department | Member |
| 5. Representative from (KPPRA) or any other co-opted member | |

ToRs of the Committee are as follows:-

- i. The Committee shall overview and examine the legal statute of Selection & Rates Contract Committee & Technical Committee as per KPPRA Act & Rules and any other relevant law;
- ii. The Committee shall overview the Nomenclature of Selection & Rates Contract Committee & Technical Committee as per KPPRA Act & Rules and any other relevant law;
- iii. The Committee shall overview the Terms of reference of Selection & Rates Contract Committee & Technical Committee according to the KPPRA Act & Rules;
- iv. The Committee shall make recommendations for composition of S&RCC or any other committee in accordance with the Rules ibid;
- v. The Committee shall identify weaknesses or gaps for improvement in the procurement process, BSDs or Evaluation Criteria etc. by following the specified Rules ibid;
- vi. Any other task assigned by the competent forum/authority.

**SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Endst. No. & date even:

Copy forwarded for information/necessary action to the:

1. Principal Staff Officer to Chief Minister Khyber Pakhtunkhwa, Peshawar.
2. PSO to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Chief Planning Officer Health Department Khyber Pakhtunkhwa, Peshawar.
4. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Director General Drugs Control and Pharmacy Services Khyber Pakhtunkhwa.
6. Director IMU Health Department Khyber Pakhtunkhwa, Peshawar.
7. PS to Secretary Health Department Khyber Pakhtunkhwa, Peshawar
8. PS to Special Secretary (B&D/E&A), Health Department.
9. PA to Deputy Secretary (B&D), Health Department.
10. Master File

**(SAEEM ULLAH KHAN)
Section Officer (General)
(091-9210863)**



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 28th April, 2023

NOTIFICATION:

No.SOG/HD/1-35/Gen.Notification/2023: In pursuance of decisions/recommendations of the Committee notified vide this Department's Notification No. SOG/HD/1-35/Gen. Notification/2023 dated 27.04.2023, in its meeting on 27.04.2023 at 1500hrs for re-examination of Selection and Rate Contracting Committee (S&RCC) MCC, the Competent authority is pleased to withdraw this Department's Notifications No. SO (Drugs)/HD/7-1/MCC/2023 dated 15.03.2023 regarding notifications of Selection and Rate Contracting Committee (S&RCC) and Technical Committee MCC in the best public interest.

Consequent upon the above, the proposed Committees regarding Selection and Rate Contracting Committee (S&RCC) MCC and Technical Committee MCC for framework contracting as per KPPRA Act & Rules is hereby re-constituted in accordance with the decisions/recommendations made by the Committee reflected in minutes of meeting held on 27.04.2023;

The S&RCC committee nomenclature:

- | | |
|--|------------------|
| 1. Director General Health Services Khyber Pakhtunkhwa | Chairperson |
| 2. Director Procurement cell DGHS | Member/Secretary |
| 3. Chief Drug Inspector | Member |
| 4. District Health Officer Peshawar | Member |
| 5. MS Police & Services Hospital | Member |
| 6. Director Accounts DGHS | Member |
| 7. Deputy Director Admin DGHS | Member |
| 8. Representative of Planning Cell Health Department | Member |
| 9. Representative from KPPRA | Observer |
| 10. Any other co-opt member to be nominated by the Chair | |

Terms of reference of S&RCC:

The S&RCC will do the framework contracting as per KPPRA Act & Rules made thereunder for Drugs/Medicines, Medical Devices, Surgical Disposables and Non-Drug Items. The following shall be the functions and responsibilities of the committee:

- Preparing bid solicitation documents and overseeing to ensure consistency of procurement proceedings with rules;
- Carrying out technical as well as financial evaluation of the bids;
- Preparing evaluation report as provided in these rules;
- Making recommendations for the award of contract to the competent authority concerned;
- Constitute sub-committees for technical evaluation; and
- Perform any other function ancillary and incidental to the above.

The Technical and Evaluation (T&E) Committee: -

- | | |
|---|------------------|
| 1. Additional DGHS (Admin) | Convener |
| 2. Director Medicine Coordination Cell | Member |
| 3. Director Public Health DGHS | Member/Secretary |
| 4. Analyst from Drug Testing Laboratory | Member |
| 5. Deputy Director Medicine Coordination Cell | Member |
| 6. Deputy Director procurement cell DGHS | Member |
| 7. MS Molvi Ameer Shah Memorial Hospital | Member |
| 8. Deputy Director Pharmacy Services | Member |
| 9. Pharmacist Police & Services Hospital | Member |
| 10. Senior Drug Inspector Peshawar | Member |
| 11. Representative from KPPRA | Observer |
| 12. Any other co-opt member | |

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Terms of Reference of T&E Committee:

- a) The ToRs of the technical committee may be formulated in light to Rule 32(B) of KPPRA Rules 2014 by S&RCC (Procurement Committee) as & when required.
- b) Any task assigned by the S&RCC (Procurement Committee).

Inspection Committee for Physical Inspection of Premises of firm:

1. One Drug Inspectors
2. One member from MCC
3. One member from Management Cadre Doctors/Procurement Cell
4. One DHO or nominee
5. Representative from KPPRA as Observer
6. Any other member included by the DGHS

Terms of Reference:

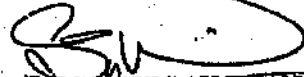
- a) The ToRs of the Inspection committee may be formulated in light to Rule 32(B) of KPPRA Rules 2014 by S&RCC (Procurement Committee) as & when required.
- b) Any task assigned by the S&RCC (Procurement Committee).

**SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Encls. No. & date even:

Copy forwarded for information/necessary action to the:

1. Principal Staff Officer to Chief Minister Khyber Pakhtunkhwa, Peshawar.
2. PSO to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Managing Director KP-PPRA, Peshawar.
4. Chief Planning Officer Health Department Khyber Pakhtunkhwa, Peshawar.
5. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
6. Director General Drugs Control and Pharmacy Services Khyber Pakhtunkhwa.
7. Director IMU Health Department Khyber Pakhtunkhwa, Peshawar.
8. Section Officer (Drugs) Health Department Khyber Pakhtunkhwa, Peshawar.
9. PS to Secretary Health Department Khyber Pakhtunkhwa, Peshawar
10. PS to Special Secretary (B&D/E&A), Health Department.
11. PA to Deputy Secretary (B&D), Health Department.
12. Master File


(SALEEM ULLAH KHAN)
Section Officer (General)
(091-9210863)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated: Peshawar, the 30th May, 2024

NOTIFICATION

No. SO (Drugs) / HD / 17-1 / MCC / 2024 (S&RCC). In supersession of all previous Notifications issued in this behalf, the Selection & Rate Contracting Committee (S&RCC) of Government Medicine Coordination Cell (MCC), Khyber Pakhtunkhwa is hereby constituted for the Year, 2024-25 with the following composition and with immediate effect in the broader public interest:

S. No.	COMPOSITION	STATUS
1.	Director General, Health Services (DGHS), Khyber Pakhtunkhwa.	Chairman
2.	Addl. Director General (M&E) at DGHS Office, Peshawar.	Secretary/Member
3.	Director General, Drug Control & Pharmacy Services (DG-DC & PS), Khyber Pakhtunkhwa.	Member
4.	Director Finance/Accounts at DGHS Office, Peshawar.	Member
5.	Professor of Cardiology at Peshawar Institute of Cardiology.	Member
6.	Professor of Medicines at MTI-HMC, Peshawar.	Member
7.	Professor of Surgery at MTI-LRH, Peshawar.	Member
8.	Chairman, Department of Pharmacy, University of Peshawar.	Member
9.	One District Health Officer.	Member
10.	Additional Director (Drugs)/CDI-KP at DG-DC & PS, Peshawar.	Member
11.	Additional Director (Pharmacy Services) at DG-DC & PS Office.	Member
12.	Any Co-opted member(s), if required	

Terms of Reference of the S&RCC, Government MCC include the following:

1. The function and responsibilities of procurement committee(s) shall be as per Rule-32 (B) of the KPPRA Rules, 2014.
2. To review the proposed changes/amendments in the Draft Bid Soliciting Documents (BSDs), if any, as submitted by the Technical Evaluation Committee, Govt. MCC for approval of the final BSDs of the Govt. MCC for the FY, 2024-25.
3. To advertise tender/invite bids for centralized rate contracting of Drugs/Medicines Medical Devices, Surgical Disposables, Cotton related and Non Drug Items etc., through national competitive bidding as per approved BSDs of the Govt. MCC for FY, 2024-25.
4. To review the Bid Evaluation Report and Comparative Statement of the received bids submitted by Technical & Evaluation Committee for its final approval in response to the advertisement, published by S&RCC through its chairman.
5. To constitute sub-committee(s), evaluation team(s) of experts, survey team(s) and co-opt additional member(s), if required, for smooth conduction of its assigned tasks.
6. Fifty percent of the notified members or their representatives shall be the quorum of the S&RCC for its meeting.
7. Decisions shall be taken on the basis of simple majority of the Chairman and members or their representatives, including the Co-opted member(s) through voting. The Chairman of T&E Committee shall have an additional casting vote which he may exercise to resolve a deadlock in case of decision making.
8. To approve and notify the final list of Drugs/Medicines Medical Devices, Surgical Disposables, Cotton related and Non Drug Items etc, as listed in the approved BSDs of the Govt. MCC for the FY 2024-25 via centralized rate contracting for all the Health Institutions, Vertical Projects of Health Departments and Health Facilities in the Prisons of Khyber Pakhtunkhwa to make purchases according to their need and budgetary allocation.

SECRETARY HEALTH

Endorsement of Even Number and Date

Copy forwarded to:-

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar
2. Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar
3. All Hospital Directors, Medical Teaching Institutions in Khyber Pakhtunkhwa
4. All DHOs / MSs of Health Institutions
5. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.

(Naseer Ahmad)
SECTION OFFICER (DRUGS)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated: Peshawar, the 30th May, 2024

NOTIFICATION

No. SO (Drugs) / HD / 7-1 / MCC / 2024 (T&E), in supersession of all previous Notifications Issued in this behalf, the Technical & Evaluation (T&E) Committee of Government Medicine Coordination Cell (MCC), Khyber Pakhtunkhwa is hereby constituted for the Year, 2024-25 with the following composition and with immediate effect in the broader public interest:

S. No.	COMPOSITION	STATUS
1.	Additional Director General (M&E) at DGHS Office.	Chairman
2.	Deputy Director (Govt: MCC) at DG-DC & PS Peshawar.	Secretary/Member
3.	Medical Superintendent, Services Hospital, Peshawar	Member
4.	Principal Pharmacist, Services Hospital, Peshawar	Member
5.	Addl. Director (Govt: MCC) at DG-DC & PS Peshawar.	Member
6.	Specialist in Medicine, Naseer Ullah Khan Babar Memorial Hospital.	Member
7.	Specialist in Surgery, Naseer Ullah Khan Babar Memorial Hospital.	Member
8.	Pediatrician, Services Hospital, Peshawar.	Member
9.	Anesthesiologist, Services Hospital, Peshawar.	Member
10.	Gynecologist, Mouvi Ameer Shah Memorial Hospital, Peshawar.	Member
11.	Deputy Director (Pharmacy Services) at DG-DC & PS Peshawar.	Member
12.	Any Co-opted member(s), if required.	

Terms of Reference of the T&E Committee, Government MCC include the following:

- To assist and provide technical support to the Selection & Rate Contracting Committee (S&RCC) of the Government MCC by making recommendations and/or proposals for approval of the S&RCC in relation to the following tasks:-
 - Propose changes and/or recommendations in the Part II (Procurement specific provisions)/changeable part of the Draft BSDs, in accordance with the applicable government rules & regulations, and/or in view of lessons learnt and change in situation, if any and
 - To receive and open bids in response to advertisement, published by the S&RCC through its chairman and
 - Conduct technical evaluation of bids received as per approved BSDs and
 - Prepare and submit Technical Bid Evaluation Report and Comparative Statement Report to the S&RCC for final approval.
- To constitute sub-committee(s), evaluation team(s) of experts and co-opt additional member/s and / or take any other appropriate action/s, if deemed required, for smooth conduction of evaluation as per its assigned tasks.
- Fifty percent of the notified members or their representatives shall be the quorum of the T&E Committee for its meeting.
- Decisions shall be taken on the basis of simple majority of the Chairman and members or their representatives, including the Co-opted member(s) through voting. The Chairman of T&E Committee shall have an additional casting vote which he may exercise to resolve a deadlock in case of decision making.

SECRETARY HEALTH

Endorsement of Even Number and Date

Copy forwarded to:-

- Director General Health Services, Khyber Pakhtunkhwa, Peshawar
- Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar
- All Hospital Directors, Medical Teaching Institutions in Khyber Pakhtunkhwa
- All DHOs / MSs of Health Institutions
- PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.

(Naseer Ahmad)
SECTION OFFICER (DRUGS)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated: Peshawar, the 30th May, 2024

NOTIFICATION

No. SO (Drugs) / HD / 7-1/ MCC / 2024 (ICs). In supersession of all previous Notifications issued in this behalf, the Inspection Committees (ICs) of Government Medicine Coordination Cell (MCC), Khyber Pakhtunkhwa is hereby constituted for the Year, 2024-25 with the following composition and with immediate effect in the broader public interest:

S.No.	COMPOSITION	STATUS
1.	One Chief Drug Inspector/Senior Drug Inspector/Drug Inspector	Member
2.	One from Govt. MCC Committees.	Member
3.	One Hospital Pharmacist.	Member
4.	One from Public Sector Universities (Deptt. of Pharmacy), preferably expert in Pharmaceuticals.	Member
5.	Any Co-opted member(s), if required.	Member

Terms of Reference of the Inspection Committee, Government MCC:-

1. The Inspection Committee shall undertake to work in light of Rule 32 (B) of the KPPRA Rules, 2014.
2. The Inspection Committee shall abide by the procedures and indicators, specified in the Bid Solicitation Documents (BSDs).
3. Nominees against the above composition shall be decided by the S&RCC and to indicate one member as convener.
4. Any task assigned by the Govt. MCC Committees.

SECRETARY HEALTH

Endorsement of Even Number and Date

Copy forwarded to:-

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar
2. Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar
3. All Hospital Directors, Medical Teaching Institutions in Khyber Pakhtunkhwa
4. All DHOs / MSs of Health Institutions
5. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.

(Naseer Ahmad)
SECTION OFFICER (DRUGS)

(21)

AMC- I

Appeal No. KP-PPRA/GRR/Appeal/145 of 2022

M/S UNISA (Pvt.) Ltd. Industry, Main G.T. Road, Adamzai, Akora Khattak, District Nowshera.

..... Appellant

Vs

1. Secretary Health Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Old FATA Secretariat, Warsak Road, Peshawar.
3. Director General, Health Services, Old FATA Secretariat, Warsak Road, Peshawar.
4. Director, Government Medical Coordination Cell (MCC), Old FATA Secretariat, Warsak Road, Peshawar.
5. Chairman, S & RCC Committee, Old FATA Secretariat, Warsak Road, Peshawar.
6. Director, Drug Testing Laboratory (DTL), Phase-5, Hayatabad, Peshawar.

..... Respondents

Appeal Proceedings:

This Appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7 of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S UNISA (Pvt.) Ltd. Industry, Main G.T. Road, Adamzai, Akora Khattak, District Nowshera (hereinafter "the Appellant") against the following:

1. Secretary, Health Government of Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Old FATA Secretariat, Warsak Road, Peshawar.
3. Director General, Health Services, Old FATA Secretariat, Warsak Road, Peshawar.
4. Director, Government Medical Coordination Cell (MCC), Old FATA Secretariat, Warsak Road, Peshawar.
5. Chairman, S & RCC Committee, Old FATA Secretariat, Warsak Road, Peshawar.
6. Director, Drug Testing Laboratory (DTL), Phase-5, Hayatabad, Peshawar.

(hereinafter "the Respondents").

Upon receipt of the subject Appeal under Section 35 of the KP-PPRA Act, 2012, the same was admitted for regular hearing, whereafter, the Managing Director, KP-PPRA nominated Dr. Syed Said Badshah Bukhari, Ex-Finance Secretary, Govt. of Khyber Pakhtunkhwa, as Technical Assistant from the approved list of Technical Assistants, under Rule 10 (2) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 and entrusted him to submit the recommendations vide letter No. KP-PPRA/GRR/Appeal/145 of 2022, dated 30.08.2022 (Flag A) and provided a copy of Memorandum of Appeal along with Annexes (Flag B).

The nominated Technical Assistant soon after his nomination for handling the Appeal in hand, issued summons to the Appellant and Respondents to appear in the office of KP-PPRA in person or through an authorized representative along with relevant record and witnesses (if any) on 07th September 2022 at 1100 hours (Flags C and D). Interlocutory order for status quo was issued until the date fixed (Flag E).

In compliance to the summons so issued by the Technical Assistant, the Appellant and Respondents appeared before the Technical Assistant in the office of KP-PPRA on the date and time so fixed and were heard at length. Not only the Appellant was afforded ample opportunity of hearing but the available record including the memo of Appeal as well as Bid Solicitation Documents of the Procuring Entity (Respondent) were duly considered and deliberated upon. M/S Aqib Ismail, CEO, UNISA, Khalid Ahmad and M. Shoaib, focal persons represented the Appellant, and Dr. Tariq Ahmad, Director MCC, Dr. Inamul Haq, D.D.(PS), MCC, Mr. Zahid Ali

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Khan, Director, DTL, and Mr. Fawad Alam, AD (Drugs/MCC) the Respondents. Attendance sheet of the hearing is attached (Flag F).

Salient Features of the Case enshrined under the Appeal are given below:

2. Brief facts of the case are reproduced below:

- a) *As per Memorandum of Appeal, the appellant, M/S UNISA(Pvt.) Ltd. Akora-Khattak Nowshera are manufacturer of medical devices i.e., Disposable Ordinary Syringes, Disposable Auto Disable Syringes, Cord Clamp and IV Fluid Administration set, and has been supplying their quality products to Govt. Hospitals throughout Pakistan, including Khyber Pakhtunkhwa, for the last several years, without any complaint from the end-users.*
- b) *The Appellant applied for centralized tender of Khyber Pakhtunkhwa Govt. MCC Tender for Medicine/Surgical Disposables for 2022-23, for items including formulary No: 1087 (IV Fluid Administration Set) and formulary No:993 (Disposable Syringe Auto Disable Sec). The bids were invited under Single Stage-Two Envelope procedure, with allocation of 30 marks to financial bid and 70 marks to technical bid, with further break-up on several sub-criteria, including 10 marks each under mandatory criteria for evaluation reports of samples by the Surgeons Committee of MCC and Drug Testing Laboratory (DTL), for conformity to specified parameters, including minimum tube length of 150 cm for IV Fluid Administration Set. The Appellant had provided the two samples of the prescribed minimum tube length of 150 cm for the formulary No: 1087 (IV Fluid Administration Set) for the said evaluation. During the evaluation, the Surgeons Committee of MCC passed the sample and 10 marks were awarded to the Appellant on this basis, while the DTL rejected their similar sample and were awarded zero marks, which meant that their product IV Fluid Administration Set had been disqualified from the competition on this basis. The Appellant claims that the samples submitted by their Company were up to the required length of 150 cm, but has wrongly been declared by the DTL as of 134 cm, and hence their bid was rejected. They lodged a complaint against the evaluation, but their grievances had not been properly resolved so far.*
- c) *The Appellant had also applied for formulary No:993 (Disposable Syringe Auto Disable Sec) and were awarded 62 marks and their competitor M/S Amson was awarded 61 marks for the same item in the Technical Scores Proforma (TSP)/ Bid Evaluation Report (BER). After sharing the TSP/BER, the procurement entity announced financial bids opening of the technically qualified bidders, and, consequently, all bid rates were opened and disclosed to the procurement entity. As the ranking of the bids were known to the procuring entity at this stage, it was very easy to manipulate the bids in order to change the ranking of the bids. Subsequently, the procuring entity revised the BER and 02 marks were deducted from their bid, reducing their marks from 62 to 60, while 02 additional marks were awarded to M/S Amson for the said product, raising their total marks from 61 to 63. The Appellant had quoted the rate of Rs.8.89/Syringe, while M/S Amson quoted Rs.9.92/Syringe, as such, their bid was still in winning position on the prescribed criteria in the final evaluation. But on the last day just before 03 hours of uploading the final comparative statement, again extra 03 extra marks were given to M/S Amson for the said product, raising their total marks from 63 to 66, and thus M/s Amson was declared the successful bidder.*

d) *The Appellant has prayed that:*

- i. as the samples for formulary No. 1087: IV Fluid Administration Set, Brand Name Uniset, batch No: 220320 supplied by them to the procuring entity, and kept under the custody of Govt. MCC and DTL are of the 150 cm length, that shall be remeasured for the tube length in presence of their representative, and if that turns out to be 150cm, then their bid shall be given 10 marks of DTL evaluation and the final comparative statement with others competitors shall be revised accordingly, for further processing of the procurement case;
- ii. for the formulary No. 993 (Disposable Auto Disable Syringe 5cc), the additional marks given to M/S Amson i.e., from 61 to 63 after opening of financial bids and its further raising from 63 to 66 on the last hours of announcing the final comparative statement may be inquired into, and the final comparative statement shall be re-evaluated on the basis of 62 marks of M/S UNISA(Pvt.)Ltd. and 61 marks of M/S Amson; and
- iii. interim reliefs be given in their favour as they have quoted lower prices of Rs.21.89/IV set in formulary No. 1087 and Rs. 8.89/Syringe in formulary No. 993 compared to Rs. 22/IV set and Rs. 9.92/Syringe of the M/S Amson.

Findings:

3. The following points were selected for consideration and proceedings in the appeal:
 - a) The accuracy of the DTL report declaring the tube length of the Appellant formulary No. 1087 sample of IV Fluid Administration Set as 134 cm instead of the required length of 150 cm, leading to the disqualification of the Appellant's bid for that item, and the fair way for removal of the doubts therein.
 - b) The legality of changes in the technical marks of the Appellant and their competitor, M/S Amson, particularly after opening of the financial bids, resulting into changes in the ranking of their bids for formulary No. 993 (Disposable Auto Disable Syringe 5cc).
 - c) The conformity of grievance application/complaint disposal by the procuring entity with the rules, and the impact of non-conformity, if any, on the validity of the procurement process.
4. The Appellant and his representatives stated the brief facts of the case by referring to the Memorandum of Appeal and documents annexed thereto. They stated that:
 - a) M/s UNISA (Pvt.) Ltd. Akora Khattak, Nowshera are manufacturer of medical devices i.e., Disposable Ordinary Syringes, Disposable Auto Disable Syringes, Cord Clamp and IV Fluid Administration Sets. Their Company has good reputation in the market, and supplies quality items to Govt. Hospitals on low prices with no compromise on quality. The Company had been supplying various items in millions of packs to Govt. Hospitals in Khyber Pakhtunkhwa for the last several years, without any complaint from the end-users. The Company was also among the 17th largest exporter of medical devices for 2020-21.
 - b) In response to Govt. MCC advertisement through different newspapers as well as on official website of Health Department for procurement of Medicine and Surgical Disposable for the financial year 2022-23 under Single Stage – Two Envelope procedure, with last date for submission of bids as 20th April 2022, their Company submitted technical and financial bids (Flag G). The bid was made for the formulary No: 992 (Disposable Syringe Auto Disable 3cc), 993 (Disposable Syringe Auto Disable 5cc) 997 (Disposable Ordinary Syringe 10cc), 1087 (IV Fluid

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Administration Set), 1088 (I.V. Fluid Administration Set with Y-Port) and 941 (Cord Clamp), according to the specifications given in the Bid Solicitation Document (BSD) (Flag H).

- c) The evaluation criteria have mentioned 70:30 marks for technical bid and financial bid, respectively. The 70 marks were further allocated to different parameters, including 10 marks each for evaluation/testing of the products by the Surgeons Committee of MCC and Drug Testing Laboratory (DTL), for conformity to specified parameters, including the minimum tube length of IV Fluid Administration Set as 150 cm (Flag I).
- d) After evaluation of the technical bids, physical inspection of the factory and sample evaluation of the Surgeon Committee and DTL, the Appellant received Technical Score Proforma (TSP) (Flag J).
- e) The TSP indicated that the DTL has awarded zero marks to the Appellant's sample for formulary No: 1087 (IV Fluid Administration Set). A copy of the DTL report for the Appellant's sample for formulary No: 1087 (IV Fluid Administration Set) shows that the sample was disqualified on the ground that the tube length of IV Fluid Administration Set was found as 134cm instead of 150cm. As this was a mandatory criterion in the bidding process, the evaluation rendered the Appellant's bid disqualified on this basis. But the Surgeons Committee report for the same product declared the Appellant's sample according to the required specifications, including the minimum tube length of 150cm. The Appellant informally approached an officer of the DTL, and the sample of IV Fluid Administration Set was measured in presence of their Company's representatives, and the tube length was accurately found as 150cm. The officer informed that earlier the sample was erroneously measured as 134 cm due to burden of work. The Appellant offered to give this statement on oath, if needed. They further stated that there could be some confusion/error in the report of the DTL in the case, and probably the DTL has mixed up their sample with that of another bidder, the M/S NISA who is supplying IV Fluid Administration Set with tube length of 134cm to the market, and produced sealed packet of such product with 134 cm tube length. They further stated that IV Fluid Administration Set is a regulated product, and its certificate issued by the Drugs Regulatory Authority of Pakistan (DRAP) mentions the tube length as 150cm., which is also in conformity with the ISO specifications and guidelines.
- f) Feeling aggrieved, the Appellant submitted a grievance application/complaint dated 16.07.2022, in the matter to the procuring entity (Flag K). The meeting of the Grievances Redressal Committee (GRC) of the procuring entity was held on 29.07.2022 (Flag L), but the Committee informed that the mandate of the Committee is only for re-totalling of the marks, and did not resolve the Appellant's complaint.
- g) Feeling still aggrieved, the Appellant submitted another application/ complaint, dated 01.08.2022, in the case to the procuring entity (Flag M) and the procurement entity formed a committee to remeasure the size of the sample of IV Fluid Administration Set. The Committee was comprising members who had issued the contested BER/TSP. The Committee held its meeting but the Appellant or its representative was not invited to the meeting and issued the verdict and up-held the decision of the DTL, without mentioning the remeasurement process and its determined tube length (Flag N). It tantamount to sitting in judgment on own case. The composition of the Committee was not in accordance with the GRC, notified by the Administrative Department, and had no authority to dispose of the grievances in the case. Further, the Committee had one member, who had served earlier as Drug Inspector in District Nowshera, and has biased approach towards the Appellant

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Company. On a question by the forum about lodging of any earlier complaint on this point, their reply was in negative.

- h) They stated in support of their claim of meeting the specified tube length of IV Fluid Administration Set by their sample, that in a recent procurement case, the Lady Reading Hospital has approved similar sample of the same product of the same batch No. 220320 supplied by the Appellant/Supplier, and purchase orders have been issued. The end-user has no complaint whatsoever in that case.
 - i) As a matter of fact, the conformity of the supplies to the approved specifications does not end with the Committee, but continues onward, and can be reported or acted against by the end-users or Drug Inspectors at any time, and prescribed could be taken to check any irregularity, if detected.
 - j) The Appellant had also applied for formulary No: 993 (Disposable Syringe Auto Disable 5cc) and were awarded 62 marks and their competitor M/S Amson was awarded 61 marks for the same item in the Technical Scores Proforma (TSP)/Bid Evaluation Report (BER). After sharing the TSP/BER, the procurement entity announced financial bids opening of the technically qualified bidders, and, consequently, all bid rates were disclosed to the procurement entity. As the ranking of the bids were known to the procuring entity at this stage, it was very easy to manipulate the bids in order change the ranking of the bids. Subsequently, the procuring entity revised the TSP/BER and 02 marks were deducted from their bid, reducing its total from 62 to 60, while 02 additional marks were awarded to M/S Amson for the said product, raising their total marks from 61 to 63. The Appellant had quoted Rs.8.89/Syringe, while M/s Amson quoted Rs.9.92/Syringe, as such, the Appellant's bid was still in the winning position on the prescribed criteria in the final evaluation. But, violating the rules and the standard procedure and derogatory to all norms of justice and fair play, on the last day before 03 hours of uploading the final comparative statement, the procuring entity again awarded 03 extra marks to M/S Amson for the said product, raising their total marks from 63 to 66, and thus M/s Amson was declared the successful bidder. Against this unfair play, the Appellant has lodged another grievance application/complaint to the Secretary, Health Department, with copies to all concerned on 09.08.2022 (Flag O), but the fate of that is yet unknown to the Appellant. The inordinate delay in disposal of the complaint is violation of the Grievance Redressal Rules.
 - k) Feeling continuously aggrieved in the case, this appeal has been lodged with the KPPRA for redressal under the KPPRA Act and rules.
 - l) They reiterated their prayers stated in their appeal.
5. The representatives of the respondents stated that the procuring entity/respondents conducted the procurement proceedings in accordance with the rules, Bid Solicitation Documents (BSD) and merit. They took pains to explain the detailed procedure of procurement in the Health Department. The Selection & Rates Contracting Committee (S&RCC) is the final authority in all such cases. The criteria for evaluation of the bids, physical inspections of the production facilities and samples testing are reflected in the BSD. Accordingly, the samples of the Appellant for the formulary No: 1087 (IV Fluid Administration Set) were tested by both the Surgeons Committee of MCC and Drug Testing Laboratory (DTL), for conformity to specified parameters, including the minimum tube length of IV Fluid Administration Set as 150 cm. The Appellant was awarded 10 marks on the basis of evaluation report of the Surgeons Committee of MCC and zero marks on the basis of report of the DTL. As passing both the evaluation parameters was a mandatory criterion, the Appellant's bid was declared disqualified for further processing. The grievance applications/complaints of the Appellant have been decided on

merit in the prescribed manner. The TSP/BER was issued on tentative basis, and was corrected on the objections raised by the bidders. On the questions from the forum regarding the clarification of points raised in the appeal and in the hearing, pertaining to the conflicting results of the Surgeons Committee of MCC and DTL, the precise parameters of the sample testing, the prescribed procedure for the corrections in the TSP/BER, the accuracy of the of the informal remeasurement of the samples in the DTL, identity of the end-users in the case and adherence to the prescribed procedure for the grievance redressal, they responded that the samples testing by the Surgeons Committee of MCC and DTL are separate parameters in the mandatory criteria. The former evaluates the samples on the basis of their field experience and the latter on physical measurements and analyses, and two evaluations may be different. One of the representatives of the Respondents stated that the Surgeons Committee of MCC has no mandate to evaluate the length of the samples and their evaluation is of no value. They further stated that the criteria for samples testing demands for supplying appropriate quantities of the relevant stuff, which is not fixed. There is no detailed provision for fixing the number of items to be tested out of the sample provided for testing or decision rules for variation in the finding of different items in the same sample. There is no prescribed procedure for independent remeasurement of the sample, if the initial results are contested by the applicants/bidders. As per standard procedure, the tentative TSP/BER is corrected on the valid objections of the bidders, prior to opening of the financial bids. However, in this case, the procedure was not followed by making changes in the awarded marks to technical bids after the opening of the financial bids, in order to avoid further complications. The Director, DTL stated that the Appellant has approached an officer of the DTL for the informal measurement, but he was not the authorized officer for doing so. The end-user in this procurement is the S&RCC and not the Govt. Hospitals who issue the purchase orders. The grievance applications/complaints of the Appellant were disposed of in the prescribed manner by the Committee constituted by the S&RCC, which is the final authority in this regard. However, the Appellant/ Complainant was not invited or heard in the process. The GRC notified by the Administrative Department has been constituted, after the disposal of the grievance applications/complaints of the Appellant, and was not in the field at that time. Regarding the processing/disposal of the complaint against the changes in the TSP/BER, after opening of the financial bids and its validity, they stated that the complaint in the matter is not in their knowledge, and Secretary, Health Department, the addressee, can explain the position in this regard. The Respondents produced copies of three decisions of KPPRA in earlier appeals against the DG, Health Services and other, and suggested these as precedence for the case (Flag P). After conclusion of their statement, they produced a written reply in the Case (Flag Q).

6. In the rejoinder, the Appellant stated that the procuring entity has grossly violated the rules and regulations and merit of the case. His two complaints have been rejected in arbitrary manner, while his last complaint is still pending with the procuring entity.
7. The Memoranda of Appeal, attached documents, verbal and written submissions of the parties indicate that the parties are at variance on the accuracy of the Appellant's sample measurement of formulary No: 1087 (IV Fluid Administration Set) by the DTL, validity of changes in the marks in the TSP/BER, particularly after opening of the financial bids, and disposal/pendency of the Appellant's complaints in the case.
8. The decisions of the KPPRA in disposal of earlier appeals against DG, Health Services and others, produced by the Respondents as a persuasive precedence for deciding the instant case were examined (Flag P), but these decisions do not contain any *ratio decidendi*. Its *obiter dicta*

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are also having no relevance to the present case. Further, these decisions do not meet the basic criteria for adopting as binding precedence; viz,

- a) Similarity in material facts of the cases;
- b) Hierarchy of the Courts/deciding forum; and
- c) Ratio decidendi and obiter dicta in the decided case.

Therefore, these cases provide no guidance in deciding the instant case.

9. The testing of the samples in the case is the responsibility of both the Surgeons Committee of MCC and Drug Testing Laboratory (DTL). The former has passed the Appellant sample of formulary No: 1087 (IV Fluid Administration Set), while the latter has rejected it on the basis of tube length having been found as 134cm instead of the required length of 150cm. After the complaints of the Appellant, challenging the accuracy of the DTL report on the point as a possible error or mistake and giving various supportive arguments for the same, it was imperative to remeasure the sample in presence of the Appellant, which was a simple step of remeasurement of the sample tube length with a measuring tape. But the procuring entity has failed to address and dispose of the case in a meaning manner, with no justification. This factual issue needs to be addressed on its merit.
10. The changes in the tentative TSP/BER shared with the bidders in the case is a fair step, and should have been concluded on merit, prior to opening of the financial bids. But resorting to this practice, after opening of the financial bids, leading to changes in the ranking of the highest bid in the case, is highly objectionable, and indicates the gross negligence or malafide or both of the concerned officer/committee in the bid evaluation. The case needs proper inquiry and rectification on merit.
11. The procuring entity has disposed of two complaints of the Appellant in the case, without complying with the mandatory provisions of Rule 6 of Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017, which provides a comprehensive procedure for disposal of complaint.
12. Under the said Rule, the aggrieved bidder shall be summoned by the GRC, and he shall be entitled to attend the proceedings, and shall be heard at least once during the proceedings. The decision on the complaint shall be recorded along with reasons and conveyed to the complainant within three (3) days of its finalization. The 3rd complaint of the Appellant dated 09.08.2022 regarding the unauthorized changes in the TSP/BER is still pending with the Respondents, and has not been disposed of within prescribed period of five (5) days. The failure to dispose of the complaints in accordance with the provisions of the Grievance Redressal Rules, 2017 constitutes misconduct against the defaulting employee(s) of the procuring entity. By violating the said rule, the procuring entity has committed irregularity, which may lead to pronouncement of the mis-procurement and consequent negative effects on the defaulting employees. These lapses and irregularities also compel the aggrieved bidder for lodging of appeal with KPPRA, thus causing unwarranted delays in finalization of the procurement process.
13. It is also added that in most of the cases of procurement appeals, initial stay order is issued for a short period of few days, normally till the date fixed, in order to avoid chances of miscarriage of justice, if the procurement process continues during the pendency of the appeals. This is a legal requirement and also facilitates the procuring entity in damage control arising from their

irregularities in the procurement process. The stay order can be vacated on the application of the affected party, if justified. However, in this case, the Respondents did not argue for the vacation of the initial stay order in their statements and arguments in the forum, but the Respondents have criticized the stay order in their written reply/letter to the MD, KPPRA on the grounds that "granting stay order on distorted facts at such critical time of natural catastrophe will lead to serious consequences faced by patients in Health facilities". However, it needs to be realized that the occurrence of any catastrophe does not stop the operation of law and dispensation of justice. Otherwise ignoring this fact would lead to serious complications for the procuring entity and can render their procurement proceedings null and void, with concomitant complications. By criticizing the statutory process of issuing a stay order, the Health Department cannot shift their shortcomings and irregularities to the quasi-judicial working of KPPRA in disposal of procurement appeals. Further, as a foul and unethical tactics, more than once, the beneficiaries of such irregularities and their sponsors in the Department have resorted to twisted media campaigns and propaganda against the statutory working of KPPRA, with the aim to conceal the factual position and avoid accountability for the irregularities, which shall be strongly condemned and checked against.

Recommendations of the Technical Assistant:

- 14. In view of the foregoing discussion and conclusions, and in terms of rule 10(8) of GRR read with item 22 of the KPPRA Guidelines on Grievance Redressal, the Technical Assistant recommends that the appeal may be accepted to the extent of following actions:
 - a) The procuring entity shall be directed to re-measure the Appellant's Sample for IV Fluid Administration Set in his presence and representative of the DTL, and if found of specified length of 150cm, he shall be awarded the 10 marks allocated for the DTL evaluation, and proceed further in the procurement process.
 - b) The changes in the marks in the TSP/BER, particularly after the opening of the financial bids, shall be departmentally probed into through a senior officer having no connection with the case. Further actions, including disciplinary action against the defaulting employees, if warranted, may be taken in light of conclusions of the probe.
 - c) The procuring entity must ensure strict compliance with the procurement law and rules, to eliminate or reduce the grievances of bidders and ensuing appeal cases therefrom.

Decision of the Authority:

- 15. Memo of Appeal along with the available record, proceedings conducted by the Technical Assistant (TA) so nominated in the instant Appeal, statements/documents submitted by the parties thereto, and recommendations of the Technical Assistant have been perused and examined threadbare.
- 16. In the light of above, the Authority, under the provision of Section 35 of the KP-PPRA Act, 2012 while agreeing with the recommendations of the Technical Assistant directs the head of the PE i.e. DGHS to re-measure the Appellant's Sample for IV Fluid Administration Set in his presence and representative of the DTL, and if found of specified length of 150cm, he shall be awarded the 10 marks allocated for the DTL evaluation, and proceed further in the procurement process within five (5) days under intimation to Authority. The Secretary Health being administrative head of the Procuring Entity is requested to ensure that the changes in the marks in the TSP/BER, particularly after opening of the financial bids are probe into through a senior officer having no connection with the case and MCC procurements. Further actions, including

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disciplinary action against the defaulting employees, if warranted, may be taken in light of conclusions of the probe.

-Sd-
Managing Director
KP Public Procurement Regulatory Authority

Dated: 12/09/2022

CA 164
Registrar of Appeals, KP-PPRA

Registrar of Appeals
Government of Khyber Pakhtunkhwa,
Public Procurement Regulatory Authority

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Appeal No. KP-PPRA/GRR/Appeal/ 146 of 2022

M/S UNISA (Pvt.) Ltd. Industry, Main G.T. Road, Adamzai, Akora Khattak, District Nowshera.

..... Appellant

Vs

1. Secretary Health Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Old FATA Secretariat, Warsak Road, Peshawar.
3. Director General, Health Services, Old FATA Secretariat, Warsak Road, Peshawar.
4. Director, Government Medical Coordination Cell (MCC), Old FATA Secretariat, Warsak Road, Peshawar.
5. Chairman, S & RCC Committee, Old FATA Secretariat, Warsak Road, Peshawar.

..... Respondents

Appeal Proceedings:

This Appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7 of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S UNISA (Pvt.) Ltd. Industry, Main G.T. Road, Adamzai, Akora Khattak, District Nowshera (hereinafter "the Appellant") against the following:

1. Secretary, Health Government of Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Old FATA Secretariat, Warsak Road, Peshawar.
3. Director General, Health Services, Old FATA Secretariat, Warsak Road, Peshawar.
4. Director, Government Medical Coordination Cell (MCC), Old FATA Secretariat, Warsak Road, Peshawar.
5. Chairman, S & RCC Committee, Old FATA Secretariat, Warsak Road, Peshawar.

(hereinafter "the Respondents").

Upon receipt of the subject Appeal under Section 35 of the KP-PPRA Act, 2012, the same was admitted for regular hearing, whereafter, the Managing Director, KP-PPRA nominated Dr. Syed Said Badshah Bukhari, Ex-Finance Secretary, Govt. of Khyber Pakhtunkhwa, as Technical Assistant from the approved list of Technical Assistants, under Rule 10 (2) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 and entrusted him to submit the recommendations vide letter No. KP-PPRA/GRR/Appeal/146 of 2022, dated 30.08.2022 (Flag A) and provided a copy of Memorandum of Appeal along with Annexes (Flag B).

The nominated Technical Assistant soon after his nomination for handling the Appeal in hand, issued summons to the Appellant and Respondents to appear in the office of KP-PPRA in person or through an authorized representative along with relevant record and witnesses (if any) on 07th September 2022 at 1200 hours (Flags C and D). Interlocutory order for status quo was issued until the date fixed (Flag E).

In compliance to the summons so issued by the Technical Assistant, the Appellant and Respondents appeared before the Technical Assistant in the office of KP-PPRA on the date and time so fixed and were heard at length. Not only the Appellant was afforded ample opportunity of hearing but the available record including the memo of Appeal as well as Bid Solicitation Documents of the Procuring Entity (Respondent) were duly considered and deliberated upon. M/S Aqib Ismail, CEO, UNISA, Khalid Ahmad and M. Shoaib, focal persons represented the

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Appellant, and Dr. Tariq Ahmad, Director MCC, Dr. Inamul Haq, D.D (PS), MCC, and Mr. Fawad Alam, A.D. (Drugs/MCC) the Respondents. Attendance sheet of the hearing is attached (Flag F).

Sallent Features of the Case enshrined under the Appeal are given below:

2. Brief facts of the case are reproduced below:

- a) *As per Memorandum of Appeal, the Appellant, M/S Unisa (Pvt.) Ltd. Akora Khattak Nowshera are manufacturer of Quality IV Fluids product. The Company has been supplying their products to Govt. Hospitals of Khyber Pakhtunkhwa since 2013, without any complaint from the end-users. They have also supplied major quantities to MSD Quetta, all district of Punjab, AJ&K and PIMS Hospital, Islamabad. The Company was ranked 17th in the export award list for 2020-21.*
- b) *The Appellant's Company has never been disqualified on the basis of the inspection criteria in the past, but has been disqualified in the Technical Report of Govt. MCC 2022-23, on the basis of deficiencies pointed out in the inspection report prepared by their Inspection Team, and some other deficiencies pertaining to their financial status. The Appellant claims that their Company/factory meets all the five mandatory criteria, set in the Bidding Documents, and have no other deficiencies for the Tender. The Appellant's Company has been cleared on the same mandatory points by the Drugs Regulatory Authority of Pakistan (DRAP), and have been issued current Good Medical Practices (cGMP) and other certificates, which were handed over to the Inspection Team of Govt. MCC on their visit to the factory. The Appellant's Company was previously inspected for Tender 2021-22, by Govt. MCC, and were awarded full marks. It is surprising that the same Company has been disqualified after 8-9 months. The Appellant submitted a grievance application/complaint to the procuring entity, but the same was disposed of in arbitrary and evasive manner. Consequently, another grievance application/complaint was submitted to the procuring entity, but the fate of the same is not known to them. Feeling aggrieved, this appeal has been lodged with KPPRA for redressal.*
- c) *The Appellant has prayed that their Company may be re-inspected for better marking for the qualification of Govt. MCC Tender 2022 -2023, which will promote better competition and save the money of poor patients, because they offer the lowest prices with quality. Only two bidders have participated in the bidding for IV Fluids in Govt. MCC Tender, and their disqualification will discourage competition in the floated Tender. And an interim relief be granted in the case till disposal of their grievance application/complaint, already submitted to the procuring entity.*

Findings:

3. The following points were selected for consideration and proceedings in the appeal:
 - a) The accuracy of the report of the Appellant factory by the Inspection Team of Govt. MCC, and the factual position of the other deficiencies reflected in the Technical Report of Govt. MCC.
 - b) The conformity of disposal of the first grievance application/complaint, submitted by the Appellant to the procuring entity in the case, with the rules, and the status of the 2nd grievance application/complaint in the case.

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4. The Appellant and his representatives stated the brief facts of the case by referring to the Memorandum of Appeal and documents annexed thereto. They stated that:
- a) M/s UNISA (Pvt.) Ltd. Akorn Khattak, Nowshera are manufacturer of high-quality medicines and medical disposables, including IV Fluids product. The Company has been supplying their products to Govt. Hospitals of Khyber Pakhtunkhwa and other provinces since 2013, without any complaint from the end-users. The Company keeps high standards and has never been disqualified on the basis of inspection criteria in the past. The Company was ranked 17th in the export award list for 2020-21.
 - b) However, the Appellant's Company has been disqualified in the Technical Report of Govt. MCC 2022-23, on the basis of deficiencies pointed out in the inspection report of the Inspection Team and some other deficiencies pertaining to their financial status. They stated the mandatory criteria for Inspection in Govt. MCC Tender as:
 - i. Availability of calibrated equipment for analysis of quoted items along with validated methods of testing and adherence of GLP in all Labs and Functional Stability Chamber.
 - ii. Raw Materials in process and finished good storage.
 - iii. Adherence to cGMP guidelines (as schedule-B of DRAP)
 - iv. Adequate availability of Qualified & Relevant Human Resource
 - v. Availability of functional and Validated HVAC.
 - c) They stated that their Company/factory meets all the five mandatory criteria, set in the Bidding Documents, and have no other deficiencies for the Tender. The Appellant's Company have been cleared on the same mandatory points by the Drugs Regulatory Authority of Pakistan (DRAP), and have been issued cGMP and other certificates, which were handed over to the Inspection Team of Govt. MCC on their visit to the factory. The Appellant's Company was previously inspected for Tender 2021-22, by Govt. MCC, and were awarded full marks. It is surprising that the same Company has been disqualified after 8-9 months.
 - d) They explained their position against the points reflected in the Inspection Report of the Govt. MCC, in the grievance application/complaint to the procuring entity, but the same was disposed of in arbitrary and evasive manner. Consequently, another grievance application/complaint was submitted to the procuring entity, but the fate of the same is not known to them. They briefly stated the points reflected in the Inspection Report of the Govt. MCC, and their factual position/reply, as reproduced below:
 - i. In quarantine area temperature recorded was 32.5 C and 10 % RH
Reply: The Hygrometer of the said area was fully functional on the spot, and was/is in proper working condition. The temperature and humidity had been under observation and regularly recorded.
 - ii. Unavailability of Temperature Log sheet
Reply: The temperature and humidity are recorded on regular basis and log sheets are available in the same area. The recorded sheets of the same month are available and can be presented to anyone, whenever required.
 - iii. SOP Regarding Storage condition of Quarantine area
Reply: The SOP of concerned area was/is available and had been placed in the same section.

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iv. HVAC was not functional at RMS

Reply: The HVAC of the said area is functional and has been in proper working condition. A separate dehumidifier has been installed in the premises for better control. A back-up generator is also installed. However, on the inspection day the light fluctuation was on extreme and its functioning was not up to the mark for a while.

v. Activities in In-process Quality Control Lab

Reply: In-process quality control lab is fully functional and have strong qualified team to run this Lab. The instruments mentioned in the report for IPQC are not mandatory, as the tests are conducted regularly by the Quality Control Lab.

vi. GSP IN Finish Goods Store

Reply: The Good Storage Practice (GSP) are strictly followed by the Company and it was even appreciated by the Federal Team in GMP inspection in last months and the GSP certificate was issued.

vii. Overall poor temperature control in Production area

Reply: The temperature and humidity in all production area are controlled and up to the required level all the time as we have efficient HVAC system with powerful chillers systems. The AHU verification Certificate is available for the purpose.

viii. HVAC Validation documents

Reply: HVAC Validation was available and also presented to the Inspection Team on the spot, and all validation documents, including AHU verification certificate, were handed over to them in a booklet form.

xiv. GLP was not observed

Reply: It was only mentioned for one product i.e., Unisol para. This product has been recently registered and its validation process completed. The validation documents and testing method of Unisol para are available for ready reference. Needless to mention that the Company is ISO Certified (9001, 2015, 14001-2015, 45001-2018) and got GMP Certificate that also covers the GLP required standards.

x. In microbiology section no positive control test

Reply: On the day of inspection, the positive control test (Fungal and Bacterial) test was available, and the invoice of positive control (Fungal & Bacterial) is available for ready reference.

xi. Technical staff list

Reply: Mr. Haseeb ul Haq is Quality Assurance Manager at Unisa Pharmaceutical and his documents were had also been submitted as QAM to DRAP as per their requirement at the time of inspection. Mr. Asif Shah (Pharm D) was available as technical staff on the spot at inspection time and his documents are also available in booklet of Aqib Trading Company, which was presented to the Inspection Team.

xii. SOPs for RO Plant

Reply: SOPS and Labeling of all the machines have been done as per requirement, and related documents are available for ready reference.

xiv. Integrity test of Cartridge filter of RO Plant

Reply: As the Cartridge filters are disposable and the SOP for changing these filters in timely manner after certain duration has been prepared. The duration limit has been set according to working capacity of filters, and the log book of replacement of these filters was presented to the Inspection Team.

xv. Financial turnover

Reply: The Company's financial turnover is more than 900 million and the financial statements and income tax returns are available for ready reference.

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xvi. COA and GD of items

Reply: Sodium Acetate, COA, GD and COA of concerned items are available, and can be checked.

xvii. Agreement acceptance letter or tender contract

Reply: Needless to mention that agreement acceptance letter is the same thing as tender contract and it fulfills all the requirements of the contract.

xviii. API/S Source accreditation

Reply: API/S Source of different countries like Germany are already accredited and their ISO and CA certificates have already been submitted.

5. The Appellant submitted the above points/position to the procuring entity, vide letter dated 18.07.2022 (Flag G), and the same was considered by the Govt. MCC Grievance Redressal Committee during its meeting held on 29th July 2022, attended by the complainant/Appellant (Flag H), but they verbally informed them that the Committee mandate is only for retotaling of the score and not to decide the fate of such grievances. The Appellant submitted another complaint dated 04.08.2022 to the procurement entity (Flag I), but the fate of its disposal is not known to them. Feeling aggrieved, this appeal has been lodged with KPPRA for redressal. On a forum question as why couldn't the Appellant wait for the disposal of his complaint, pending with the procuring entity, his reply was that the complaint has been pending since long and has not been disposed of in the stipulated time period and may even not be disposed of at all, in a fair manner.
6. The Appellant prayed that their Company may be re-inspected for better marking for the qualification of Govt. MCC Tender 2022 -2023, which will promote better competition and save the money of poor patients, because they offer the lowest prices with quality. Only two bidders have participated in the bidding for IV Fluids in Govt. MCC Tender, and their disqualification will discourage competition in the Tender. And the interim relief granted may be continued in the case till decision on their grievance application/complaint already submitted to the procuring entity.
7. The representatives of the respondents stated that the procuring entity/respondents conducted the procurement proceedings in accordance with the rules, Bid Solicitation Documents (BSD) and merit. They elaborated the standard procedure for evaluation and inspection for the technical eligibility of the applicants/bidders. They informed that the grievances/objections of the Appellant were duly considered in the meeting of Grievance Redressal committee in its meeting held on 29th July 2022, and the Appellant representative attended that meeting. However, the minutes of that meeting have not been communicated to them. The 2nd complaint of the Appellant (formally submitted in writing) is still pending with the procuring entity for disposal. On a forum question whether they are proceeding to dispose of the pending grievance application/complaint of the Appellant in the prescribed manner, their reply was in affirmative.
8. In the rejoinder, the Appellant reiterated their requests/prayers mentioned in the appeal.
9. The procuring entity has provided some documents, which have been received in KPPRA on 08.09.2022 (Flag J), a day after the conclusion of the hearing in the case, and without any prior notice to the Appellant or copies to him and without the permission of the hearing forum.

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10. The Memoranda of Appeal, attached documents, verbal and written submissions of the parties indicate that the parties are at variance on the accuracy of the Inspection Report of the Appellants factory of Govt. MCC Inspection Team, and status of other documents regarding the financial status etc., and disposal/pendency of the Appellant's complaints in the case.
11. The inspection of the production facilities of all applicants/bidders in the case is the responsibility of the procuring entity, which has been conducted in the standard manner, and report thereon communicated to concerned applicants/bidders. However, the Appellant has challenged the contents of that report regarding the deficiencies of the Appellant' Company/factory highlighted in the report, leading to disqualification of the Appellant' Company/bid. The Appellant submitted his grievances/objections to the procuring entity, and a meeting of the Grievance Redressal Committee was held on 29th July 2022, but the grievances/objections of the Appellant were not addressed in objective and substantial manner. Minutes of the meeting were also not communicated to the Appellant, whose representatives attended the meeting. The second complaint of the Appellant is still pending with the procuring entity, and has not been disposed of in the prescribed time of five (5) days.
12. Rule 6 of Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 contains mandatory provisions regarding disposal of complaints in the procurement case, which provides a comprehensive procedure for disposal for complaints.
13. Under the said Rule, the aggrieved bidder shall be summoned by the GRC, and he shall be entitled to attend the proceedings, and shall be heard at least once during the proceedings. The decision on the complaint shall be recorded along with reasons and conveyed to the complainant within three (3) days of its finalization. The first complaint/grievances of the Appellant in the case have not been disposed of in conformity with the said Rule. The 2nd complaint of the Appellant in the case, dated 10.08.2022, is still pending with the Respondents, and has not been disposed of within prescribed period of five (5) days. The failure to dispose of the complaints in accordance with the provisions of the Grievance Redressal Rules, 2017 constitutes misconduct against the defaulting employee(s) of the procuring entity. By violating the said rule, the procuring entity has committed irregularity, which may lead to pronouncement of the mis-procurement and consequent negative effects on the defaulting employees/procuring entity. These lapses and irregularities also compel the aggrieved bidder for lodging of appeal with KPPRA, thus causing unwarranted delays in finalization of the procurement process.
14. It is also added that in most of the cases of procurement appeals, initial stay order is issued for a short period of few days, normally until the date fixed, in order to avoid chances of miscarriage of justice, if the procurement process continues during the pendency of the appeals. This is a legal requirement and also facilitates the procuring entity in damage control arising from their irregularities in the procurement process. The stay order can be vacated on the application of the affected party, if justified. However, in this case, the Respondents did not argue for the vacation of the initial stay order in their statements and arguments during the hearing at the forum, however, the Respondents have criticized the stay order in their written reply/letter to the MD, KPPRA on the grounds that "granting stay order on distorted facts at such critical time of natural catastrophe will lead to serious consequences faced by patients in Health

facilities". However, it needs to be realized that the occurrence of any catastrophe does not stop the operation of law and dispensation of justice. Otherwise ignoring this fact would lead to serious complications or the procuring entity and can render their procurement proceedings null and void, with concomitant complication. By criticizing the statutory process of issuing a stay order, the Health Department cannot shift their shortcomings and irregularities to the quasi-judicial working of KPPRA in disposal of procurement appeals. Further, as a foul and unethical tactics, more than once, the beneficiaries of such irregularities and their sponsors in the Department have resorted to twisted media campaigns and propaganda against the statutory working of KPPRA, with the aim to conceal the factual position and avoid accountability for the irregularities, which shall be strongly condemned and checked against.

15. Some documents have been provided by the procuring entity, received in KPPRA on 08.09.2022 (Flag J), a day after the conclusion of the hearing in the case, and without any prior notice to the Appellant or copies to him and without the permission of the hearing forum. In fact, any documents pertaining to the appeal should be produced before or during hearing of the case, and shall be presented/argued in presence of the other party, who could respond to the same. The late and time-barred submission of the documents annul its value, whatever that may be. However, going through these document reveals that the procuring entity contends to use the previous decisions of KPPRA in earlier appeal cases as persuasive/binding precedence in the instant case. However, the factual position is that these decisions do not contain any *ratio decidendi*. Its *obiter dicta* are also having no relevance to the present case. Further, these decisions do not meet the basic criteria for adopting as persuasive or binding precedence; viz,
- a) Similarity in material facts of the cases;
 - b) Hierarchy of the relevant Courts/deciding *fora*; and
 - c) Ratio decidendi and obiter dicta in the decided case.

Therefore, these cases provide no guidance in deciding the instant case.

Recommendations of the Technical Assistant:

16. In view of the foregoing discussion and conclusions, and in terms of rule 10(8) of GRR read with item 22 of the KPPRA Guidelines on Grievance Redressal, the Technical Assistant recommends that the appeal may be accepted to the extent of following actions:
- a) The procuring entity shall be directed to re-inspect the Appellant's factory for the requisite parameters, at his risk and cost, compile a report on that basis and proceed further in the procurement process in the prescribed manner.
 - b) The procuring entity must ensure strict compliance with the procurement law and rules, and avoid violations of the Grievance Redressal Rules, 2017 and Guidelines notified for the purpose.

Decision of the Authority:

17. Memo of Appeal along with the available record, proceedings conducted by the Technical Assistant (TA) so nominated in the instant Appeal, statements/documents submitted by the parties thereto, and recommendations of the Technical Assistant have been perused and examined threadbare.

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18. In the light of above, the Authority, under the provision of Section 35 of the KP-PPRA Act, 2012 while agreeing with the recommendations of the Technical Assistant directs the head of the Procuring Entity i.e. DGHS to re-inspect the Appellant's factory for the requisite parameters, at his risk and cost, compile a report on that basis within five (5) working days, submit the same to the Administrative head of the Procuring Entity and proceed further in the procurement process in the prescribed manner under intimation to the Authority.

-Sd-
Managing Director
KP Public Procurement Regulatory Authority

CA NY
Registrar of Appeals, KP-PPRA

Dated: 12/09/2022

Registrar of Appeals
Government of Khyber Pakhtunkhwa,
Public Procurement Regulatory Authority

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Appeal No. KPPRA/GRR/Appeal/58 of 2020

M/S Hashir Surgical Services, Address: Office # 5, Second Floor, Syed's Tower, Opposite Income Tax Office, University Road, Peshawar.

-----Appellant

Vs.

1. Director General Health Services, Khyber Pakhtunkhwa.
2. Govt. Medicine Coordination Cell (MCC), Directorate General Health Services, Khyber Pakhtunkhwa.
3. Secretary Health Department, Govt. of Khyber Pakhtunkhwa.

-----Respondents

Appeal Proceedings:

This appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7(1)(c) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S Hashir Surgical Services, Address: Office # 5, Second Floor, Syed's Tower, Opposite Income Tax Office, University Road, Peshawar (hereinafter "Appellant") against the followings.

1. Director General Health Services, Khyber Pakhtunkhwa,
2. Govt. Medicine Coordination Cell (MCC), Directorate General Health Services, Khyber Pakhtunkhwa
3. Secretary Health Department, Govt. of Khyber Pakhtunkhwa.

(hereinafter "Respondents")

Upon receipt of the subject appeal under Section 35 of the KPPRA Act, 2012, the same was admitted for regular hearing where after the Managing Director, KPPRA nominated Mr. Khalid Khan, Ex-Chief Drug Analyst, Health Department, Government of Khyber Pakhtunkhwa and Engr. Amjad Shamsheer, Executive Engineer, PHE Division, District Bannu nominated as panel of Technical Assistant(s) among the approved list of Technical Assistants under Rule 10 (2) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 and entrusted him to submit his recommendations vide No. KPPRA/GRR/Appeal/58 of 2020 dated 08.12.2020 (Annex-I)

The panel of Technical Assistants soon after the nomination for handling the appeal in hand issued summons to appellant and respondents dated 10.12.2020 to appear before the panel of Technical Assistants in KPPRA Office in person or by an authorized representative along with relevant documents and witnesses if any on Friday, December 18, 2020 at 11:00 AM (Annex-II).

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In compliance to the summons so issued, the appellant and respondents appeared before the panel of Technical Assistants in KPPRA Office on the date and time so fixed and were heard at length. Not only the appellant was afforded ample opportunity of hearing but the available record including the memo of appeal as well as Bidding Documents were duly considered and deliberated. Similarly, Respondents/Procuring Entity through Dr Abbas Khan Chief Drug Inspector KP, Dr Muhammad Fahim Additional Director DG Office and Nasir Ahmad SO (D) Health Department produced the entire record and were heard in detail as well.

Salient Features of the case along with Findings of the Panel of Technical Assistants are given below:

1. That the Director General Health Services Khyber Pakhtunkhwa published an Invitation for Bids through "Government Medicine Coordination Cell (MCC)", Director General Health Services Khyber Pakhtunkhwa Peshawar for Selection and Rate Contracting of Drugs/Medical Devices Surgical Disposables and Non-Drug Items for the Year 2020-21. (Annexed-III)
2. That the Appellant submitted bids for various items wherein for Items No, 1011, 1012, 1013 and 1014 i.e. LV cannula of different Gauge/size.
3. That the Final Evaluation Report/Comparative Statement was prepared on 12-10-2020 wherein, the appellant bids for Items No. 1011, 1012, 1013 and 1014 i.e. LV Cannula of different Gauge/Size were declared as highest in merit points. (Annexed-IV)
4. That the approved rates of Drugs /Medicines, Surgical Disposables, Medical Devices and other Non-Drug Items of Govt. MCC for the Financial Year 2020-21 was issued on 16-10-2020 wherein, for the Items No. 1011, 1012, 1013 and 1014 i.e. LV Cannula of different Gauge/Size Rates/Bids were not approved in spite of best evaluated bids were available for the reasons best known to Govt. MCC and Director General Health Services Khyber Pakhtunkhwa Peshawar.
5. That the appellant filed a complaint under Section 35(1)(a) of Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 before the worthy Secretary Health Department /Respondent No. 3 on 19-10-2020 vide diary No. 12633, which is pending before him and not decided within stipulated time period.
6. That the Respondents in their written reply relies on that the items were withheld due to Court case and have not been finalized on the basis of some other issues agitated by the respondent firm in the Court of Law for which opinion of the Law Department was obtained whereby the Department has been allowed to file CPLA.
7. Whereas the finalizations of the said items are still pending for which the Law Department has been requested again as claimed by Health Department in its reply.

Finding: During the process of hearing the appellant submitted various above mentioned annexed letters/ Documents and requested to direct/revisit and approved the rates of items No. 1011, 1012, 1013 and 1014 i.e. LV cannula of different Gauge/ size by the Respondents No.1 (Director General

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Services KP) and 2 (Govt. MCC) being best merit point evaluated as highest ranking fair bids. The respondents in their written reply could not substantiate any court order which could have been relied upon to reach a conclusion that the Honourable court has directed the respondents to stop the procurement process.

Recommendations of the Panel of Technical Assistants:

In light of above facts and findings, apparently there seems no solid grounds or justification over which the procurement entity (Health Department) has either cancelled or suspended or stopped the procurement process fully or partially. The Department has stopped the procurement process partially for few items, of specific bidders merely on the plea that another competitor has filed a case in court of law. Health Department could not produce any such court order whereby it has been directed to stop the procurement Process. It is therefore recommended that instant appeal of M/S Hashir Surgical Services may be accepted to the extent that the procurement entity may be directed to proceed and award contract to the best evaluated (highest ranked) bidder as per Bid Evaluation Report (BER).

It is also recommended that the Health Department should adopt the Procurement process as per procurement rules (for goods) of KPPRA in letter in spirit. In the instant case Health Department was not clear about their process of procurement and adopted a mixture of two different procurement processes. The bids were called on single stage two envelope systems but process adopted was for post-qualification system. In future they should adopt one of the processes clearly mentioned in the KPPRA rules for goods.

Decision of the Authority:

Memo of appeal along with available record, proceedings conducted by the panel of Technical Assistants so nominated in the instant appeal and statements submitted by the parties thereto have been perused and examined threadbare. Since the approved rates of Drugs/Medicines, Surgical Disposables, Medical Devices and other Non-Drug Items of Govt. MCC for the Financial Year 2020-21 was issued on 16-10-2020 wherein, for the items No. 1011, 1012, 1013 and 1014 i.e. I.V cannula of different Gauge/ size rates/bids were not approved by the Procuring Entity/Respondent(s) even after fulfilling all the codal formalities and since there seems no solid grounds or justification over which the Procuring Entity/Respondent(s) has either cancelled or suspended or stopped the procurement process fully or partially. The respondent has stopped the procurement process partially for few items, on the plea that another competitor has filed a case in the Court of Law while the Procuring Entity/Respondent(s) could not produce any such Court Order which could have been relied upon to reach a conclusion that the honourable court has directed the respondent to stop the procurement process. To the contrary the decision of the Honourable Peshawar Court High, Peshawar in a Writ Petition vide No. 99-P/2020, dated 17.09.2020 is reproduced below:

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"Dispose of this petition in terms of directing the petitioner that as and when some contract for the supply of the medical equipments is published in future, he may apply for the same and the findings of the Grievance Redressal Mechanism of the DG Health Services, KPK as well as the Appellate Authority i.e. KPPRA would not come in his way and his request would be considered without being influenced from any such finding"

Consequently, in light of the order of the August High Court Peshawar which has not been rendered upset till date, the Board of Directors (BoD) under the provision of Section 35 of the KPPRA Act, 2012 read with Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 has reached to the conclusion that while complying with the said orders of the August High Court Peshawar it is decided that the procurement process will continue purely in line with KPPRA Act and Procurement Rules.

Therefore, the appeal of the appellant firm M/S Hashir Surgical Services is accepted and the procuring entity/respondent(s) is hereby directed to proceed further and award the contract under Section 28(e) of the KPPRA Act, 2012 to the bidder whose bid is responsive and is determined as the best evaluated bid as defined in Section 2(1)(c)(ii) of the Act *ibid*.

During proceeding of the appeal, an impleadment application was received to the Authority from M/S Al-Hamd Enterprises, Karachi. The applicant was afforded an ample opportunity of hearing and was summoned vide No. KPPRA/GRR/Appeal/58 of 2020, dated 31.12.2020. The applicant attended the Authority and was accordingly heard. Therefore, the impleadment application of Al-Hamd Enterprises Karachi is also disposed of in accordance with the terms of the decision of the appeal.

**Managing Director, KPPRA in the capacity of Secretary to the (BoD)
Khyber Pakhtunkhwa Public Procurement Regulatory Authority**

Dated: _____

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APPEAL No. KPPRA/GRR/Appeal/91 of 2021

M/S Adcare Pharma, through its CEO, Chaudary Fazal Hussain, Head Office: House No. 309-D Satellite Town Rawalpindi.

Appellant

Versus

1. Director General, Health Service, Chairman, S&RCC Govt. MCC, Khyber Pakhtunkhwa, Peshawar.
2. Director, Government Medicine Coordination Cell (MCC), Peshawar.
3. Chairperson, T&E Committee MCC, Peshawar.
4. Director General, Drug Control and Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
5. Secretary, Health Government of Khyber Pakhtunkhwa, Peshawar.

Respondents

Appel Proceedings:

This appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7(1)(c) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S Adcare Pharma, through its CEO, Chaudary Fazal Hussain, Head Office: House No. 309-D Satellite Town Rawalpindi (hereinafter "the Appellant") against the followings:

1. Director General, Health Service, Chairman, S&RCC Govt. MCC, Khyber Pakhtunkhwa, Peshawar.
2. Director, Government Medicine Coordination Cell (MCC), Peshawar.
3. Chairperson, T&E Committee MCC, Peshawar.
4. Director General, Drug Control and Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
5. Secretary, Health Government of Khyber Pakhtunkhwa, Peshawar.

(hereinafter "the Respondents").

Upon receipt of the subject appeal under Section 35 of the KPPRA Act, 2012, the same was admitted for regular hearing where after the Managing Director, KPPRA nominated Dr. Syed Said Badshah Bukhari, Ex-Finance Secretary, Khyber Pakhtunkhwa, Mr. Muhammad Fakher-e-Alam Khan, Chief Coordinator, Commissionerate Afghan Refugees, Khyber Pakhtunkhwa, and Mr. Muhammad Sheraz, Director Finance, Mardan Medical Complex, Medical Teaching Institution (MTI), Mardan, as a panel of Technical Assistants from the approved list of Technical Assistants under Rule 10 (2) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 and entrusted them to submit the recommendations vide No. KPPRA/GRR/Appeal/91 of 2021, dated 30.09.2021 (F/A). A copy of the appeal along with supportive documents were provided to the panel (Flag B; Pages 1-17).

Brief facts of the Appeal:

2. Brief facts stated in the appeal are as follows:
 - a) The appellant is a registered firm and deal in Medicine/Drug/Non-Drug items with the name and style "Adcare Pharma". In response to advertisement of respondent No. 1, inviting bids through "Government Medicine Coordination Cell (MCC)" Directorate General, Health Services, Khyber Pakhtunkhwa for selection and rate contracting (Framework Agreement) of Drugs/ Medicine, Medical Devices,

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- Surgical Disposable and non-drug items for the year 2021-22, the appellant submitted his technical and financial bids, in the prescribed manner.
- b) The appellant's technical bid was rejected by the Technical & Evaluation Committee, MCC/respondent No. 3 on the following grounds:
- i. Valid original Embassy attested GMP was not present at the time of inspection.
 - ii. Availability of minimum inventory of the total import of the quoted items during last one year was not present at the time of inspection (only 38 bottles were physically available at the warehouse).
 - iii. Qualified Person (Pharmacist) was not present at the time of inspection.
- c) The above stated grounds are factually and legally incorrect and invalid. The appellant had the GMP certificate, i.e., original GMP of LUNAN BETTER PHARMACEUTICAL CO, LTD., which was submitted to the Drug Regulatory Authority of Pakistan (DRAP), Islamabad for registration of other product, i.e., Sevoflurane of the same firm on 21-06-2021, as a mandatory requirement for the registration of drugs under Drug Act 1976. A copy of the DRAP receipt was handed over to the inspection committee of MCC during the course of inspection at appellant office in Rawalpindi. As per Standard Bidding Document (SBD), a minimum 20% stock of the quoted item was required to be present at the premises. The appellant imports stock of the said drug and a new consignment had reached at the port which was cleared by the authority on 29.06.2021, and is now present at the premises of the appellant's firm. The T & E Committee did not serve any letter/notice to the appellant's firm for the inspection, so that requisite stocks may have been kept. Isoflurane is an essential drug and used in operation theatres, due to pressure of hospitals and following the term and condition to make supply on time to them, it is not possible to retain/keep the stock for a long time. As per the report of the T & E Committee, MCC, the qualified person was not present at the time of the inspection, it is stated that as per the SBD there is no specific clause or rule that if the qualified person was not present at the time of inspection the firm can be ousted from the competition; as a matter of fact, the qualified person is available with the firm but on inspection day he was on leave due to his mother's illness.
- d) The non-recommendation of the appellant's firm on such basis and report creates a serious doubt at the integrity and independent approach and position of the procuring entity. The procuring entity is using its official power and taking unfair advantages over the appellant as they are in dominant position, therefore, the appellant was constrained to file a complaint, u/s 35(1)(a) of Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012, before the Secretary, Health Department/ respondent No. 5 on 09-09-2021, which is pending before him and has not been decided within stipulated time period, hence the instant appeal.
- e) The prayers in the appeal are that on acceptance of the appeal, the Director General, Health Services/ respondent No. 1 may be directed to revise the list of Approved Bid Evaluation Report of MCC 2021-22 and the appellant may be recommended for healthy competition and to save the money of the public exchequer. The Respondents' Department may be directed to issue a pre-qualification order of the appellant's company and allow them to participate in the forthcoming projects/contracts. As an interim relief, till the final decision on the appeal, the Director General/respondent No.1 may be directed not to award the contract to anybody and also not to sign an agreement for the same drugs. Any

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other relief, not specifically asked for, may also be granted in favor of the appellant's company and against the Respondents' Department.

Proceedings and Evidence:

3. The nominated panel of Technical Assistants examined the appeal and attached documents on 05.10.2021. Summons were issued to the parties for appearance along with record and relevant documents before the panel in the office of KPPRA on 08.10.2021 (Flag C and D). A status quo order was issued in the case (Flag E).
4. The following points were selected for consideration and proceedings in the appeal:
 - a) What is the relevant criteria for evaluation of technical bid in the case, and its compliance by the appellant?
 - b) What inspection procedure is prescribed for technical bid evaluation?
 - c) Is the conduct of unscheduled or un-notified or surprise inspection for technical bid evaluation covered under the criteria set for the case in the rules and Bid Solicitation Documents?
 - d) Has the Procuring Entity treated the grievance application/complaint in the prescribed manner, and the impact of non-conformity, if any, on the procurement process?
5. The hearing of the case was conducted by the nominated panel of Technical Assistants in the office of KPPRA on 08.10.2021. Mr. Muhammad Taif Khan, advocate, and Messrs. Arsalan Sareer, Fazal Hussain and Naseeb Gul, represented the appellant and Dr. Inamul Haq, Secretary T & E Committee, Ms. Ume Kalsoom, Assistant Director, and Messrs. Hidayatullah, Assistant Director and Fawad Alam, Pharmacist, the respondents. The attendance sheet is attached (Flag F).
6. The learned counsel for the appellant stated the brief facts of the case by referring to the memorandum of appeal and the documents annexed thereto, and elaborated the following points:
 - a) The appellant is a registered firm and deal in Medicine/Drug/Non-Drug items with the name and style "Adcare Pharma" and has been doing business with the Health Department in the process of procurement of medicine consistently throughout the country.
 - b) The respondent No. 1 published an invitation for bids through "Government Medicine Coordination Cell (MCC)" Directorate General, Health Services, Khyber Pakhtunkhwa for selection and rate contracting (Framework Agreement) of Drugs/ Medicine, Medical Devices, Surgical Disposable and non-drug items for the year 2021-22.
 - c) The appellant participated in the bidding process for various items by submitting Technical and Financial Bids under the procedure duly provided by the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 and Khyber Pakhtunkhwa Public Procurement of Good, Works services Rules, 2014.
 - d) The appellant's technical bid was rejected by the Technical & Evaluation (T & C) Committee, MCC/respondent No. 3 on the grounds that:
 - i. Valid original Embassy attested GMP was not present at the time of inspection.

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- ii. Availability of minimum inventory of the total import of the quoted items during last one year was not present at the time of inspection (only 38 bottles were physically available at the warehouse).
 - iii. Qualified Person (Pharmacist) was not present at the time of inspection.
- e) All the three grounds of rejection of the technical bid of the appellant are factually incorrect and legally not tenable. The appellant does have the requisite GMP certificate, i.e., the original GMP of LUNAN BETTER PHARMACEUTICAL CO, LTD., which had been submitted to the Drug Regulatory Authority of Pakistan (DRAP), Islamabad for registration of another product, i.e., Sevoflurane of the same firm on 21.06.2021, – to meet the mandatory requirement for the registration of drugs under the Drug Act, 1976. The DRAP issued a receipt for receiving the original GMP certificate, a copy of which was handed over to the Inspection Committee of MCC during the course of inspection at the appellant office in Rawalpindi (Flag B; Page 13). However, the respondents have not properly considered it in their evaluation, and raised the incorrect observation.
- f) As per Standard Bidding Document (SBD), a minimum 20% stock of the quoted item (Isoflurane) was required to be present at the premises. There were 38 bottles of the Isoflurane in the store of the appellant's firm at the time of inspection. Sufficient stock of the drug was also available with the distributors of the appellant's firm, to whom it is provided as advance reserve consignments for timely supply in their jurisdictions. The overall stock of the drug with the appellant fluctuates as per demand and supply, and the inventory is regularly replenished. This fluctuation is reflected in the stock register (Flag G). Isoflurane is an essential drug and used in operation theatres. Due to high demand for the drug, the pressure of the hospitals for quick supplies and compliance with the terms and conditions to make the supply in time to them, it is not possible to retain/keep a large stock of the drug in the warehouse for a long time without any meaning purpose. Further, as a regular importer of the drugs, the appellant imports consignments of various drugs from time to time, as per its business requirements. Accordingly, a stock of 5,520 bottles of Isoflurane was also imported in June 2021. The consignment had reached at the Karachi Port and was under clearance as per rules, when the inspection was conducted on 22.06.2021. The consignment was cleared by the authorities on 29.06.2021, and is now present at the premises of the appellant's firm. The appellant provided a copy of the Goods Declaration (GD) of the import to the procuring entity (Flag B; Pages 11-12), but they did not consider it on its merit.
- g) The procuring entity / the T & E Committee did not inform or serve any notice to the firm for the inspection conducted on 22.06.2021. There is no provision in the procurement rules or Standard Bid Documents (SBD) for any inspection without prior intimation. This practice is highly irregular and gross violation of the terms and conditions of the SBD.
- h) As per the report of the T & E Committee, MCC that a qualified person (Pharmacist) was not present at the time of the inspection, two arguments are submitted: first, a qualified person (Pharmacist) is available with the firm, but on the inspection day he was on leave due to his illness of his mother, and second, as per SBD, there is no specific clause or rule that if the qualified person was not present at the time of the inspection, the firm can be ousted from the competition. A copy of the attendance register of the staff (Flag B; Page 16), including the Pharmacist was provided to the procuring entity, but they did not drop the incorrect objection.

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- i) The non-recommendation of the appellant's firm on such invalid bases and incorrect report creates a serious doubt at the integrity and independence of the procuring entity as a public functionary.
 - j) The conduct of the procuring entity is offending the fair play and basic facts and circumstances of the case; and the procuring entity has been using its official powers and taking unfair advantages over the appellant as they are in a dominant position.
 - k) The appellant has been consistently doing business with the Health Department and Government Health Institutions without giving any opportunity for any objection or complaint of the procuring entities, and even the instant objections are not justified because the appellant's firm has a valid original GMP, their requisite stock of the drug was present in the store and with distributors and at the port and they have a valid Drugs Sale License, indicating availability of the qualified person (Pharmacist), required for selling of the drugs in the store. Otherwise also, there is no requirement in the term and conditions of the tender for the presence of the qualified person at the time of inspection or any unscheduled inspection.
 - l) The procuring entity displayed the technical bid evaluation report on 09.09.2021, indicating the rejection of the appellant's bid. The appellant filed a complaint u/s 35(1) (a) of Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012, before the Secretary, Health/ respondent No. 5 on 09.09.2021 vide diary No. 17302 (Flag B; Pages 8-9), clarifying the appellant's position regarding the grounds of rejection of the bid, and requesting to consider their complaint prior to opening of financial bids in the case on 10.09.2021. The complaint is till date pending and has not been decided within the stipulated time period, hence the instant appeal.
 - m) The procuring entity has also violated the mandatory provisions of Section 16 of the KPPRA Act, by not setting and signing the Code of Ethics, which is a serious irregularity on the part of the procuring entity.
 - n) The learned counsel prayed that on acceptance of the appeal, the Director General, Health Services/ respondent No. 1 may be directed to revise the list of Approved Bid Evaluation Report of MCC 2021-22 and the appellant's technical bid may be declared qualified for participation in the procurement proceedings. This decision will also promote healthy competition and save money to the public exchequer.
7. On a forum question about the current physical possession of the cGMP, the learned counsel replied that it is still in custody of the DRAP, however, the appellant will approach them either to return the same or provide a certificate of its custody by them for processing of another drug of the same manufacturer, with submission of the same, within a week's time. The appellant submitted a letter from the DRAP dated 12.10.2021 confirming that the cGMP in respect of M/S Lunan Better Pharmaceutical Co. Ltd, Shandong, China attested by consulate General of Pakistan Shanghai submitted by appellant in connection with registration of Sevocare (Flag H).
8. The respondent No.3 submitted a folder containing a written statement and supporting documents (Flag I; Pages 1- 42, Annexes I-VI). The respondent referred to his folder and stated the following points:
- a) The appellant has concealed the whole truth and material facts, has not come with clean hands, has mala fide intentions, is estopped by his own conduct and his appeal is liable for dismissal.
 - b) Described the general procedure for framework agreement of Government Medicine Coordination Cell (MCC) for procurement of medicines, involving advertisement in the press, submission of bids, opening of technical bids,

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evaluation of product wise evaluation of the firms, technical and performance evaluation of the disposable items by a panel of experts, and testing of items by the Drug Testing Laboratory (DTL). The process of evaluation of bidders is undertaken by the Technical and Evaluation (T & E) Committee, whose role is to assist the Selection and Rate Contracting Committee (S & RCC), which is the final authority for approval of the cases. The evaluation is followed by physical inspections of the firms to authenticate the current Good Manufacturing Practices (cGMP) and other documents. During the process any grievance or appeal is considered on its merit. The same procedure was applied in the instant procurement.

- c) The appellant participated in the instant procurement process. Their technical bid was evaluated as per technical evaluation criteria for importer of General Medicines and was not recommended due to non-fulfilment of the following mandatory requirements as reported by the inspection team:
 - i. Valid original Embassy attested GMP/Quality assurance certificate was not present at the time of inspection.
 - ii. Availability of a minimum of 20% inventory of the total import of the quoted items during last one year was not present at the time of inspection (only 38 bottles were physically available at the warehouse).
 - iii. Qualified Person (Pharmacist) was not present at the time of inspection.These shortcomings were a violation of the conditions given in the SBD (Flag I; Annexure-I).
- d) After the announcement of the Bid Evaluation Report (BER), the appellant submitted an appeal dated 27.07.2021 (Flag I; Annexure). The appeal was considered in the meeting of S & RCC on 11.08.2021, and the appellant was heard in person also. The minutes of the meeting and the decision regarding the appellant's appeal are attached (Flag I; Annexure III).
- e) Points 2 and 3 of the appeal pertain to record and the rest of the points are denied as incorrect.
- f) The respondents prayed that the appeal being devoid of merit may be dismissed.

9. The learned members of the Panel asked a few questions from the respondents to clarify certain facts. A question was asked under what provision an inspection of the premises of the appellant was conducted, without any prior notice to the appellant. The respondents replied that they are conducting such inspections as a routine, but could not point out any enabling provisions for the same in the rules or SBD. Regarding a question about the constructive possession of the cGMP, they replied that the appellant did not produce the original cGMP at the time of inspection. Regarding the availability of the Pharmacist with the appellant and his attendance and leave record, they replied that it is a minor issue and not a deciding factor. Regarding a question about the purpose of the condition of availability of the 20% stock of the previous year import stock of the quoted drug by the firm, the respondents clarified that it shows the turn-over of the drug. They further explained that the procuring entity is not bound to place any order with the supplier, even if a rate contract is awarded to him. On asking a question about the status of disposal of grievance application dated 09.09.2021 of the appellant in the case, they expressed their lack of knowledge pertaining to the status.

10. In the rejoinder, the learned counsel for the appellant stated that the inspection of their premises without any prior notice is irregular and violation of the SBD; therefore, the report based on such inspection is nullity in the eyes of law. Further, they meet all the mandatory

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requirements of the SBD, and are fully qualified in technical evaluation. They reiterated their prayers mentioned in their appeal.

Discussion and Findings:

- 11. The memoranda of appeal, attached documents, verbal and written submissions of the parties indicate that the parties are at variance on meeting the three mandatory requirements of the SBD, as highlighted in paras 6(d) and 8(c) and validity of the inspection of premises of the appellant, without any prior notice.
- 12. The proceedings in the case revealed the following position about the points for determination and points at variance:
 - a) The relevant criteria for evaluation of technical bid in the case in the SBD are reproduced below:

"Section V. Technical Specifications
Technical Evaluation Criteria for Drugs / Medicines, Medical Devices,
Surgical Disposables and Non-Drug Items (NDIs)
B. Importers of General Drugs/Medicines, IV Fluids and Powdered
Injectable Drugs:

- i. Valid cGMP/Certificate of Pharmaceutical Product (COPP) / Certificate of Medicinal Product (COMP)/ Certificate of the Principal Manufacturer for the quoted item/s as issued by relevant authority of the country of origin of the quoted imported goods (duly attested from the Embassy / High Commission / Consulate (as the case may be) of the country of origin in Pakistan or Pakistani Embassy / High Commission / Consulate (as the case may be) in the country of origin of the quoted goods). Non provision of this document shall lead to disqualification of the firm.
- ii. Availability of minimum 20% inventory of the total import of the quoted item/s during last one year (certificate to the effect duly signed by the senior executive of the firm & evaluated by the MCC expert/s). Non availability of the 20% stock at the time of inspection shall lead to disqualification of the quoted item/s).
- v. Valid cGMP (attested from the embassy of the country of origin in Pakistan or Pakistani embassy in the country of origin) in original and Valid Free sale certificate for the quoted item/s duly attested by the Pakistani embassy in the country of origin of quoted item/s or embassy of the country of origin in Pakistan in original shall be provided to the Inspection team at the time of inspection."

The above conditions stipulate that the bidders shall be in possession of the described cGMP, and shall be provided in original at the time of inspection. Leaving aside the nature of inspection described for the purpose for a while, the appellant produced a receipt of the DRAP, indicating the submission of the cGMP to them. This constitutes a constructive possession and meets the above stated requirement of the tender. Again, regarding the 20% availability of the stock of the quoted drug, a question remains whether the stock delivered to the distributors as advance or awaiting clearance at the port can be counted in such percentage. The above description does not clarify the point, but looking at the purpose of the condition as stated by the respondents in reply to a forum question, such quantities do add to the turn-over of the drug, and shall be counted as such.

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13. There is also a provision regarding availability of relevant, qualified human resources in column 12 of the prescribed relevant evaluation criteria, as reproduced below:

"Adequate availability of qualified & relevant Human Resource (Certified by the senior executive of the firm & evaluated by MCC experts at the time of inspection)."

The factual position is that the appellant's firm does have the services of a pharmacist, as evident from the attendance register of the appellant's firm, who was on leave on the date of unscheduled inspection. Further, this requirement is not included in the knock down criteria of the tender, therefore the appellant's firm could not be disqualified on said ground.

14. The SBDs provides for the inspection and testing of the procurement goods offered by the bidders. The relevant provisions are contained in Clause (8) of General Conditions of Contract, as reproduced below:

"The Procuring agency or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specification at the no extra cost to the Procuring agency. SCC and the Technical Specification shall specify what inspections and tests the Procuring agency requires and where they are to be conducted. The Procuring agency shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes".

The relevant provisions regarding the inspection in the Special Conditions of Contract (SCC) are reproduced below:

Inspection and Tests (GCC Clause 8 and in accordance with the clauses of contract with the Procuring Agency)

- i. *The technical evaluation shall be conducted by the Inspection Team/s of MCC experts constituted by the Technical and Evaluation (T&C) Committee and / or by the Selection and Rate Contracting Committee (S&RCC) of the Government MCC to*
 - a. *undertake examination of the original documents as mentioned in the Bid Cover Sheet (Bid Form-I) of these SBDs, and the attested copies of which had been submitted by the bidder along with the technical bids; and*
 - b. *undertake the physical inspection of the relevant premises to verify the status of current Good Manufacturing Practices (CGMP) Parameters for the quoted items as laid down in the Technical Evaluation Proformas (Section-V: Technical Specification of the part- ii of these SBDs); ... "*

The above stipulations provide that the Procuring agency or its representative to inspect and/or to test the Goods to confirm their conformity to the Contract specification. Further, the SCC and the Technical Specification shall specify what inspections and tests the Procuring agency requires and where they are to be conducted. The Procuring agency shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes. However, the perusal of the SCC contains only the provisions about the undertaking the physical inspection of the relevant premises to verify the status of current Good Manufacturing Practices (CGMP) Parameters for the quoted items as laid down in the Technical Evaluation Proformas (Section-V: Technical Specification of the part- II of these SBDs). Evidently, there are no provisions in the SBDs for any inspection of the bidders other than for the purposes stated in Clause 8.1 of the GCC and with the conditions that the procuring entity shall notify the Supplier in

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writing, in a timely manner, of the identity of any representatives retained for these purposes. The inspection conducted by the procuring entity on 22.06.2021 does not fall within the four corners of the above stipulations, and is irregular. Any report based on such irregular inspection is void and of no legal effect.

15. The complaint dated 09.09.2021 in the case is still pending with the Respondents. In terms of Rule 6 of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017, the Grievance Redressal Officer/Committee is bound to decide the complaint within 5 days and convey the decision to the complainant within 3 days. By violating the said rules, the Procuring Entity has committed an irregularity. Such violations of the mandatory provisions of the rules render the entire procurement proceedings as mis-procurement.
16. It is pertinent to mention that in the grievance redressal mechanism in the Khyber Pakhtunkhwa and generally in all most all systems, there are provisions for suspension of the procurement proceedings during the pendency of the complaint or appeal or both. This stipulation is justified on the grounds that if the procurement proceedings are continued during the pendency of the complaint/appeal, there could be further steps which may require reversal as a result of the final disposal of the complaint/appeal. It has been assessed that the reversal of any step involving vested rights of other parties compares very costly and tedious to affording a short disruption of the procurement proceedings due to suspension order. It has been observed that in some cases because of the vested interests and malafide of some elements in the procurement system, the issuance of suspension order of the procurement proceedings is portrayed as a negative step, which is unfair and making mockery of the legal system. In the instant case also, a stay order has been issued by the panel of Technical Assistants till date fixed (for duration of 03 days) on admission of the appeal in conformity with the law. The procuring entity had never requested the panel for vacation of the stay order till date. However, a news item appeared in the press criticizing the issue of the stay order with incorrect and twisted narrations (Flag J). This seems an attempt for tarnishing the repute and image of the Public Procurement system. The matter may be investigated to identify the culprits in the case and to take effective measures to avoid recurrence of such unfair and illegal activity in future.

Recommendations of the Panel of Technical Assistants:

17. In view of the foregoing discussion and conclusions, and in terms of Rule 10 (8) of the GRR read with item 22 of the Guidelines on Grievance Redressal, the panel of Technical Assistants recommends that as the appeal has substance to justify the position for compliance with the provisions of the SBDs and against the undertaking of an inspection without prior notification of the persons retained for the purpose and non-disposal of the grievance application in conformity with the rules; therefore:
- a) The procuring entity may be directed to conduct a fresh inspection of the appellant's firm in conformity with the provisions the SBDs and proceed further on merit; and
 - b) The administrative department may conduct a probe to fix the responsibility for the irregularities in the case, including the publishing of a twisted and unfair press item against the government procurement system.

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Decision of the Authority:

15. After presentation on the report by the Technical Assistant, the Board thoroughly discussed the points highlighted in the Memo of Appeal, reply of Procuring Entity, and the Report of the panel of Technical Assistant(s). It was concluded that since the appellant produced a receipt of the DRAP, indicating the submission of the cGMP to them, this constitutes a constructive possession and meets the requirement of BSD. As regard the 20% availability of the stock of the quoted drug, the stock delivered to the distributors as advance or awaiting clearance at the port can be counted in such percentage as such quantities do add to the turn-over of the drug, and shall be counted as such. Furthermore, the Firm do have the services of a pharmacist, as evident from the attendance register of the appellant's firm, who was on leave on the date of unscheduled inspection yet this requirement is not included in the knock down criteria of the tender, therefore the appellant's firm could not be disqualified on this ground. In addition to above, the inspection conducted by the procuring entity on 22.06.2021 does not fall within the four corners of the SBDs stipulations hence the BoD while agreeing with the recommendations of the panel of Technical Assistants hereby decides that the Procuring Entity shall carry out re-inspection of the appellant firm within 05 days and proceed on merit in accordance with the law and BSDs.

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**Managing Director/Secretary, BoD
KP Public Procurement Regulatory Authority**

**Managing Director
Khyber Pakhtunkhwa Public
Procurement Regulatory Authority**

Dated: 03/11/2021

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Appeal: No. KPPRA /GRR/Appeal/37 of 2019

M/S Stallion Pharma Lahore (Pvt). Ltd

Address: 22-L Johar Town, Lahore-Pakistan.

..... Appellant

Versus

1. Director General, Health Services (DGHS) Khyber Pakhtunkhwa.
2. Secretary to Government of Khyber Pakhtunkhwa, Health Department.
3. Black Listing/Debarment Committee through its Chairman Government of Khyber Pakhtunkhwa, Peshawar.

..... Respondents

Appeal Proceedings:

This appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7(1)(c) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S Stallion Pharma Lahore Pvt Ltd 22-L Johar Town Lahore and (hereinafter Appellant) against the following:

- i. Director General Health Services (DGHS) Khyber Pakhtunkhwa.
- ii. Secretary Health Government of Khyber Pakhtunkhwa.
- iii. Black Listing/Debarment Committee through its Chairman Government of Khyber Pakhtunkhwa, Peshawar.

(Hereinafter Respondents).

The appeal so submitted to this Authority has been scrutinized and found that the appellant firm has not exhausted the first tier of grievance Redressal mechanism as required under section 35 of KPPRA Act, 2012. This Authority returned the appeal to the appellant firm vide letter No. KPPRA/M&E/ Advice/2-73/2019-20 dated 16.01.2020 (Annex-I) with advice to resubmit the appeal by fulfilling's all codal formalities along with all required documents.

In response the appellant firm has resubmitted the appeal dated 18.02.2020 by following all the codal formalities as required by the Law. Upon receipt of the subject appeal under Section 35 of the KPPRA Act, 2012, the same was admitted for regular hearing where after the Managing Director, KPPRA nominated Engr. Amjad Shamshir, Design Engineer, Office of the Chief Engineer North PHE Department, Khyber Pakhtunkhwa, Peshawar as Technical Assistant among the approved list of Technical Assistants under Rule 10(2) of the Khyber Pakhtunkhwa Public

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Procurement Grievance Redressal Rules, 2017 and entrusted him to submit his recommendations vide KPPRA letter No. KPPRA/GRR/Appeal/37 of 2019 dated 24.02.2020 (Annex-II).

The Technical Assistant soon after his nomination for handling the appeal in hand issued summons to appellant and respondents dated 03.03.2020 to appear in the office of KPPRA in person or by authorized representative along with relevant record and witnesses if any on Monday, March 09, 2020 at 11:00 AM (Annex-III).

In compliance to the summons so issued by the Technical Assistant Mr. Muhammad Saeed Advocate, legal counsel of the appellant firm and respondents appeared before the Technical Assistant in the office of KPPRA on the date and time so fixed and were heard at length. Not only the appellant was afforded ample opportunity of hearing but the available record including the memo of appeal as well as Bidding Documents of the Procuring Entity (respondents) were duly considered and deliberated. Supported documents including the recommendations of the committee constituted by Secretary Health Khyber Pakhtunkhwa vide notification no SOD/Health/7-1/MCC/2019 dated 11/9/2019 were also examined in detail. Both the parties were asked to submit their written replies and record on which they rely upon.

The appellant firm asked that they have already submitted the relevant record along with the appeal however the respondents (Health department Khyber Pakhtunkhwa) requested time up to 16/3/2020 for submission of their written reply and relevant record, which was granted.

Written reply and para wise comments of Health Department was received on 16/3/2020.

1. Salient Features of the case along with Findings of Technical Assistant are given below.

- 1.1. Invitation for bid was advertised by DG Health Services Government of Khyber Pakhtunkhwa through Medicines Coordination Cell (MCC) for procurement of medicines, medical devices and surgical instruments for the year 2018-19.
- 1.2. The appellant participated in the bidding process for various items and he was declared as successful bidder for eight (8) different medicines i.e. Cap: Amoxicillin 250mg and 500mg.
- 1.3. A committee was constituted by Health department under the chairmanship of DHO Peshawar Dr Ghulam Subhani vide notification no SOD/Health/&-1/MCC/2019 dated 11/9/2019 to examine the case of various firms for non-supply of medicines and put up recommendations to the competent forum for taking legal punitive action against the defaulter.
- 1.4. The committee held its two meeting on 30/9/2019 and 7/10/2019 and after scrutiny of record & detail examinations a consolidated report/recommendation were prepared and submitted to the authorities for implementation.
- 1.5. In its recommendations the committee recommended that displeasure letter be issued to the firm as supplies were substantially delayed.

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- 1.6. Later on another meeting was held under the chairmanship of additional secretary Health and it was unanimously decided that the 2% Earnest money of all those firms should be forfeited to Government as per clause 22 (c)(i) of the contract agreement, who have failed to comply with the orders within 60 days of the supply orders.

2. PRAYER OF THE APPELLANT:

The order of the committee for forfeiture of earnest money of the appellant be set aside and 2% earnest money of stallion pharma Lahore be released by the Health Department Khyber Pakhtunkhwa.

3. FINDINGS:

After hearing both the parties in detail and going through the documents provided in their supports the following findings came on to the surface in the instant appeal.

- 3.1. Stallion pharma was a successful bidder for suppling of 8 different medicines (Amoxicillin group) to various hospital during the year 2018-19 against the purchase orders received from District Health Officers (DHOs) in Khyber Pakhtunkhwa.
- 3.2. A five-member committee (by name) was constituted by Secretary Health Khyber Pakhtunkhwa vide notification No SOD/Health/7-1/MCC/2019 dated 11/9/2019 under the chairmanship of Dr Ghulam Subhani DHO Peshawar to examine the cases of non-supply of items duly approved by Government MCC and ordered by purchasing entities and to recommend lawful action against the defaulter's firms.
- 3.3. Meeting of the Committee was held on 30/9/2019 & 7/10/2019 to examine case to case the issue of non-supply or delayed supply of items by various firms.
- 3.4. DG Health Services Khyber Pakhtunkhwa issued a notice to stallion pharma Lahore Pvt Ltd to be appear before the committee on 30/9/2019 in person or through authorised person and explain his position for delay or non-supply of medicines to the purchasing entities. (Annex -IV)
- 3.5. The committee examined the cases and prepared a detail report and firms wise recommendations and submitted the same to competent authority.
- 3.6. As per recommendations of the committee "Displeasure letter be issued to the firm as supplies were made with substantial delay". (Annex-V)
- 3.7. Astonishingly another meeting was held under the chairmanship of special secretary health on 15/10/2019 where the following decisions/recommendations were made: (Annex-VI)
- (i) To forfeit the bid securities of all those defaulter firms which could not comply with the orders within the allowed time of 60 days during fiscal year 2018-19.
 - (ii) Debar the non-supplied items as reported by the purchasing agencies and reported to the DGHS KP for the fiscal year 2019-20.

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- (iii) All the purchasing agencies shall comply in submission of quantified performance in receipt in supplies versus supply orders which shall enable the Health Department for remedial measures then and there to ensure supplies and providing relief to the public.
- (iv) To forfeit the bid securities of all those defaulter firms which could not comply with the orders within the allowed time of 60 days during fiscal year 2018-19.

3.8. The recommendations of this committee have no legal coverage on following grounds:

- a. The new committee under chairmanship of special secretary health is not backed by any authorised notification for this specific purpose.
- b. Recommendation at S.No. (i) was implemented whereas the rest of recommendation were not implemented as per available record. Partial implementation of the recommendations arises question mark on the decisions.
- c. The minutes of the meeting do not reveal that the recommendation of the authorised committee for this specific purpose was discussed and recommendations were changed or revisited.
- d. The bid security of various firms was recommended for forfeitures under clause 22 (c) (i) without cancelling the supply orders. The procuring entity should have either imposed penalty for the delayed period and accept the delivery or the order should have been cancelled with forfeiture of bid security.

3.9. The (Procuring Entity (i.e. DGHS KP)) shall have the right, duty and authority to impose any or all of the penalties as mentioned under sub clause (i) (ii) &(iii). Of clause 22 (c). Similarly, no committee other than the purchasing agency (i.e. DHOs) can recommend any legal action under clause 22 (c) against the defaulting firms (refer to clause 11). However, in the instant case no such recommendations have been made by any purchasing agency/officer.

3.10. During the process of hearing it was noted that the respondents have forfeited the bid security of the appellant only on the basis of the recommendations of the new committee constituted without any lawful justification, while neither any notification of such forfeiture has been issued nor has such forfeiture been communicated to the appellant by the respondents.

3.11. The record reveals that DHO Chitral had placed purchased order no 1233/DHOH/B-5 dated 2/5/2019 which was delivered on 10/6/2019 but received by the hospital and taken on stock on 8/8/2019.

3.12. The record shows that the firm stallion pharma has delivered the consignment through public goods transport services. In majority of the cases the consignment is placed on the "truck Addas" for couple of months until it is received by the receivers. This practice

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of delivery of medicines through public goods transport is not only an irregularity on the part of the firms but it is also a criminal negligence on the part of procurement officer as to why they have accepted such delivery of medicines where the assurance of cold chain has not been observed.

- 3.13. DHO Chitral has issued completion certificate date 25/9/2019. If he had faced non-supply of items or delayed supply than he should have recommended legal action under the contract agreement clause 11 for forfeiture, debarment or any other penalty as mentioned under clause 22 with issuance of completion certificate.
- 3.14. As per reply of the respondent two supply orders of DHO Lakki Marwat (i.e. order no 1139-40/MCC dated 20/3/2019 and order no 5084/MCC dated 9/5/2019) were not complied with by the firm stallion pharma.
- 3.15. The appellant showed ignorance about the receipt of order dated 20/3/2019 whereas in support of compliance of order dated 9/5/2019 he produced "bully No 7743" dated 12/6/2019 and payment vide DD no 03260294 dated 18/7/2019 National bank Pakistan.
- 3.16. Here question arises that if the firm has made compliance to order dated 9/5/2019 (Rs 605800) than why he didn't make compliance of the order dated 20/3/2019 (Rs 58140). This apparently supports the statement of the appellant that he has not received order dated 20/3/2019.
- 3.17. Apparently it seems that the firm has sent the consignment through goods transport service and the medicine were not delivered timely and these were lying on the "Truck adda" for considerable time. It was the duty of the firm to make sure that the consignment has been timely delivered and received by the purchasing officer, in which firm has failed.
- 3.18. The appellant also failed to produce any authentic and acceptable evidence to support his stance that he has complied with the purchase orders of DHO Lakki Marwat and DHO Chitral as per contract agreement.
- 3.19. In case of DHO chitral purchase order no 1233/DHOH/B-5 dated 2/5/2019 which was delivered on 10/6/2019 and received by the purchasing officer and taken on stock on 8/8/2019 i.e. after 96 days of the order and payment was made to the firm.
- 3.20. In case of DHO Lakki Marwat purchase order no 1139-40/MCC dated 20/3/2019 the respondent could neither produce any solid evidence that order was received by the firm nor any notice of non-compliance was issued to the firm by the purchasing officer.
- 3.21. In case of DHO Lakki Marwat purchase order no 5084/MCC dated 9/5/2019 it was revealed that the order was delivered on 12/6/2019 i.e. after 33 days of the placement of order for which the firm also received payment, hence comes under the penalty clause 22 (a)

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- 3.22. The record also shows that the firm stallion pharma has received total 202 purchase orders through out from Khyber Pakhtunkhwa which were fulfilled during the financial year 2018-19. It shows that substantial purchase orders have been fulfilled except the above-mentioned three purchase orders, which were received beyond normal delivery time.
- 3.23. The firm stallion pharma has supplied medicines through public transport goods service which is apparently clear violation of the contract agreement clause no 3&4.
- 3.24. No committee other than the purchasing agency (DHOs) can recommend any legal action to be taken against the defaulter firm by the procurement agency (DGHS). (Refer to clause 11 of the contract agreement).
- 3.25. No documentary proof was produced by the respondents that the forfeited amount has been credited to Government treasury through challan.

4. Recommendation of the Technical Assistant:

In light of above fact and findings, it is recommended that the instant case may be remanded back to Secretary Health Khyber Pakhtunkhwa to revisit the recommendations of the new committee constituted without any lawful justification and remove the lapses in the decision of the department.

It is also suggested & recommended that clause 3&4 of the contract agreement are very important in nature which must be observed in regard to cold chain supply of medicines and the transportation and delivery of medicines through public transport goods services be banned in future.

5. Decision of the Authority:

Memo of appeal along with available record, proceeding conducted by the Technical Assistant (TA) so nominated in the instant appeal, statements/documents submitted by the parties thereto and recommendations of the Technical Assistant have been perused and examined in thread bare. Recommendations of the Technical Assistant are reproduced as under:

"In light of above fact and findings, it is recommended that the instant case may be remanded back to Secretary Health Khyber Pakhtunkhwa to revisit the recommendations of the new committee constituted without any lawful justification and remove the lapses in the decision of the department.

It is also suggested & recommended that clause 3&4 of the contract agreement are very important in nature which must be observed in regard to cold chain supply of medicines and the transportation and delivery of medicines through public transport goods services be banned in future".

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In the light of above this Authority, under the provision of Section 35 of the KPPRA Act, 2012 and the Powers conferred upon the Managing Director KPPRA in this regard by the Board of Directors (BoD) of the Authority, while agreeing with the recommendations of Technical Assistant has reached the conclusion that since the respondents could not establish any lawful justification which could have been relied upon for constitution of new committee. Similarly, the respondents have also been unable to produce any documentary evidence i.e. notification, office order, circular or notice which could have proved that the Health Department has forfeited the bid securities and communicated the decision of forfeiture of bid securities to the appellant. Further, the respondents have also been unable to even comment on the fate of the bid securities that what has been done with the bid securities. Therefore, the matter is remitted back to Secretary to Government of Khyber Pakhtunkhwa, Health Department to revisit the recommendations of the new committee constituted without any lawful justification, consider the recommendations of the lawfully constituted committee i.e. issuance of displeasure letter to the appellant, return the bid security of the appellant without forfeiture at this stage and remove the lapses in the decision of the department within fifteen (15) working days from the receipt of the decision with intimation to this Authority.

Respondent No. 1 is also directed to enquire about the fate of the amount of bid securities, whether it has been forfeited (though on the basis of recommendations of a committee having no lawful justification) and deposited in the Government treasury or it is laying in the shape of CDR on the file and take appropriate action against the responsible officers/officials accordingly with intimation to the Authority.

It is further held that clause 3&4 of the contract agreement are very important in nature which must be observed in regard to cold chain supply of medicines and the transportation and delivery of medicines through public transport goods services be banned in future.

Managing Director
Khyber Pakhtunkhwa
Public Procurement Regulatory Authority

Dated: _____

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Appeal No. KPPRA/GRR/Appeal/41 of 2019/614

M/S Frontier Dextrose Ltd,

Address: 12-Baqir Lane, Canal view society, Canal bank Lahore.

.....Appellant

Versus

1. Director General Health Services (DGHS), Khyber Pakhtunkhwa.
2. Government Medicines Coordination Cell (GMCC), Health Department, Government of Khyber Pakhtunkhwa.
3. MS UNISA Pharmaceutical Industries Ltd, Address: Akora Khattak KPK.

.....Respondents

1. Introduction:

This appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7(1)(c) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S Frontiers Dextrose Ltd, 12-Baqir Lane, Canal view society, Canal bank Lahore and (hereinafter called as Appellant) against the following:

- I. Director General, Health Services (DGHS), Khyber Pakhtunkhwa.
- II. Government Medicines Coordination Cell (GMCC) Health Deptt: Government of Khyber Pakhtunkhwa.
- III. MS UNISA Pharmaceutical Industries Ltd, Address: Akora Khattak KPK (Hereinafter Respondents).

2. Background and History:

- I. The instant appeal was initially filed by the appellant in September 2019 wherein technical assistant was nominated by KPPRA vide letter no KPPRA /GRR/Appeal/1-30/2019-20/337 dated 19/9/2019.
- II. The case was heard and recommendations thereon were submitted by the Technical Assistant (Dr. Syed Said Badshah Bukhari) on 3/10/2019.

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- III. The decision of KPPRA was announced and communicated to the procurement Entity (DG Health Services) vide letter No. KPPRA /GRR/Appeal/1-30/2019-20/378 dated 4/10/2019 for implementations.
- IV. The procurement Entity awarded three (03) additional marks in Technical bid to the appellant in compliance to the decision of KPPRA, but at the same time the financial bid of the appellant was declared as non-responsive on certain grounds.
- V. Aggrieved upon the decision of Procurement Entity the appellant once again filed another appeal with the Authority for seeking justice.
- VI. On the appeal of appellant order of temporary injunction was issued by KPPRA dated 12/11/2019 and the procurement entity was directed to stop further proceedings of the contract award and suspend the award of contract if already awarded till the decision of the case. But neither the decision of KPPRA implemented in letter & spirit nor has the proceeding of award of tender been stopped by the procurement entity in clear cut violation of the lawful directions of the KPPRA.
- VII. KPPRA while following the legal procedure heard the parties and decided the case vide No KPPRA /GRR/Appeal 33-2019 dated 4/12/2019. KPPRA in its decision directed the procurement Entity that *"the decision of PE about declaring the financial bid of the appellant as "non-responsive" contained in the minutes of meeting of S&RCC held on 28/10/2019 is set aside and the Financial bid shall be evaluated as per rules and SBDs. The final result of the evaluation shall be announced in accordance with rule 45 of the procurement rules and award the contract to the best evaluated bidder."*
- VIII. This was the second decision made by KPPRA which was very clear and unambiguous in its nature but once again it was not implemented in letter & spirit by the procurement entity and the award of contract was processed as a routine matter without any hesitation and giving any heed to the decision of the Authority.
- IX. Work order was issued to the contractor and agreement was signed between the procurement entity and UNISA pharmaceutical industries LTD. on 27/11/2019.
- X. Meanwhile UNISA pharmaceutical Industries also filed a writ petition at Peshawar High Court, Peshawar under Article 199 dated 11/12/2019 to get legal cover of the esteemed Court.
- XI. The August Peshawar High Court decided the case on 19/2/2020 filed by UNISA Pharmaceuticals and the case was remanded back to the procurement Entity with the

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direction to that "the respondent no 2 (DG Health Services) shall decide the case so remitted to him by the Authority within five working days from today strictly in accordance with all the relevant rules on the subject and after hearing all the parties present before the court. It is made clear that while deciding the Lis before him, the respondent no 2 (DG Health /procurement entity) shall not be prejudiced either by the orders of the court or Authority and shall apply his own mind independently by taking into account all the relevant facts, circumstances and law on the subject and till decision of the case no further supply of the items /goods shall be made"

- XII. In the light of Honorable Peshawar High Court decision dated 19/2/2020 Procuring Entity convened a meeting, all parties were heard and decided that there are discrepancies between the technical bid and financial bid of Frontier Dextrose Ltd (appellant) and any undertaking from frontier dextrose ltd cannot be accepted at this belated stage and as such his petition was disposed of.
- XIII. Till this day the case has not been decided/concluded in accordance with the law and directions of the Authority by the Procuring Entity and the appellant has become a rolling stone between the Authority and the Procurement Entity whereas the appellant is knocking doors for seeking justice, which could have easily been provided to the appellant by implementing the decision of the Authority.
- XIV. The instant appeal is the 3rd appeal with a fresh cause of action for seeking justice.

3. Prayers of the Appellant:

The appellant has prayed in its appeal that:

- I. The instant appeal may be admitted and declare that there was no bid modification as alleged by respondent no 2 (DG health services)
- II. To reconsider/re-evaluate the technical and financial bids submitted by the appellant and set aside the orders dated 25/2/2020 of respondent no 2.
- III. To declare the appellant as responsive and till final decision of the case the procurement entity be directed:
 - a) To suspend, stop, or hold in abeyance the whole process of procurement till the decision of the instant appeal.
 - b) Not to award the contract to any bidder as it will frustrate the instant appeal causing miscarriage of justice

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- c) If the contract has been awarded during existence of stay orders by the authority, then not only the execution of contract may be stopped but also declare it null and void in the interest of law and justice
- d) Supply of medicines, payments which have already been released may also be declared as illegal, unlawful and having no value.

4. Proceedings of Appeal:

- I. Soon after nomination of the Technical Assistant summons were issued and the appellants and respondents were directed to appear before the Authority on 12/5/20120 at 12.00 vide No KPPRA/GRR/Appeal/41 of 2019/632 dated 4/5/2020 & vide No KPPRA /GRR /Appeal / 41 of 2019/636-41, dated 11/5/2020 respectively.
- II. In response to the summons so issued the respondent no 1 (DG health services kpk) requested vide letter no 783/DDC/DGHS/KP dated 11/5/2020 for another suitable date for appearance before the TA as the concerned staff are self-quarantined after detection of covid-19 positive.
- III. Next date was fixed as 4/6/2020 and summons were issued to the appellant and respondents.
- IV. Mr Shehzad Hassan pervaiz (advocate high court) and his team appeared on behalf of the appellant and Mr Abbas and DHO Peshawar represented their department.
- V. Health department raised questions on the maintainability of the case with the plea that the instant case has already been decided by Peshawar High Court and health department has decided the case in light of the decision of Peshawar High Court dated 19/2/2020
- VI. After hearing both the parties in detail and perusal of the documents provided in support following are the findings which have come to the surface.

5. Findings:

- I. This appeal has already been decided by the Technical Assistant nominated by KPPRA and decision has been conveyed to the procurement Entity vide KPPRA letter no KPPRA/GRR/Appeal/1-30/2019-20/378 dated 4/10/2019.
- II. The record shows that the procurement Entity as well as the Health department did not bother to implement the decision of KPPRA in letter & spirit and the appellant was

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- involved in lengthy correspondence without giving him the due rights as per decision of KPPRA.
- III. As per decision of the KPPRA three (03) marks was given to the appellant in technical bids but the same was declared as non-responsive in the financial bid for the so-called discrepancies in the financial bid and technical bid.
 - IV. The discrepancy in financial bid was a clarification with regard to an item rate and its specification, which was clarified by the appellant on stamp paper but it was not accepted by the procurement Entity on the plea that negotiation and bid modification is not allowed. It is worth noting that according to Rule 37 of the procurement Rules clarification is allowed.
 - V. While in its decision on the second appeal KPPRA directed the procurement Entity to consider the financial bid of the appellant as responsive and award the bid to the best evaluated bidder but no heed was given to the decision of KPPRA. It is also worth noting that contract was already awarded to another bidder before decision of the Authority during status quo period which shows that the procurement entity had already made up its mind not to give the benefit of three (03) marks awarded to the appellant in pursuance to the decision of the Authority on the first appeal.
 - VI. Agreement was signed on 29/11/2019 but astonishingly supply orders had been issued with effect from 25/10/2019 prior to agreement which is clear violation of Rules.
 - VII. The circumstances also reveal that the other party UNISA pharmaceutical Industries ltd has been guided to file a writ petition under article 199 at Peshawar high court to get a legal cover and get time to prolong the case as the procurement Entity had not stopped the process of issuance of supply orders.
 - VIII. After series of proceedings at Peshawar high court, the court remanded back the case to the respondent no 2 (DG Health services) to decide the case on merit without having been prejudiced either by court order or the authority order.
 - IX. It is worth noting that the tender was floated for supply of medicines and equipment for the year 2019-20 starting from 1/7/2019 to 30/6/2020. The contract is going to expire on 30th June 2020, which was, prima facia, the intension of PE to prolong the issue by involving the appellant in unnecessary litigations to kill the purpose of want of justice and act according to its own whims & fancies. It is also worth lamenting that at this belated stage when the contract has already been awarded, executed, and

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payments have already been made to the supplier no instant relief can be given to the appellant.

- X. Record revealed that the procurement Entity (DGHS) has remained in complete denial of the decisions made by KPPRA in the previous appeals of the appellant of this case.

6. Discussions:

"Justice delayed is justice denied."

There is no doubt that in the instant case justice has not only been delayed but altogether denied. There were three fora of justice from where the appellant could seek justice, which the appellant has timely knocked at but the appellant has still been abased just because of the usual/routine stubborn behavior of the dealing hand at the PE.

- 1st Tier..... The Departmental Grievance Redressal Cell
- 2nd TierThe Procurement Regulatory Authority (KPPRA)
- 3rd Tier.....Court of Law (High Court)

7. Departmental Grievance Redressal Committee:

- I. The appellant filed a complaint to the head of procurement authority i.e. Health Department. The Health Department was required to constitute a separate independent committee or refer the case to the departmental Grievance Redressal Committee under Section 35 of the KPPRA Act, 2012 to consider queries or observation of the appellant regarding score in the technical bid and decide the case on merit. Contrary to norms of justice the case was referred to the same technical and evaluation (T&E) committee for consideration which had carried out evaluation of the technical bid without taking into consideration of the fact that T&E committee will never accept the observations and negate their own Technical Evaluation.
- II. The technical committee gave three (03) additional marks to the appellant as per decision of KPPRA but his technical bid was declared as non-responsive based on the plea that there is discrepancy in technical and financial bids while there is big difference between discrepancy and ambiguity. Any bid having discrepancy can be declared as non-responsive but any ambiguity can be cleared by seeking clarification which is also covered under Rule 37 of the Procurement Rules, 2014. Although the ambiguity was cleared by the appellant on submitting undertaking which was not accepted rather

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considered and referred the undertaking to as it was negotiation without any sense and complete ignorance of difference between clarification and negotiations.

- III. It is also worth mentioning that the ambiguity so created in the bid of the appellant was due to the ambiguity in the SBDs, which is clear violation of Section 23 of the KPPRA Act, 2012 and Rule 33 of the Procurement Rules, 2014.
- IV. When the case was remanded back to DG Health Service KPK by the High court, it was required that an independent and impartial committee should have been constituted to decide the case on merit which was not done and the case was again referred to same technical and evaluation committee for recommendations and decision. This was again against the norms of justice.

8. Role of KPPRA:

- I. Although the case was decided by KPPRA on merit and recommendations were also sent to the procurement Entity but thereafter the role of KPPRA remained weak as it could not implement its decision in letter & spirit. However, it was also noted that KPPRA being regulator issued a number of letters followed by reminders to the PE for sharing implementation status of the decisions of the Authority but the same non-professional behavior of the PE remained hurdle in such implementation. It was also noted that there is no such mechanism available in the legal framework of the KPPRA which could have been exercised to implement its decision by force. Similarly, no such referral mechanism provided under such Law/Rules by invoking which the decision of KPPRA could have been referred to Law enforcing agencies.
- II. During course of hearing it was also noted that KPPRA has no powers of contempt of Law in its Act or Rules. During course of hearing the representatives of PE showed severe un-professional attitude by mocking over the powers & functions of the Authority as well as over entire mechanism of Grievance Redressal Mechanism provided under KPPRA Law.
- III. Implementation of the decisions of the Authority in letter & spirit is not only provision of justice to an aggrieved party but it is also required for existence of a procurement regulator which was challenged by the Procurement Entity in the instant case.

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9. Decision of Peshawar High Court:

- I. Peshawar high court decided the case on 19/2/2020 and remanded back to health deptt for decision of the case on merit

"وہی قاتل، وہی شاہد وہی منصف تیرے
اقربا میرے قتل کا کریں دعوہ کس پر"

10 Recommendations:

After hearing both the parties in detail, scrutinizing the documents so provided and findings of the instant case the following recommendations are hereby submitted:

- I. The instant case has already been decided by KPPRA and the decision made vide no KPPRA/GRR/Appeal/1-30/2019-20/378 dated 4/10/2019 & No. KPPRA/GRR/Appeal 33-2019 dated 4/12/2019 be implemented in letter & spirit.
- II. A high-level committee be constituted to conduct a fact-finding inquiry against all those dealing hands who consciously delayed the case and did not implement the decisions made by KPPRA for twice.
- III. The procurement proceeding made after 12/11/2019 be declared as mis-procurement to the extent that the decisions of KPPRA were not implement in letter & spirit.
- IV. No relief at this stage can be given to the appellant by this Authority as the case had already been decided by Authority in time which if implemented in true sense by the PE would have not led the appellant to suffer. However, if the appellant so desire may invoke other remedies available under the Law.
- V. It is also recommended that in order to avoid such circumstances in future where the decision of KPPRA is not implemented, the Rules may be amended and a special clause of contempt and referral of decision to Law Enforcing agencies under Rule 54 of the Procurement Rules, 2014 for implementation by force be included in Grievance Redressal Rules 2017.
- VI. During course of hearing counsel of appellant Mr. Habib-ur-Rahman advocate and Mr khalid Ahmad the representative of respondents (UNISA Pharmaceutical industries) used un-parliamentary and harsh language as well as threatened each others of serious consequences. The attitude and behavior of Dr Abbas was also not fair, professional and justified during the entire course of hearing. Therefore, it is also recommended that:

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- (i) a letter may be written to Bar Council for taking action against Mr. Habib-ur-Rahman advocate for using un-parliamentary and harsh language as well threatened other party for serious consequences
- (ii) A letter may be written to Secretary Health Department and convey the displeasure of KPPRA over the un professional attitude and behavior during the hearing.
- (iii) A letter may be written to UNISA pharmaceutical about their representative MR Khalid Ahmad for using un-parliamentary and harsh language as well threatened other party for serious consequences.

VII. The last but not the least recommendation of the Technical Assistant is regarding role of KPPRA which has been has been explained by a renowned poet Ahmad Faraz in his words.

"بٹ جائے گی مخلوق تو کیا انصاف کروے
مُصَف ہو تو اب حشر اٹھا کیوں نہیں دیتے"

Decision of the Authority:

Memo of appeal along with available record, proceeding conducted by the Technical Assistant (TA) so nominated in the instant appeal, statements/documents submitted by the parties thereto and recommendations of the Technical Assistant have been perused and examined in thread bare. Recommendations of the Technical Assistant are stated above.

In the light of above this Authority, under the provision of Section 35 of the KPPRA Act, 2012 and the Powers conferred upon the Managing Director KPPRA in this regard by the Board of Directors (BoD) of the Authority, while agreeing with the recommendations of Technical Assistant has reached to the conclusion that since the Respondent has failed to implement two decisions of the Authority in letter & spirit as well as mis-interpreted orders of the August Peshawar High Court, Peshawar. Therefore, the instant appeal is accepted and procurement proceedings conducted after 12/11/2019, during status quo period issued under Rule 10(4) of the GRR, 2017 by this Authority, to the extent of those items for which directions were issued in two decisions of the Authority as well as in the orders of the August Peshawar High Court, Peshawar are hereby declared as mis-procurement. The Authority holds that no relief at this stage can be given to the appellant by this Authority as the case had already been decided by Authority in time which if implemented in true sense by the Procuring Entity would

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have not led the appellant to suffer. However, if the appellant so desires may invoke other remedies available under the Law. Consequent, thereupon the administrative head of the Procuring entity i.e. Secretary to the Government of Khyber Pakhtunkhwa Health Department is directed to constitute a high-level committee to conduct a fact-finding inquiry against all those dealing hands who consciously delayed the case and did not implement the two decisions of the Authority in letter & spirit as well as mis-interpreted the orders/judgement of the August Peshawar High Court, Peshawar with intimation to this Authority. The Authority further holds that Respondents were directed in other two decisions that *"to avoid such disputes in future and ensure procurement of requisite standards and meeting the general principles of public procurement, the Procuring Entity/respondent may suitably revise the Evaluation Criteria by incorporating all desired specifications and terms and conditions needed for procurement of the intended products, and should ensure conformity of all documents and segments, inter se, of the SBD in this regard"*. However, due to non-implementation of the decisions of the Authority any procurement process conducted under the same un-revised Evaluation Criteria, terms & conditions and specifications would, once again, lead the Procuring Entity to enter into an un-ending litigation in future as well. Therefore, Secretary Health is further directed to take serious notice of such un-revised bid solicitation documents and the Procuring Entity is once again directed to revisit and revise the bid solicitation documents to avoid disputes in future.

Managing Director
Khyber Pakhtunkhwa
Public Procurement Regulatory Authority

Dated: _____

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APPEAL No. KPPRA/GRR/Appeal/94 of 2021

M/S Hashir Surgical Services through CEO Asghar Ali Shah, House No. 16, Street No. 1, Sector F-2, Phase-6, Hayatabad, Peshawar. _____ Appellant

Versus

1. Director General, Health Services, Chairman, S&RCC Govt. MCC, Khyber Pakhtunkhwa, Peshawar.
2. Director, Government Medicine Coordination Cell (MCC), Peshawar.
3. Chairperson, T&E Committee MCC, Peshawar.
4. Director General, Drug Control and Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
5. Secretary, Health Department, Government of Khyber Pakhtunkhwa, Peshawar.

_____ Respondents

Appeal Proceedings:

This appeal has been filed under Section 35(1)(b) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 read with Rule 7(1)(c) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 by M/S Hashir Surgical Services through CEO Asghar Ali Shah, House No. 16, Street No. 1, Sector F-2, Phase-6, Hayatabad, Peshawar (hereinafter "the Appellant") against the followings:

1. Director General, Health Services, Chairman, S&RCC Govt. MCC, Khyber Pakhtunkhwa, Peshawar.
2. Director, Government Medicine Coordination Cell (MCC), Peshawar.
3. Chairperson, T&E Committee MCC, Peshawar.
4. Director General, Drug Control and Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
5. Secretary, Health Department, Government of Khyber Pakhtunkhwa, Peshawar.

(hereinafter "the Respondents").

Upon receipt of the subject appeal under Section 35 of the KPPRA Act, 2012, the same was admitted for regular hearing, where after the Managing Director, KPPRA nominated Mr. Muhammad Fakher-e-Alam Khan, Chief Coordinator, Commissionerate Afghan Refugees, Khyber Pakhtunkhwa, and Mr. Muhammad Sheraz, Director Finance, Mardan Medical Complex, as a panel of Technical Assistants from the approved list of Technical Assistants under Rule 10 (2) of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017 and entrusted them to submit the recommendations vide No. KPPRA/GRR/Appeal/94 of 2021/911 dated 15.10.2021 (T/A). A copy of the appeal along with supportive documents were provided to the panel (Flag B; Pages 1-18).

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Proceedings and Evidence:

2. The nominated panel of Technical Assistants examined the appeal and attached documents on 15.10.2021. Summons were issued to the parties to appear along with record and relevant documents before the panel in the office of KPPRA on 21.10.2021 (Flag C and D).
3. The following points were selected for consideration and proceedings in the appeal:
 - a) Has the procuring entity/end users/MCC experts/consultants rightly applied the evaluation criteria and correctly recommended the appellant to be declared as non-responsive for the quoted item No. 985 i.e. 0.5 Auto Disable Syringe for Immunization Brand name Revitale CDY?
 - b) Has the Procuring Entity treated the grievance application/complaint in the prescribed manner, and the impact of non-conformity, if any, on the procurement process?
4. The hearing of the case was held by the nominated panel of Technical Assistants in the office of KPPRA on 21.10.2021. Mr. Mohammad Taif Khan, advocate, Mr. Arsalan Sareer, advocate, Naseeb Gul and Asghar Ali Shah represented the Appellant while Dr. Inam Ul Haq, Deputy Director, Miss Ume Kalsoom and Hidayat Ullah, MCC, DG Health, KP represented the Respondents. The attendance sheet is attached as (Flag E).
5. The learned counsel for the Appellant stated the brief facts of the case by referring to the memorandum of appeal and the documents annexed thereto, and elaborated that:
 - a) The appellant is a registered firm and deals in medical devices with the name and style "Hashir Surgical Services" the appellant is doing business with the Health Department and participating in the process of procurement of medicine.
 - b) Directorate of Health Services (DGHS), Khyber Pakhtunkhwa published an invitation for bids through "Government Medicine Coordination Cell (MCC)", Directorate General Health Services Khyber Pakhtunkhwa for selection and rate contracting of drug/Medicine, Medical devices Surgical Disposable and non-drug items for the year 2021-22.
 - c) The appellant submitted bids for various items, wherein item No. 985 i.e. Auto Disable Syringe for Immunization with Brand Name Revitale CDY was not recommended on the following grounds:
 1. *Revitale healthcare Kenya Item No. 985 is not recommended by End User/MCC expert/Consultant.*
 - d) Non-recommendation of the appellant on the basis of physical examination by the end user/doctor is illegal as the said quoted item has been tested by the DTL and such specification has also been approved by the World Health Organization (WHO).
 - e) That according to the law mere examination held by persons/individuals, the standard and specification of such item cannot be questioned. A group of individuals who are

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otherwise not the sector/item experts cannot ascertain the quality parameters and decide the sterility and pyrogen free tests with other specifications. Similarly, the fact that such quoted item is used for the immunization of vaccine was also ignored, for which the standard of gauge required is 23-gauge needle.

- f) The end user/doctor also ignored the fact that effectiveness of the quoted item will be reduced if gauge of needle was put below 23-gauge as the vaccine is dense in the nature and it cannot be easily injected if the gauge of the needle is below 23-gauge.
 - g) The appellant filed a complaint u/s 35(1)(a) of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act 2012 to the Secretary Health/Respondent No.5 on 20.09.2021, vide diary No. 17710, which was pending disposal within stipulated time period, hence the instant appeal has been filed.
 - h) The appellant most humbly requested that on acceptance of this appeal, the respondent may please be directed to revise the approved bid evaluation report of MCC bid 2021-22 and the appellant may be declared as qualified being responsive in all required specification and documentation to save the money of public exchequer. It was further requested that till the final decision in the instant appeal, the DG Health/Respondent No.1 may please be restrained to award the contract for the above mentioned items.
6. The learned counsel for the respondents briefly responded on the points raised by the appellant and requested that they may be granted time to submit their written reply/statement. The panel of Technical Assistants allowed the request of the respondents and allowed to submit written response to the office of Registrar of Appeals, KPPRA on 27.10.2021 along with the supporting documents. The respondent again requested ROA, KPPRA that the submission date of written reply may kindly be extended upto 02.11.2021, which was granted by the panel of TA's. On 02.11.2021 vide letter No. 5717/DG, DC&PS/MCC/KP the respondent submitted written statement and supporting documents (Flag G; Annexes I-IX). Copy of the same has been shared with the appellant through the office of ROA, KPPRA. The respondents stated the following points;
- a) The appellant has concealed the whole truth and material facts. The appellant has not come with clean hands. The appellant has mala fide intentions. The appellant is estopped by his own conduct and his appeal is liable for dismissal.
 - b) The respondents have described the general procedure for framework agreement of Government Medicine Coordination Cell (MCC) for procurement of medicines, involving advertisement in the press, submission of bids, opening of technical bids, evaluation of product wise evaluation of the firms, technical and performance evaluation of the disposable items by a panel of experts, and testing of items by the Drug Testing Laboratory (DTL). According to respondents the process of evaluation of bidders have been undertaken by the Technical and Evaluation (T & E) Committee, which assist the Selection and Rate Contracting Committee (S & RCC) being the final authority for approval of the cases. The evaluation is

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followed by physical inspections of the firms to authenticate the current Good Manufacturing Practices (cGMP) and other documents. During the process any grievance or appeal is considered on its merit. The same procedure was applied in the instant procurement.

- c) The appellant deals in the items which fall under the category of medical devices, surgical disposables and non-drug items, including the following items;
 - i. *Formulary No. 985 (auto-disable syringe 0.5 ml) manufactured by M/S Revitale Healthcare Kenya.*
- d) The respondent further submitted that the items quoted by the appellant were not technically qualified due to non-fulfilment of the technical evaluation criteria/parameters set forth in the advertised standard bidding documents (SBDs) for the year 2021-22 covered in section II (ITB 25.4), SCC Section 5(iv) & (viii), section V (F) (v) and technical evaluation proforma for the import of medical devices at column No. 18 & 19 of the advertised SBDs Govt. MMC FY 2021-22 (Flag G; Annex-I).
- e) The appellant firm participated in open bidding competition and has successfully been selected for thirty-three (33) items on the basis of best evaluated bids in Govt. Medicine Coordination Cell, KP for the year, 2021-22, copy of the contract agreement is at (Flag G; Annex-IX).
- f) The appellant has filed the instant appeal for its quoted formulary item No. 985, which is not recommended during the course of technical evaluation due to non-adherence to quality and prescribed standards as defined in the SBDs.
- g) Detail of the item in question is reproduced as under along with facts and decisions of the procurement committee as per advertised criteria;
 - i. *M/S Revitale Healthcare Kenya, Item Formulary No. 985 (auto-disable syringe 0.5 ml) is not recommended by End Users/MCC Experts/consultants.*
- h) The respondent in their written statement produced the decision of the S&RCC/Procurement Committee and stated that the samples provided by the appellant to the MCC panel of experts/End Users/Consultants (Surgeons, Nephrologists, Physicians, Senior Nurse/Dialysis Technician) notified vide Annex-VI for physical examination/evaluation of the items as a mandatory requirement for the technical evaluation process mentioned in the SBDs at Section II(ITB 25.4), SCC Section 5(iv) & (viii), section V (F) (v) and technical evaluation proforma for the import of medical devices at Column No. 18 of the advertised SBDs Govt. MMC FY 2021-22 (Flag G; Annex-VIII).
- i) It is further stated in the written reply of the respondent that 05 members of the panel of experts/End Users/Consultants have not recommended the quoted item at formulary No. 985 of the appellant due to the adverse observation, which is reproduced in the End Users/Consultants report (Flag G; Annex-VII).

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- j) The respondent further stated that the items quoted by the appellant falls under the Category of therapeutic goods, which are used for parenteral medicaments in critical conditions at hospitals. Non-fulfillment of the end user satisfaction of such items shall lead to life threatening and serious consequences.
- k) In addition, the mandatory technical evaluation of the quoted medical devices/surgical disposables etc. at DTL for test analysis according to official monographs and pharmacopoeias/standard/analysis parameter and physical examination/evaluation by the MCC panel of experts/End users/Consultants of all bidders, as system breaking points, are binding requirements mentioned in the SBDs at Section II(ITB 25.4), SCC Section 5(iv) & (viii), section V (F) (v) and technical evaluation proforma for the import of medical devices at Column No. 18 & 19 of the advertised SBDs of Govt. MMC FY 2021-22. (Flag G; Annex-I & II).
- l) The respondent stated that the appellant statement regarding physical examination of the quoted medical devices etc. by MCC panel of expert/End user/consultant is incorrect and misleading. The procuring entity during procurement process conducted evaluation through highly qualified technical experts/consultants in a transparent and professional manner. Notification of MCC panel of expert/End users/consultants is produced which is attached as (Flag G; Annex VI).
- m) It has been again stated by the respondent that (05) five members of the MCC panel of expert/End users/consultants have not recommended the quoted item at formulary No. 985 of the appellant due to adverse observations, which are reproduced as such "painful phlebotomy, phlebitis risk and contraindicated in neonates" hence not due to gauge requirements.
- n) The sterility and pyrogen test of the quoted items are conducted at DTL along with all relevant test analysis which are required according to the official monographs, pharmacopoeias/standard ISOs and analysis parameters. The same item was physically failed to satisfy MCC panel of experts due to risk of phlebitis and contraindication in the neonates during immunization.
- o) The Respondent prayed that the instant appeal has no material, a plethora of distorted facts, which has got nothing with the procurement process. The same is merely due to the ignorance of procurement laws and policy of the procuring entity which has taken its effect while finalizing rate contracting. The instant appeal on the bases of incorrect, distortion of facts and ulterior motives shall directly affect the patients in free provision of lifesaving medicines being exclusively used in immunization and intravenous catheterization in critical conditions at hospital settings. The Govt. MCC Khyber Pakhtunkhwa is a notified body with defined TORs. The selection of items are based on the qualification of all the technical criteria/parameters for the respective firm/items. In the case of appellant, the

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products were examined by MCC panel of experts for purpose of safety, efficacy, potency, quality and cost effective selection of the items. All parameters were critically checked and documented as per advertised criteria. However, the quoted item at formulary No. 985 did not qualify due to non-fulfillment of the requisite technical evaluation criteria/parameters in the advertised bidding competition. Therefore, it is requested that the instant appeal may be dismissed for the supply and availability of the lifesaving medical devices to the poor, deserving and critically ill patients.

Discussion and Findings:

8. The proceedings in the case revealed the following position about the points for determination and points at variance:
- a. Whether the procuring entity/end users/MCC experts/consultants rightly applied the evaluation criteria and the PE has correctly not recommended the appellant's quoted item No. 985 i.e. 0.5 Auto Disable Syringe for Immunization Brand name Revitale CDY. The relevant criteria for evaluation of technical bid given in the SBDs are reproduced below;

Section V. Technical Specifications

Technical Evaluation Criteria for Drugs / Medicines, Medical Devices,

Surgical Disposables and Non-Drug Items (NDIs)

F. Importers of Medical Devices (excluding Cardiac Stents)

- v. Samples of devices will be tested and evaluated by the Drugs Testing Laboratory as well as by panel of experts/end users and the quoted item/s may be disqualified for further competition on the report/s of these entities.

Special Conditions of Contract

5. Inspection and Tests (GCC Clause 8 and in accordance with the clauses of contract with the Procuring Agency)

- iv. Medical Devices, Surgical Disposables and NDIs shall be examined and/or tested by MCC experts/s of the T&E Committee, and/or of the S&RCC of the Government MCC in a manner as deemed relevant and appropriate (including testing at Drug Testing Lab or elsewhere) for the purpose by the said expert/s, and as laid down, or otherwise, in the applicable laws and Rules, for submission of technical report to the relevant forum/quarter for the needful.

- viii. The application fee charges of @ Rs. 5000/bid seems rational to carry out the purpose of soliciting the bidding documents as the same is considered as fee not only considering the cost of the documents but to achieve multiple steps relating to the procurement process including the product wise evaluation of the firms, technical & amp; performance

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evaluation of the disposable items at their premises across the country by the panels of Pharmacists, consultants (physicians, surgeons, etc.) and other experts/end users and quality assurance parameters / specifications through chemical analysis in adherence to the standard specification of the offer bid as per provision of The Drug Act and rules frame their under.

Technical evaluation proforma for the import of medical devices column No.18 & 19 of advertised SBDs Govt. MCC FY 2021

Evaluation Criteria for Importers of Medical Devices, Govt. MCC 2021-22	
Product Technical Evaluation	
Column 18	Column 19
Samples evaluation by DTL(Failure to comply with the relevant standards shall lead to Disqualification of the quoted product)	Physical examination of the quoted item/s by the MCC expert/s shall lead to disqualification of the said item

The above conditions stipulate that samples of devices will be tested and evaluated by the Drugs Testing Laboratory (DTL) and panel of experts/end users and the quoted item/s may be disqualified for further competition on the report/s of these entities. Moreover, according to Evaluation Criteria provided in technical evaluation proforma for Importers of Medical Devices, product technical evaluation in column 18 it has been stated that Samples evaluation by DTL(Failure to comply with the relevant standards shall lead to Disqualification of the quoted product) and column 19 states that Physical examination of the quoted item/s by the MCC expert/s shall lead to disqualification of the said item. Based on evaluation criteria provided in the bidding documents and record provided by the respondent was perused to find out the DTL report for the item No. 985 in said case. From the perusal of record submitted by respondent it was revealed that the DG Health Services KP/Chairman S&RC Committee Govt. MCC 2021-22 has sent a letter No. 2126-28/MCC/KP, dated 17.06.2021 to the Director/In-charge, Drug Testing Laboratory, Khyber Pakhtunkhwa and enclosed the samples of the medical devices, surgical disposables and cotton related items in the Govt. MCC tender 2021-22 for the test/analysis along with list (01 page) of firms and cartons vide letter No. 2126/MCC/KP dated 17.06.2021 (Flag G; Annex V). however, there is no reply available on record from the Director/In-charge, Drug Testing Laboratory (DTL), Khyber Pakhtunkhwa, which was the evaluation criteria in SBDs for compliance with standards; and in case of failure to comply with the relevant standards shall lead

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to disqualification of the quoted product. Nor the respondent has contested that the DTL report of the appellant has failed, so the same criteria in the instant case in hand has not been the reason for disqualification of the appellant firm. The other evaluation criteria/parameter provided in the SBDs was the physical examination of the quoted item/s by the MCC panel of expert/end users. The documents provided by the respondent were perused wherein it was noticed that the DG, Health Services, KP Chairman S&RC Committee has sent a letter to Heads of the MTIs, IKD, Services Hospital and DHQ hospital regarding the MCC expert/end user/consultants committee for the selection & Rate contracting of Medicines/Drugs, Medical Devices, Surgical Disposables & Non-Drug items for the FY 2021-2022 Govt. MCC, KP (Flag G; Annex-VI). List of the samples for DTL/End users for the year 2021-22 of Hashir Surgical Services is available on record (06 pages); at serial No. 5 under the column "Trade name" Revitale CADY, column "Specification" 0.5 ML, under the last column "DTL/End user report" painful phlebotomy and contraindicated in neonates remarks has been reflected. Apart from said comment, there is nothing available on record or any report that could have been relied upon for rejection of item No. 985 i.e. 0.5 Auto Disable Syringe for Immunization Brand Name Revitale CDY.

The complaint dated 14.09.2021 filed by the appellant is still pending with the Respondents. In terms of Rule 6 of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017, the Grievance Redressal Officer/Committee was duty bound to decide the complaint within 5 days and convey the decision to the complainant/appellant within 3 days.

Recommendations of the Panel of Technical Assistants:

In view of the foregoing discussion and conclusions, and in terms of Rule 10(8) of GRR read with item 22 of Guidelines GR, the panel of Technical Assistants recommends that the evaluation criteria provided in the Standard Bidding Documents has not been applied objectively and the detailed expert report is missing. Keeping in view the health implication of the subject, it is recommended that the detailed expert inspection report (expressing an objective, evidence-based and data-based feedback on the basis of which the product was rejected) may be submitted to Authority for the final decision.

Decision of the Authority:

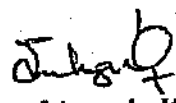
Memo of appeal along with available record, proceedings conducted by the panel of Technical Assistants (TAs) so nominated in the instant appeal, statements/documents submitted by the parties thereto and recommendations of the panel of Technical Assistants have been perused and examined thread bare.

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In light of the above, the Authority under the provision of Section 35 of the KPPRA Act, 2012 and the Powers conferred upon by the Board of Directors (BoD) of the Authority, while agreeing with the recommendations of panel of Technical Assistants has reached to the conclusion that the appellant submitted bids for various items, wherein the item No. 985 i.e. Auto Disable Syringe for Immunization Brand Name Revitale CDY was not recommended by End Users/MCC experts/Consultants. However, there is no reply available on record from the Director/In-charge, Drug Testing Laboratory (DTL), Khyber Pakhtunkhwa, which could be relied upon to decide about qualification/disqualification of the said item. Similarly, the other evaluation criteria/parameter provided in the BSDs is the physical examination of the quoted item/s by the MCC panel of experts/end users. As per available record, DG, Health Services, KP Chairman S&RC Committee sent a letter to Heads of the MTIs, IKD, Services Hospital and DHQ hospital regarding the MCC experts/end users/consultants committee for the selection & Rate contracting of Medicines/Drugs, Medical Devices, Surgical Disposables & Non-Drug items for the FY 2021-22 of Govt. MCC, KP. List of the samples for DTL/End users for the FY 2021-22 of Hashir Surgical Services is available on record (06 pages); at serial No. 5 under the column "Trade name" Revitale CADY, column "Specification" 0.5 ML, under the last column "DTL/End user report" with following remarks "painful phlebotomy and contraindicated in neonates". Apart from the said comment, there is nothing available on the record or any report that provides the basis for rejection of item No. 985 i.e. 0.5 Auto Disable Syringe for Immunization Brand Name Revitale CDY.

Since the evaluation criteria provided in the BSDs has not been applied objectively and the reports of both DTL and MCC panel of experts/end users/Consultants are missing. Therefore, the Respondent(s) are directed to re-evaluate the item No. 985 i.e. Auto Disable Syringe for Immunization Brand Name Revitale CDY in the light of DTL report within 05 days and proceed on merit in accordance with the law and BSDs.

-Sd-
Managing Director
KP Public Procurement Regulatory Authority


Registrar of Appeals, KPPRA

Dated: 14/12/2021

Registrar of Appeals
Government of Khyber Pakhtunkhwa,
Public Procurement Regulatory Authority



(78)

AM's J

CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA
PESHAWAR

Dated Peshawar 4th June, 2024. /12/

NOTIFICATION.

NO.DS(C)/CMS/KPK/2024: The Hon'able Chief Minister Khyber Pakhtunkhwa is pleased to constitute a committee comprising the following to discuss uninterrupted availability of essential medicines and to maintain transparency in the procurement process in Districts with the ToRs as under:-

- | | | |
|----|--|----------|
| 1. | Brigadier (R) Muhammad Mussadiq Abbasi,
Advisor to Chief Minister on Anti-Corruption, Khyber Pakhtunkhwa. | Convener |
| 2. | The Additional Chief Secretary, P&D Department
Khyber Pakhtunkhwa. | Member |
| 3. | The Principal Secretary to Chief Minister,
Khyber Pakhtunkhwa | Member |
| 4. | The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department. | Member |
| 5. | The Secretary to Government of Khyber Pakhtunkhwa,
Finance Department. | Member |
| 6. | The Director General, Drugs, Khyber Pakhtunkhwa | Member |

ToRs of the Committee.

- I. The Committee will look into the requirements of measures in the distribution and the item provided in the recent procurement.
- II. The upcoming procurement
- III. How to streamline and transparent the procurement system.
- IV. Lapses if any, the responsible shall be identified.
- V. Any other issue by the committee deem appropriate to be highlighted

-Sd-

Principal Secretary to Chief Minister
Khyber Pakhtunkhwa

Copy forwarded to:-

1. All Members of Task Force.
2. PS to Chief Minister, Khyber Pakhtunkhwa.
3. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar
4. PS to Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

(Muhammad Hashim Khan)
Deputy Secretary (Coord).

(79)

Amo-K²

The Honorable Chief Minister
Khyber Pakhtunkhwa
Peshawar.

Subject: Representation against the Committee Constituted via Notification No: S(C)/CMS/KPK/2024

Honorable Chief Minister,

With all due respect, I am writing to formally express my concerns regarding the Committee constituted under Notification No: DS(C)/CMS/KPK/2024, dated 4th June 2024, which is led by Advisor to Chief Minister on Anti-Corruption and includes the Director General Drugs as a member.

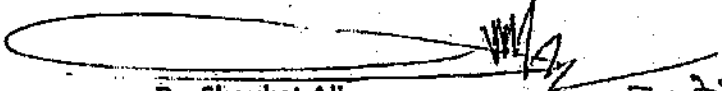
It is with great respect that I bring to your attention our strong objections regarding the constitution of this Committee. We believe that its composition appears biased, which undermines the integrity of its intended purpose. Furthermore, the letter issued by the said committee dated 7th June 2024 indicates that the Committee is deviating from its Terms of Reference (ToRs) by targeting procurement matters related to the fiscal year 2023, which pertains to my tenure as Director General.

This targeting raises serious concerns about the impartiality of the investigation and the potential for unjust conclusions. It is essential for the credibility of any review process that it is conducted in a fair and unbiased manner, free from any perceived conflicts of interest.

In light of these considerations, I respectfully request that you reconsider the constitution of this Committee. I urge you to de-notify the current committee and revert any proceedings that may have been conducted under its purview.

Thank you for your attention to this important matter. I remain hopeful for your prompt action to ensure justice and fairness in our health services.

Yours sincerely,


Dr. Shaukat Ali
Ex-Director General Health Services
Khyber Pakhtunkhwa
Peshawar

1.7.2024



(80) Aug - 2
L

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR**

(All communications should be addressed to the Director General Health Services Peshawar and not in any official by name)
Ph: 091-8210283, Website: <http://www.dghsp.gov.pk>, E-mail: dghsp2014@gmail.com

No: 8426-27/10mm

Dated: 22/07/2024

OFFICE ORDER:

In pursuance of the directions given in a meeting of the committee, notified for ensuring uninterrupted availability of essential medicines and to maintain transparency in the procurement process, communicated vide minutes dated: 11.07.2024, enquiry committee comprising of the following is hereby constituted to probe the non-supply of medicines / medical devices against the payment made to the firms as per report submitted by the Committee constituted vide Office Order No: 3239-40/cc dated: 11.06.2024.

1. Dr. Muhammad Saleem, Director (DHIS), DGHS Office
2. Mr. Asghar Afridi, Deputy Director (Coordination), DGHS Office
3. Mr. Adil Shah, Deputy Director (Procurement Cell), DGHS Office

TORs:

- i. To chalk out the amount against which supply orders placed to the approved firms.
- ii. To calculate the amount against which supplies / stocks have been received.
- iii. To check as to whether, supplies against the supply orders have been made in total or partially delivered against the said supply orders.
- iv. To determine the total amount against which supply orders were placed, payment made but stocks not supplied.
- v. To check the other prerequisites / requirements of the procurement i.e. modalities for the payment, need assessment prior to placement of supply orders, DTL reports, inspection reports, distribution plan viz a vi policy specified for procurement / purchases under the TopUp initiative.
- vi. Any other short comings / discrepancies observed during the probe.

The committee shall submit its report within Seven (07) days positively.


**DIRECTOR GENERAL HEALTH SERVICES
Khyber Pakhtunkhwa, Peshawar**

Copy for information:

1. PS to Special Assistant to Chief Minister on Anti-Corruption, Khyber Pakhtunkhwa.
2. Officers / Official concerned.
3. PS to Secretary Health, Khyber Pakhtunkhwa.
4. PA to DGHS, Khyber Pakhtunkhwa Peshawar.

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DR SHAIKAT ALI,

Ex- Director General Health Services,
Currently Report to Directorate General Health Services,
Government of Khyber Pakhtunkhwa.

(81)

AME M²

Subject:

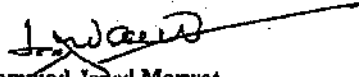
DISCIPLINARY PROCEEDING UNDER INQUIRY REPORT - TO PROBE THE NON SUPPLY OF MEDICINES /MEDICAL DEVICES AGAINST THE PAYMENT MADE TO THE FIRMS AS PER REPORT SUBMITTED BY THE COMMITTEE CONSTITUTED VIDE OFFICE ORDER NO. 3239-44/CC DATED 11.6.2024


Reference; Government of Khyber Pakhtunkhwa Health Department vide letter No. SO (E-V)/4-4/2024 dated 09.09.2024.

With reference to the subject cited above, the Competent Authority has approved an initiation of disciplinary proceeding against you.

2). Accordingly charge sheet/statement of allegations is being issued to you by Health Department vide letter NO. SO (E-V) 4-4/2024, dated 09.09.2024. Furthermore, the statement of allegations/findings of fact finding inquiry is attached as Annexure-A.

3). You are hereby directed to submit your reply within 15 days in response to the above mentioned statement of allegations/ findings of fact finding inquiry on account of Corruption, Misconduct and Misuse of Authority.


Muhammad Javed Marwat,
Chairman Inquiry Committee/
Commissioner,
Mardan Division, Mardan


Dr. Shiraz Qayyum,
Member of Inquiry Committee/
Director,
(Accident & Emergency),
Health Department, Peshawar.

NO. 1620-23 /PSC(M)

Dated: 24 /09.2024

Copy forwarded to:

1. Dr. Mushtaq Ahmad (BS-19), the Competent Authority have nominated you as Departmental Representative, under Rule 10(c) of the Khyber Pakhtunkhwa Government Servant (Efficiency and Disciplinary) Rule, 2011 to attend the inquiry proceeding alongwith all relevant records on the day of proceeding.
2. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.

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- 8. Gross irregularities have been observed when the record regarding stocks at district level as well as central warehouse was tallied with the record at Directorate General Health Service.
- 9. In deviation of the policy for Top Up medicines initiative, the stocks were shown supplied to the districts which should have been supplied to the central warehouse and no proper record was maintained either to cross check the stocks with invoices or to verify proper distribution to check the districts.
- 10. Stock of worth PKR 0.816 Billion was shown supplied to the central warehouse while supplies of worth PKR 0.452 Billion were shown supplied to the districts although in violation of the policy. Considering both the supplies, it appears that supplies of worth PKR 1.268 Billion were made against the total amount of 3.172 Billion thus putting a huge loss to the tune of PKR 1.9045 Billion on account of non-supply of stocks against the supply order but payments (3.172 Billion) made to the firms without considering the facts that no supplies against the purchase orders were made.
- 11. He has made payments against various items shown supplied to DHO Peshawar as per given table:

S#	Name of Item	Quantity	Amount (Million)
VIII.	disposable non-sterile examination gloves	60 Lac	135.66 M
IX.	Million male latex condom	2 lac	3.75 M
X.	disposable OT drape sheet	20000	8 M
XI.	disposable gown	14000	14 M
XII.	Tablets Tenoberg 300 mg	1 lac	5.15 M
XIII.	I/V Canula 24 gauge	3000	0.52 M
XIV.	Gauze cloth rolls packing	3000	8.13 M
TOTAL			175.21 M

[Handwritten signature]

Storekeeper at DHO Office Peshawar when asked about the supplies, he denied of the receipt of the mentioned stocks with no stock register maintained at the office of DHO Peshawar. It appears to be gross irregularities resulted in financial embezzlement.

- 12. He has made payments against various items shown supplied to DHQ Hospital Bajaur as per given table:

S#	Name of Item	Quantity	Amount (Million)
VIII.	disposable non-sterile examination gloves	30 Lac	67.83 M
IX.	Million male latex condom	60000	1.125 M
X.	disposable OT drape sheet	30000	12 M
XI.	disposable gown	22000	22 M
XII.	Tablets Tenoberg 300 mg	3 lac	15.45 M
XIII.	I/V Canula 18, 22 & 24 gauge	12000+35000+1500	7.404 M
XIV.	Gauze cloth rolls packing	3000	8.13 M
TOTAL			127.939 M

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OFFICE OF THE COMMISSIONER GENERAL DIVISION MARRAN



CS CamScanner

19. The invoice against the purchase order No. 1271-75/DGHS-MCC/KP dated 29-01-2024 valuing PKR 22.5 Million was submitted on same day i.e. 29-01-2024, it was processed on 02-02-2024, cheque was issued on 07-02-2024 but on the contrary the product manufacturing date given on the delivery challan was April 2024 meaning thereby the bills cleared prior to manufacturing of the said item.

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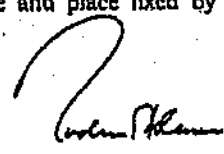
20. The invoice against purchase order no. 1266-79/DGHS-MCC/KP dated 29-01-2024 valuing PKR 92.7 Million was submitted on same day i.e. 29-01-2024, it was processed on 02-02-2024, cheque was issued on 07-02-2024 but on the contrary the invoice was submitted before the delivery as evident from issuing date.

2. For the purpose of inquiry against the said accused with reference to the above allegations an Inquiry Officer/Inquiry Committee, consisting of the following is constituted, under Rule 10(1)(a) of the ibid rules.

- a. Muhammad Javed Maswat (Per EG-21)
Commissioner Masdan.
- b. Dr. Shiraz Razaqum (BS-20)
Director (ESA) Health Deptt.

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 60-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Committee.



(NADEEM ASLAM CHAUDHARY),
Chief Secretary,
Khyber Pakhtunkhwa.



**KHYBER PAKHTUNKHWA
PESHAWAR**

Dated Peshawar 6th September, 2024.

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NOTIFICATION.

NO.DS(C)/CMS/KPK/2024: In pursuance to the Committee notification No.DS(C)/CMS/KPK/2024 dated 4th June, 2024 constituted by the Hon'able Chief Minister, Khyber Pakhtunkhwa, a sub-committee of the following officers is hereby constituted for the assistance of the committee:-

1. The Secretary to Government of Khyber Pakhtunkhwa, Health Department.
2. The Special Secretary, Finance Department or his representative.
3. The Director General, Health Services, Khyber Pakhtunkhwa. _____
4. The Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa. _____

Additional TORs of Main cum Sub-Committee.

- i. Sub-committee will carry out scrutiny of the documents, physical inspection of the firms as advised by the main committee.
- ii. The main committee to establish the malpractices, corruption or corrupt practices in the procurement processes if any and affix the blame on various responsible individuals so identified.
- iii. Any other task assigned by the committee.

The above cited committees may co-opted any person(s) for technical and legal assistance.

-Sd-
Principal Secretary to Chief Minister
Khyber Pakhtunkhwa

Copy forwarded to:-

1. All Members of the Committee.
2. PSO to Chief Minister, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar
4. PS to Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.


(Muhammad Hashim Khan)
Deputy Secretary (Coord).

GOVERNMENT OF THE KHYBER PAKHTUNKHWA ESTABLISHMENT
AND ADMINISTRATION DEPARTMENT.

85

NOTIFICATION

Peshawar dated the 16th September, 2011.

NO.SO(REG-VI) E&AD/2-6/2010.-In exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**—(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**—(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;
- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "competent authority" means—
 - (i) the respective appointing authority;
 - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules:

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused ¹[:]

²[Provided further that where Chief Minister is the Appointing Authority, the Chief Secretary shall be the competent authority for the purpose of these rules except rules 14 & 15.]

¹ Full-stop replaced by Notification No. SO (Policies) E&AD/1-41/2017 dated 07.12.2017.

² Added by Notification No. SO (Policies) E&AD/1-41/2017 dated 07.12.2017.

- (vi) making appointment or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
- (vii) conviction for a moral offence by a court of law ¹; or
- (viii) Avoiding submission of Annual confidential Report / Performance Evaluation Report by a Government Servant, or withholding such report by the Reporting Officer or the countersigning Officer as the case may be, within the required period as provided in the instructions issued by the Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973, from time to time ²;

³[(m) "penalty" means a minor or major penalty, as provided under rule 4 of these rules.]

- (2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. Grounds for proceedings.—A Government servant shall be liable to be proceeded against under these rules, if he is—

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or
- (f) entered into ⁴[voluntary return or] plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

⁵4. Penalties.— (1) The following shall be penalties under these rules:

- (a) minor penalties:
 - (i) censure;
 - (ii) withholding of increment or increments for a specific period, subject to maximum of three years, without cumulative effect:

Provided that the penalty of withholding of increment shall not be imposed upon a Government servant who has reached the maximum of his pay scale or shall superannuate within the period of penalty;

¹ Added by Notification No. SO(REG-VI) E&AD/2-6/2010 dated 26-05-2014

² Full-stop replaced by semi-colon by Notification No. SO(Policies)E&AD/2-6/2021 dated 31-12-2021

³ Added by Notification No. SO (Policies) E&AD/2-6/2021 dated 31-12-2021.

⁴ Inserted by Notification No. SO (Policies) E & AD/2-6/2017 dated 07.12.2017.

⁵ Substituted by Notification No. SO (Policies) E&AD/2-6/2021 dated 31-12-2021.

- (g) "corruption" means-
 - (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
 - (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
 - (iii) entering into [voluntary return or] plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
 - (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for and which are disproportionate to his known sources of income; or
 - (v) maintaining a standard of living beyond known sources of income; or
 - (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- ²(h-i) "hearing officer" means an officer, as far as possible, senior in rank to accused, appointed by the competent authority, to afford an opportunity of personal hearing to the accused on behalf of the competent authority;]
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;
- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "misconduct" includes-
 - (i) conduct prejudicial to good order or service discipline; or
 - (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
 - (iii) conduct unbecoming of Government servant and a gentleman; or
 - (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
 - (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or

¹. Inserted by Notification No. SO (Policies) E & AD/2-6/2017 dated 07.12.2017
². Inserted by Notification No. SO(Policies)E&AD/2-6/2021 dated 31-12-2021

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Amir N



GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT



Dated: Peshawar the 26th April 2024

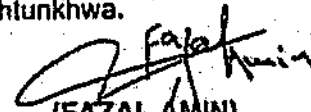
NOTIFICATION

NO.SOH(E-V)4-4/2024 The Competent Authority is pleased to suspend the services of DR. SHAUKAT ALI (1530250486057) S/O GUL NAWAZ KHAN Director General Health Services (BPS-20), with immediate effect till finalization of the inquiry in the subject matter dated: 02-04-2024 order No: 766-71/AE-V/DGHS by Director General Health Services, Khyber Pakhtunkhwa in the best public interest.

**SECRETARY HEALTH
KHYBER PAKHTUNKHWA**

No. 4494-112 /Notification of even No. & dated:
Copy of the above is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. Director General, PHSA Khyber Pakhtunkhwa, Peshawar.
5. Commissioner, Peshawar.
6. All DHOs, Khyber Pakhtunkhwa.
7. All MSs, Khyber Pakhtunkhwa.
8. All Projects / Program Managers Khyber Pakhtunkhwa.
9. PS to Minister Health, Khyber Pakhtunkhwa.
10. Additional Director Director (HRM), DGHS Office, Peshawar.
11. Deputy Director (IT), Health Department, Khyber Pakhtunkhwa.
12. PS to Secretary Health Department, Khyber Pakhtunkhwa.
13. PS to Special Secretary (E&A) Health Department, Khyber Pakhtunkhwa.
14. Doctor(s) concerned.
15. Master file.


(FAZAL AMIN)
SECTION OFFICER (E-V)



17135297012

Page 1/1

H E A L T H K P



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar May 16, 2024

NOTIFICATION

NO. SO(E-IV/E&AD)/9-133/2024. The following posting/transfer of officers is hereby ordered in the public interest, with immediate effect:-

S.#	NAME OF THE OFFICERS	FROM	TO
1.	Dr. Shaukat Ali Khan (BS-20 Management Cadre)	Director General, Health Services, Khyber Pakhtunkhwa	Report to Directorate General, Health Services, Khyber Pakhtunkhwa
2.	Dr. Muhammad Saleem (BS-20 Management Cadre)	Chief Executive Officer, Faculty of Paramedics & Allied Health Science, Khyber Pakhtunkhwa	Director General, Health Services, Khyber Pakhtunkhwa, vice Sr. No.1

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

ENDST. NO. & DATE EVEN.

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Additional Chief Secretary, P&D Department.
3. Additional Chief Secretary, Home & Tribal Affairs Department.
4. Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. Director General, Health Services, Khyber Pakhtunkhwa.
10. Chief Executive Officer, Faculty of Paramedics & Allied Health Science, Khyber Pakhtunkhwa.
11. Chief Executive Officer, Health Care Commission, Peshawar.
12. All Deputy Commissioners in Khyber Pakhtunkhwa.
13. Director General, Information & P.Rs Khyber Pakhtunkhwa.
14. Managing Director, Health Foundation, Khyber Pakhtunkhwa.
15. Director, Provincial Health Services Academy, Peshawar.
16. Additional Secretary (Staff) to Chief Secretary, Khyber Pakhtunkhwa.
17. All Hospitals/Medical Directors, MTIs, Khyber Pakhtunkhwa.
18. All District Health Officers in Khyber Pakhtunkhwa.
19. All Medical Superintendent of All District Headquarter Hospitals in Khyber Pakhtunkhwa.
20. All Principals, Public Sector Medical Colleges, Khyber Pakhtunkhwa.
21. Secretary, Pharmacy Council, Khyber Pakhtunkhwa.
22. Additional Secretary/CSO to Chief Secretary, Khyber Pakhtunkhwa.
23. PSO to Chief Secretary, Khyber Pakhtunkhwa.
24. Deputy Director, IT Health Department.
25. PS to All Ministers in Khyber Pakhtunkhwa (concerned)
26. PS to Secretary (Estt)/Special Secretary (Estt)/Special Secretary (R)/ PA to AS (Estt)/AS(HRD)/SO (Secret)/SO (HRD-I) & SO (E-II) Establishment Department.
27. PS to Managing Director, Khyber Pakhtunkhwa IT Board, Peshawar.
28. Officers concerned.
29. Manager, Govt. Printing Press Peshawar.

SECTION OFFICER (ESTT. I)
Ph# 091-9210529

Sohailan Shah

CS CamScanner

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Amc - P

(ZERO TOLERANCE TO CORRUPTION)
SPECIAL ASSISTANT TO CHIEF MINISTER
ON ANTI-CORRUPTION
GOVERNMENT OF KHYBER PAKHTUNKHWA

No. PS/SACM-AC KP/2-3/2024/Health
Dated: 07th June, 2024

To

✓
The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar.

90

Subject: - **PROCUREMENT RECORD OF GOVT MEDICINE COORDINATION CELL (MCC)**
2023-24 & LEFT OVER ITEMS

On the direction of the Hon'ble Chief Minister Khyber Pakhtunkhwa vide notification No. DS (C)/CMS/KPK/2024 dated 04.06.2024 to look into the procurement process of medicines and medical devices made by Health Department for the entire Health facilities of the Province. The following record duly legible indexed and numbered for the FY 2023-24 and left over items 2023-24 required to be submitted as soon as possible but not later than 17th June, 2024 to the committee for further course of actions desired please.

LIST OF DOCUMENTS.

1. Notification of procurement committees constituted for MCC FY 2023-24.
2. Notification of sub-committees, if any, constituted and reports.
3. Minutes and attendance of all technical and procurement committee meetings.
4. NITs/EOI/IFB/RFP as the case may be, including Bid Solicitation Documents with revision and approval in compliance with the Authority SBDs.
5. List of prospective bidders to whom the BSDs were issued.
6. Record of charging fee against the BSDs.
7. Technical Bids.
8. All correspondence (Internal/External), related to the specific procurement.
9. Bid Evaluation Report (Technical) with notification, on authority and health department website.
10. Bid Evaluation Report (Financial) with approval & notification, on authority and health department website.
11. Combined Bid Evaluation Report (Technical + Financial) with approval & notification, on authority and health department website.
12. Grievance Redressal meeting minutes.
13. Comparative statement.
14. Approved MCC lists for the FY 2023-24 & Left over Items 2023-24.
15. Corrigendum & Addendum in the approved list with notification and approval.
16. Contract agreements of successful bidders/suppliers.
17. Financial approval of the purchases.
18. Notification and approval of allocated budget, with detail of expenditure and pending liabilities, if any.
19. Demands Draft of the purchasing entities/Health facilities.
20. Annual procurement plan, and administrative approval.
21. Supply orders issued to the bidders/suppliers.
22. Delivery challan of the supplied stocks.
23. Invoices as per the applicable laws.
24. Notification of the Supply Inspection committees and reports.
25. Cash book of the receipt and expenditures.

(Page 1 of 2)



(ZERO TOLERANCE TO CORRUPTION)

91

**SPECIAL ASSISTANT TO CHIEF MINISTER
ON ANTI-CORRUPTION
GOVERNMENT OF KHYBER PAKHTUNKHWA**

26. Stock register in accordance with-GFR.
27. Bill submitted to AG office for payments of the stocks.
28. Cheque issued.
29. Distribution Plan and record of hospitals having received the stocks against their demands.
30. Verification of Issuance to hospitals

Brig[©] Muhammad Musaddiq Abbasi
Special Assistant to Chief Minister
on Anti-Corruption
(Convener)

Copy forwarded for information to:-

- 1) Minister for Health Department, Khyber Pakhtunkhwa.
- 2) Advisor to Chief Minister on Finance Department, Khyber Pakhtunkhwa.
- 3) Additional Chief Secretary (P&D), Khyber Pakhtunkhwa.
- 4) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 5) Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
- 6) Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
- 7) The Director General Drug, Health Department, Khyber Pakhtunkhwa.
- 8) The Director, Anti-Corruption Establishment, Peshawar.
- 9) Deputy Secretary (Coord.), Chief Minister Secretariat Khyber Pakhtunkhwa.

Special Assistant to Chief Minister
on Anti-Corruption



(ZERO TOLERANCE TO CORRUPTION)
SPECIAL ASSISTANT TO CHIEF MINISTER
ON ANTI-CORRUPTION
GOVERNMENT OF KHYBER PAKHTUNKHWA

No. PS/SACM-AC/KP/2-3/24
Dated: 19th August, 2024

Amr-Q

To

✓
Dr. Shaukat Ali,
Ex-Director General Health Services / Chairman,
Selection & Rate Contracting Committee (S&RCC),
Directorate General Health Services, Khyber Pakhtunkhwa,
Peshawar.

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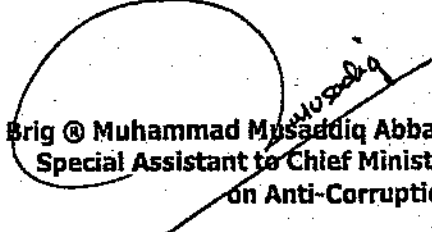
Subject: - **PROCUREMENT RECORD OF GOVT. MEDICINE COORDINATION CELL (MCC) 2023-24 & LEFT OVER ITEMS**

The Inquiry Committee constituted vide Chief Minister's Secretariat Khyber Pakhtunkhwa Notification No. DS (C)/CMS/KPK/2024/1217 dated 04th June, 2024 is looking into the matters of procurements of Health Department pertaining to year 2023-24. The facts finding's has revealed that you possess reasonable information to assist Committee in reaching its logical conclusions.

2. In view thereof, a questionnaire is sent to be replied **within five (05) days** after the receipt of this letter.

3. You are advised that failing to comply with the letter would tantamount to breach of discipline and good conduct, please.

Encl. Questionnaire


Brig @ Muhammad Muzaffiq Abbasi
Special Assistant to Chief Minister
on Anti-Corruption

Copy forwarded for information to:-

1. Additional Chief Secretary (P&D), Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department, Peshawar.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. Director General (Drug), Health Department, Peshawar.
7. PSO-I to Chief Minister, Khyber Pakhtunkhwa.


Special Assistant to Chief Minister
on Anti-Corruption

QUESTIONNAIRE

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PROCUREMENT PROCESS OF GOVT. MCC. MEDICINES/MEDICAL DEVICES, HEALTH DEPARTMENT FOR THE FY 2023-24.

Name Of Officer: **DR. SHAUKAT ALI, EX-DIRECTOR GENERAL HEALTH SERVICES / CHAIRMAN SELECTION AND RATE CONTRACTING COMMITTEE (S&RCC), DIRECTORATE GENERAL HEALTH SERVICES (DGHS)**

S#	Question	Response	
1.	Name of Committee member		
2.	Designation		
3.	Role in S&RC Committee		
4.	Period of posting as Director General Health Services	From	To
5.	Pay scale		
6.	Service Group		
7.	Were you nominated as Chairman Selection & Rate Contracting Committee notified vide notification No. SOG/HD/1-35/Gen.Notification/2023 dated 28 th April 2023 ?		
8.	What were your responsibilities as acting Chairman of the Selection & Rate Contracting Procurement committee?		
9.	How many meetings of the committee were scheduled? Do provide any such letter(s) for correspondence, attendance and minutes of the meetings if any		
10.	Your role as Chairman of the Selection & Rate Contracting Committee defined in the Policy notified vide No. SO(Drugs)/HD/7-1/MCC/2015 Dated 31-03-2015 for Govt. MCC by the Chief Minister Khyber Pakhtunkhwa which interalia carrying the composition and role of the S&RC committees. Your comments		
11.	Did you stop the already advertised tender and cancelled the BSD already prepared through notified committees. Do you understand that changes made by you in the BSD were significant than those contained in the BSD cancelled by you. Your take on it.		
12.	As a chairman of the SRCC, justify your role in developing BSDs, Schedule of Requirements, Technical & Financial Criteria, Contract agreements etc?		
13.	How can you justify the amendments in BSDs particularly the criteria of quoting prices on M.R.P? How did you fail to understand that selecting items on M.R.P would extend extraordinary loss to the Govt?		
14.	What were the justifications of all the amendments/ changes made in the BSDs for the procurement process FY 2023-24 and how did you document this?		
15.	Did you involve technical evaluation committee in developing BSDs, Schedule of Requirements, Technical & Financial Criteria, Contract agreements being technical experts in it as per policy notified vide No. SO(Drugs)/HD/7-1/MCC/2015 Dated 31-03-2015 for Govt. MCC by the Chief Minister Khyber Pakhtunkhwa?		
16.	Whether all the spade work related to technical evaluation were carried out by T&E committee or through some other committee (s) with your approval? Explain.		
17.	Who prepared Bid Evaluation report?		
18.	Did you obtain recommendations reports of the T & E Committee on Bid evaluation reports? Whether the scrutiny of the documents, inspection reports, end user analysis and other essential reports were endorsed by the T&E committee?		
19.	Did the participant from KPPRA attend any proceeding of the procurement process of medicines as member or Co-opted member? Provide attendance and minutes/reports/recommendations of the meeting where KPPRA Officer/official participated.		
20.	How many sub-committees did you constitute besides T&E committee for the technical evaluation process?		
21.	How the members of sub-committees and inspection committees were selected? How can you justify their relevance and selection being members in these committees?		

22.	Did you share the BER, GRR and Comparative statement etc on the web site of KPPRA and Health Department being mandatory provision?
23.	Can you provide a detailed account of how the procurement process of MCC FY 2022-24 adhered to the KPPRA Act 2012 and its Rules 2014?
24.	Whether SRCC meetings were attended by notified members or otherwise by allowing the process coram non iudice?
25.	How were decisions taken and communicated in the presence of unauthorized members in attending the S&RCC meeting?
26.	Despite directions communicated to the Directorate Health for provision of required record, incomplete documents provided to the Committee gives the impression that the directorate does not have the complete record in its custody. How did you maintain all the records pertaining to the procurement process?
27.	Did you Chairman of the committee carry out any exercise to compare the quoted rates of the selected items with the open market?
28.	Did you undertake redressal of appeals of the aggrieved firms?
29.	How many grievance appeals disposed off under your chairmanship by S&RCC in the said procurement process? Detail list of the appeals and decisions.
30.	Why the delay occurred in finalization of the approved list beyond 30 June 2023 as per Policy notified vide No. SO(Drugs)/HD/7-1/MCC/2015 Dated 31-03-2015 for Govt. MCC?
31.	You as Chairman S&RCC/Director General Health Services managed the entire procurement process of Medicines/ Devices through your aids specifically personnels who were not the members of any committee vide notification No. SOG/HD/1-35/ Gen.Notification/2023 dated 28 th April 2023, by Health Department. How will you justify their involvement in procurement process. Your comments.
32.	Did you follow the general principle of procurement in terms of preparation of SBD, formulary preparation, carrying out the process of technical evaluation, inspection committees, selection of items on reasonable prices with consideration of market prices, involvement of technical persons in the process. Contrary T&E report submitted vide letter No. 14521-30/ DGHS dated 10/10/2023 highlighted discrepancies in the procurement process before finalization of rates? Your comments.
33.	What was the policy for the purchases of medicines under TOPUP initiative to be followed by DGHS. Did you involve the committees for its role as specified in the said policy? Do provide the said policy.
34.	Did you follow the policy for Top Up medicines initiative, wherein the stocks were shown supplied to the districts which should have been supplied to the central warehouse by keeping proper record both in term of quantity and proper distribution to the districts? Your comments.
35.	Did you place the purchase orders (PO) to the firms under your signatures? If yes then provide the detail list of Purchased orders?
36.	You Director General Health Services / Chairman Selection & Rate Contracting Committee (S&RCC) approved 81 firms as successful bidder of different items while payments of PKR 3.17 Billion were made to few firms thus billions of rupees were distributed amongst few firms. Your comments.
37.	You as a Director General Health Services placed the supply/purchase orders worth PKR 4.4484 Billion to the firms while Finance Department has released an amount of PKR 2.909 Billion for purchase of essential medicines in two tranches (PKR 1.5 & 1.409 Billion) but purchase orders worth PKR 4.4484 Billion were placed making an unnecessary liability and that too on purchase of non-emergency items? Your comments.
38.	You Director General Health Services made payments given to the tune of PKR 3.1725 Billion wherein the Finance Department had released an amount PKR 2.909 Billion for purchase of essential medicines in two tranches (PKR 1.5 & 1.409 Billion) to DGHS. Your Comments
39.	You Director General Health Services purchased the non-essential / non-emergency items like condoms, gowns, drape sheet, examination gloves and others worth PKR 1.9173 Billion which is against the policy and depriving the health facilities from the provision of essential items. Your comments

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CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA
PESHAWAR

Dated Peshawar 6th September, 2024.

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NOTIFICATION.

NO.DS(C)/CMS/KPK/2024: In pursuance to the Committee notification No.DS(C)/CMS/KPK/2024 dated 4th June, 2024 constituted by the Hon'able Chief Minister, Khyber Pakhtunkhwa, a sub-committee of the following officers is hereby constituted for the assistance of the committee:-

1. The Secretary to Government of Khyber Pakhtunkhwa, Health Department.
2. The Special Secretary, Finance Department or his representative.
3. The Director General, Health Services, Khyber Pakhtunkhwa.
4. The Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa.

Additional TORs of Main cum Sub-Committee.

- i. Sub-committee will carry out scrutiny of the documents, physical inspection of the firms as advised by the main committee.
- ii. The main committee to establish the malpractices, corruption or corrupt practices in the procurement processes if any and affix the blame on various responsible individuals so identified.
- iii. Any other task assigned by the committee.

The above cited committees may co-opted any person(s) for technical and legal assistance.

-Sd-

Principal Secretary to Chief Minister
Khyber Pakhtunkhwa

Copy forwarded to:-

1. All Members of the Committee.
2. PSO to Chief Minister, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar
4. PS to Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.


(Muhammad Hashim Khan)
Deputy Secretary (Coord).



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA**

DG Office Phone No. 091-9210269
MCC Phone/ Fax No. 091-9211702
Email Address: mccdgdcp@gmail.com

No. 777-795/MCC
Date. 20/08/2024

To

1. Dr. Niaz Muhammad Medical Superintendent, Services Hospital Peshawar (Member)
2. Principal Pharmacist, Services Hospital Peshawar (Member)
3. Addl. Director (Govt. MCC) at DG DC & PS Peshawar (Member)
4. Dr. Mehtab Ullah Specialist in Medicine, Naseer Ullah Babar Memorial Hospital (Member)
5. Dr. Muhammad Khan Specialist in Surgery, Naseer Ullah Babar Memorial Hospital (Member)
6. Anesthesiologist, Services Hospital, Peshawar (Member)
7. Dr. Niamat Ullah Pediatrician, Services Hospital, Peshawar (Member)
8. Dr. Shakira Noreen Gynecologist, Moulvi Ameer Shah Memorial Hospital, Peshawar (Member)
9. Dr. Inam Ul Haq Deputy Director (Pharmacy Services) at DG DC & PS Peshawar (Member)
10. Mr. Jehan Zeb Assistant Director Govt. MCC, DG DC & PS Peshawar (Co-opt Member)
11. In charge Drug Testing Laboratory, Peshawar (Co-opt Member)
12. All Regional Coordinators of the inspection teams (Co-opt Members)

**Subject: 3rd MEETING OF TECHNICAL & EVALUATION COMMITTEE (T&E) FOR THE
SELECTION AND RATE CONTRACTING OF MEDICINES/DRUGS, MEDICAL
DEVICES, SURGICAL DISPOSABLES & NON-DRUG ITEMS FY 2024-25 GOVT.
MEDICINE COORDINATION CELL (MCC) KHYBER PAKHTUNKHWA**

I am directed to refer to the subject mentioned above and to inform you that the 3rd meeting of the Technical & Evaluation Committee of Govt. MCC FY 2024-25 is scheduled to be held on Wednesday, 21st August 2024, at 10:00 AM sharp, under the chairmanship of the Additional Director General (M&E), DGHS. The meeting will take place in the Public Health conference room at the Directorate General Health Services, Khyber Pakhtunkhwa, Warsak Road, Peshawar.

You are therefore requested to make it convenient to attend the said meeting on the date, time and venue, mentioned above please.

Agenda:

- a) Scrutiny Report, Inspection Report, DTL Report; End User Report Govt. MCC FY 2024-25.
- b) Any other business.

[Signature]
Deputy Director Govt. MCC
Secretary T&E Govt. MCC FY 2024-25

Even No & dated.

Copy for information to:

1. Secretary Health, Government of Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa/Chairman S&RCC Govt. MCC FY2024-25.
3. Additional Director General (M&E) DGHS/Chairman T&E/Secretary S&RCC Govt. MCC FY2024-25.
4. Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
5. Medical Superintendents of the Services Hospital Peshawar, Govt. Naseer Ullah Khan Babar Memorial Hospital Peshawar & Moulvi Ameer Shah Memorial Hospital Peshawar with the request to depute the concerned officer(s) to attend the said meeting.
6. Office copy for record.

[Signature]
Deputy Director Govt. MCC
Secretary T&E Govt. MCC FY 2024-25



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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SO(Drugs)/HD/7-1/MCC/2024/Insp. Committee
Dated: Peshawar, the 30-09-2024.

To

1. Dr. Sadiq Shah, DHO Malakand.
2. Dr. Javed Iqbal, DHO Mardan.
3. Mr. Abdul Hafeez Senior Drug Inspector, Distt. Bannu.
4. Mr. Zahid Ali Khan, Assistant Director Govt. MCC.
5. Mr. Rehmat Gul, Drug Inspector Distt. Tank.
6. Mr. Baqir Imad Ullah, Drug Inspector Distt. Khyber
7. Mr. Ali Nawaz, Assistant at the ofc DGHS.

Subject - 3RD MEETING OF THE SUB-COMMITTEE REGARDING UN-
INTERRUPTED AVAILABILITY OF ESSENTIAL MEDICINES & TO
MAINTAIN TRANSPARENCY IN THE PROCUREMENT PROCESS IN
DISTRICTS.

I am directed to refer to the subject noted above and to inform that during the proceedings of Sub-Committee, constituted by the Honorable Chief Minister Khyber Pakhtunkhwa, vide Notification No. DS(C)/CMS/KPK/2024, dated 6th September, 2024, it has been learnt that you being members of the Inspection Committee of Govt. MCC for the FY, 2023-24, possess information/evidence to assist the Committee in shaping the findings, being probed.

A meeting has, consequently, been scheduled on 03-10-2024 at 10:00 A.M in the Committee Room of Health Department to seek your stance in the matter.

It is, therefore, required to appear in person, along with relevant record/evidence on which you rely to exhibit before the Committee, on the date, time and venue, mentioned above, please.


(Naseer Ahmad)
Section Officer (Drugs)

Encls: No. & Date Even.

Copy forwarded to:

1. Director General Health Services, Khyber Pakhtunkhwa with the request to attend the meeting, please.
2. Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa with the request to attend the meeting, please.
3. Deputy Director (DHIS) at the ofc DGHS, Khyber Pakhtunkhwa with the request to attend the meeting, please.
4. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
6. PS to Special Secretary (Budget), Finance Department with the request to SSH (Budget), Finance Deptt. to attend the meeting, please.
8. PA to Deputy Secretary (Drugs), Health Department with the request to DS (Drugs) to attend the meeting, please.


Section Officer (Drugs)

MARDAN DIVISION, MARDAN

No. 1619 /PSC (M) Dated 24.09.2024

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Amo-T

DR SHAUKAT ALL

Ex- Director General Health Services,
Currently Report to Directorate General Health Services,
Government of Khyber Pakhtunkhwa.

Subject:

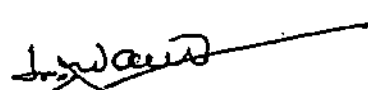
DISCIPLINARY PROCEEDING UNDER INQUIRY REPORT - TO
PROBE THE NON SUPPLY OF MEDICINES /MEDICAL DEVICES
AGAINST THE PAYMENT MADE TO THE FIRMS AS PER REPORT
SUBMITTED BY THE COMMITTEE CONSTITUTED VIDE OFFICE
ORDER NO. 3239-44/CC DATED 11.6.2024


Reference; Government of Khyber Pakhtunkhwa Health Department vide letter
No. SO (E-V)/4-4/2024 dated 09.09.2024.

With reference to the subject cited above, the Competent Authority has
approved an initiation of disciplinary proceeding against you.

2). Accordingly charge sheet/statement of allegations is being issued to you
by Health Department vide letter NO. SO (E-V) 4-4/2024, dated 09.09.2024.
Furthermore, the statement of allegations/findings of fact finding inquiry is
attached as Annexure-A.

3). You are hereby directed to submit your reply within 15 days in response
to the above mentioned statement of allegations/ findings of fact finding inquiry on
account of Corruption, Misconduct and Misuse of Authority.


Muhammad Javed Marwat,
Chairman Inquiry Committee/
Commissioner,
Mardan Division, Mardan


Dr. Shlraz Qayyum,
Member of Inquiry Committee/
Director,
(Accident & Emergency),
Health Department, Peshawar.

NO. 1620-23 /PSC(M)

Dated: 24 /09.2024

Copy forwarded to:

1. Dr. Mushlaq Ahmad (BS-19), the Competent Authority have nominated you as
Departmental Representative, under Rule 10(o) of the Khyber Pakhtunkhwa
Government Servant (Efficiency and Disciplinary) Rule, 2011 to attend the inquiry
proceeding alongwith all relevant records on the day of proceeding.
2. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.

DISCIPLINARY ACTION

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I, Nadeem Aslam Chaudhary, Chief Secretary, Khyber Pakhtunkhwa, as the Competent Authority, am of the opinion that Dr. Shukat Ali, Ex-Director General Health Services (DGHS) currently reported to Directorate General Health Services, Khyber Pakhtunkhwa has rendered himself liable to be proceeded against, as he has committed the following acts/omissions when he was posted as Director General Health Services (DS-20), within the meaning of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

1. Ex Director General Health Services managed the entire procurement process of Medicines/ Devices through his aids and involved them in various steps of the procurement process that converted the entire process in to a scam.
2. He placed the Supply / purchase orders worth PKR 4,448,452,774 (PKR 4.4484 Billion) to the firms while Finance Department has released an amount of PKR 2,909 Billion for purchase of essential medicines in two tranches (PKR 1.5 & 1,409 Billion) but purchase orders worth PKR 4.4484 Billion were placed making an unnecessary liability and that too on purchase of non-emergency items.
3. Despite Finance Department had released an amount of PKR 2,909 Billion for purchase of essential medicines in two tranches (PKR 1.5 & 1,409 Billion) but record has revealed that payments given to the firms are to the tune of PKR 3,1725 Billion.
4. He has purchased the Non-essential / non-emergency items like condoms, gowns, drape sheet, examination gloves and others worth PKR 1,9173 Billion which were shown purchased thus deprived the health facilities of the provision of essential/emergency items.
5. He being Director General Health Services/Chairman Selection & Rate Contracting Committee (S&RCC) approved 81 firms as successful bidders for different items (almost 1800 in MCC Formulary) but payments of PKR 3.17 Billion were made to few firms (14) thus billions of rupees were distributed amongst few firms.
6. Despite approved formulary of almost 1800 items, including highly essential medicines, the budget of worth PKR 3.172 Billion were shown spent mostly on purchase of 8-10 non-emergency items.
7. He had placed supply orders worth PKR 4,4484 Billion to the firms without any need assessment / demand from the end users and without involving the committees, in deviation from the policy set forth for the Top Up Medicines initiative and without observing the budget status resulted in financial loss to the Govt. exchequer.

Signature

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8. Gross irregularities have been observed when the record regarding stocks at district level as well as central warehouse was tallied with the record at Directorate General Health Service.

9. In deviation of the policy for Top Up medicines Initiative, the stocks were shown supplied to the districts which should have been supplied to the central warehouse and no proper record was maintained either to cross check the stocks with invoices or to verify proper distribution to check the districts.

10. Stock of worth PKR 0.816 Billion was shown supplied to the central warehouse while supplies of worth PKR 0.452 Billion were shown supplied to the districts although in violation of the policy. Considering both the supplies, it appears that supplies of worth PKR 1.268 Billion were made against the total amount of 3.172 Billion thus putting a huge loss to the tune of PKR 1,904.5 Billion on account of non-supply of stocks against the supply order but payments (3.172 Billion) made to the firms without considering the facts that no supplies against the purchase orders were made.

11. He has made payments against various items shown supplied to DHO Peshawar as per given table:

S#	Name of Item	Quantity	Amount (Million)
VIII.	disposable non-sterile examination gloves	60 Lac	133.66 M
IX.	Million male latex condom	2 lac	3.75 M
X.	disposable OT drape sheet	20000	8 M
XI.	disposable gown	14000	14 M
XII.	Tablets Tenoberg 300 mg	11 lac	5.15 M
XIII.	I/V Canula 24 gauge	8000	0.52 M
XIV.	Gauze cloth rolls packing	3000	8.13 M
TOTAL			176.21 M

Storekeeper at DHO Office Peshawar when asked about the supplies, he denied of the receipt of the mentioned stocks with no stock register maintained at the office of DHO Peshawar. It appears to be gross irregularities resulted in financial embezzlement.

12. He has made payments against various items shown supplied to DHO Hospital Bajaur as per given table:

S#	Name of Item	Quantity	Amount (Million)
VIII.	disposable non-sterile examination gloves	30 Lac	67.83 M
IX.	Million male latex condom	60000	1,123 M
X.	disposable OT drape sheet	30000	12 M
XI.	disposable gown	22000	22 M
XII.	Tablets Tenoberg 300 mg	3 lac	15.48 M
XIII.	I/V Canula 18, 22 & 24 gauge	12000+33000+1500	7,404 M
XIV.	Gauze cloth rolls packing	6000	8.13 M
TOTAL			127,939 M

OFFICE OF THE COMMISSIONER GENERAL INVESTIGATIONS



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CS CamScanner

As per record provided by MS DHQ Hospital Bajaur, the mentioned stocks have not been supplied/delivered to DHQ Hospital Bajuar. It appears to be gross irregularities resulted in financial embezzlement

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13. He has made payments against various items shown supplied to 'DHO North Waziristan as per given table:

SN	Name of Item	Quantity	Amount (Million)
VIII.	disposable non-sterile examination gloves	19,23 Million	434.835 M
IX.	Million male latex condom	7 lac	13.125 M
X.	disposable OT drapc sheet	72000	28.8 M
XI.	disposable gown	35000	35 M
XII.	Tablets Tenoberg 300 mg	0.775 M	39.912 M
XIII.	I/V Canula gauge	166,900	26.05 M
XIV.	Gauze cloth rolls packing	10000	27.1 M
	TOTAL		604.822 M

DHO North Waziristan, when asked, about the supplies, has denied of the receipt of the mentioned stocks at DHO North Waziristan. It appears to be gross irregularities resulted in financial embezzlement.

14. He has made payments amounting PKR 3.1725 Billion against the supply orders of worth PKR 4.4484 Billion. On the contrary, the Accounts Office at DGHS has submitted reconciliation statement of AQ Office (SAP) showing PKR 3.610 Billion paid on the purchase of medicines. It shows a difference of PKR 0.438 Billion whose fate is missing with regards to expenditure that tantamount Financial embezzlement.
15. He has violated the general principle of procurement in terms of preparation of SBD, formulary preparation, carrying out the process of technical evaluation, inspection committees, selection of items on exorbitant prices without considering market prices, involvement of irrelevant & non-technical persons in the process and non-adherence to the T&E report submitted vide letter No. 14521-30/ DGHS dated 10/10/2023 which highlighted discrepancies in the procurement process before finalization of rates.
16. He has put huge financial loss to the tune of PKR 1.9045 Billion due to lack of adherence to the good procurement practices viz-a-viz violation of GFR resulted in payments to different firms without fulfilling the prerequisites.
17. Bills were processed without asking standard test report of Drug Testing Laboratory, lack of inspection reports and confirmation of stock positions that led to huge financial embezzlement.
18. Bills were processed, approved and sanctioned without having standard test reports issued by DTL. There are bills which have been processed but on the contrary, the items were declared either substandard or misbranded. 95 samples including sutures of M/S Bajwa & Sons, medicines of M/S Bajwa Pharma (PKR 220.796 Million), medicines of M/S Aman Pharma Lahore (PKR 50.3 Million) and I/V Canula of M/S Bearly were declared misbranded / substandard, but despite payments were given to these firms.

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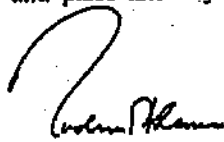
- 19. The invoice against the purchase order No. 1271-75/DGHS-MCC/KP dated 29-01-2024 valuing PKR 22.5 Million was submitted on same day i.e. 29-01-2024, it was processed on 02-02-2024, cheque was issued on 07-02-2024 but on the contrary the product manufacturing date given on the delivery challan was April 2024 meaning thereby the bills cleared prior to manufacturing of the said item.
- 20. The invoice against purchase order no. 1266-79/DGHS-MCC/KP dated 29-01-2024 valuing PKR 92.7 Million was submitted on same day i.e. 29-01-2024, it was processed on 02-02-2024, cheque was issued on 07-02-2024 but on the contrary the invoice was submitted before the delivery as evident from issuing date.

2. For the purpose of inquiry against the said accused with reference to the above allegations an Inquiry Officer/Inquiry Committee, consisting of the following is constituted, under Rule 10(1)(a) of the ibid rules.

- a. Muhammed Javed Maswat (Per-59-21)
Commissioner Masden.
- b. Dr. Shireen Beggum (BS-20)
Director (IA) Health Dept.

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 60-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Committee.


[NADEEM ASLAM CHAUDHARY],
Chief Secretary,
Khyber Pakhtunkhwa.

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**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR**

(All communications should be addressed to the Director General Health Services Peshawar and not to any official by name)
Ph: 091-9210200, Website: <http://www.dghkpk.gov.pk/>, E-mail: dghs@kpk2014@gmail.com


No: 3259 40 /CC

Dated: 11/16/2024

OFFICE ORDER:

The following committee is hereby constituted to analyze the Demand, Stock position of medicine of District Health Officers and Medical Superintendents of DHQ Hospitals Medicine Store and the available stock in main warehouse of DGHS and to finalize & submit a rational Distribution plan of medicine within 02 days positively.

- | | |
|--|----------|
| 1- Dr. Khizar Hayat, Director (MCH) | Chairman |
| 2- Mr. Adil Shah, Deputy Director (Proc Cell) | Member |
| 3- Mr. Asghar Khan, Deputy Director (Coord) | Member |
| 4- Mr. Khuram Shahzad, In-Charge Logistic Cell | Member |


**DIRECTOR GENERAL HEALTH SERVICES -
Khyber Pakhtunkhwa, Peshawar**
11/16

Copy for Information:

1. Officers / Official concerned.
2. PA to DGHS, Khyber Pakhtunkhwa Peshawar.

VAKALATNAMA
(POWER OF ATTORNEY)
IN THE K.P. Service Tribunal, Peshawar.

Case _____ No. _____ /2024

Dr. Shaukat AliPetitioner

Govt, of K.P etc. VersusRespondents

Dr. Shaukat Ali S/o, D/o Gul Nawaz Khan the
Appellant do hereby appoint and constitute Babar Khan Yousafzai Advocate Supreme Court of Pakistan, of Legal Oracles, in the above-mentioned cause, to do all or any of the following acts, deeds and things:-

1. To appear, act, and plead for me in the above-mentioned cause, in this court or any other court in which the same may be tried or heard, and in any other proceedings arising out of or connected therewith;
2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for submission to arbitration of the said cause, or any other documents as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said cause at all its stages;
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to me/us during the course or on the conclusion of the proceedings;
4. To do all other acts and things which may be deemed necessary or advisable during the course of proceedings;
5. To delegate all or any of the above powers to any other legal practitioner;

AND I, hereby also agree:-

- (a) To ratify whatever the Advocate(s) or their substitutes may do in the proceedings;
- (b) not to hold the Advocate(s) or their substitutes responsible if the said cause be proceeded ex parte or dismissed in default in consequence of their absence from the court when it is called for hearing unless such absence is due to the gross negligence of the Advocate(s) or their substitutes; and
- (c) That the Advocate(s) shall be entitled to withdraw from the prosecution of the said cause if the whole or any part of the agreed fees remain unpaid.

IN WITNESS WHEREOF I have signed this Power of Attorney hereunder on this ____ day of ____ 2024 at Peshawar and the contents of this Power of Attorney have been read, fully explained and understood by me.

Signatures of executants:


ACCEPTED
LEGAL ORACLES

Suite No. 1, Opposite Cantt Railway Station,
Saddar Road, Peshawar Cantt.
T: 92 91 5284140 - E: mianfazalmanan80@gmail.com
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