



**GOVERNMENT OF THE PUNJAB  
PUNJAB PROCUREMENT REGULATORY AUTHORITY  
SERVICES AND GENERAL ADMINISTRATION  
DEPARTMENT**

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Dated Lahore, the 20<sup>th</sup> May, 2021

**ORDER**

**No. L&M(PPRA)1-45(G)2020/BL/228** M/s. Ayesha + Marriam Pvt. Ltd., 4<sup>th</sup> Floor Legacy Tower, Kohinoor City, Jaranwala Road Faisalabad (hereinafter called "firm/representer") in terms of Rule 21 (4) of Punjab Procurement Rules 2014 amended to date (PPR-14) has filed a representation against the order of blacklisting passed by Chief Executive Officer Multan Waste Management Company Property No. 275/RB, Ward No. X-EX, Shamsabad Colony, Near Chungi No. 09/Water Filtration Plant, Multan (hereinafter called "procuring agency/respondent"); vide order bearing No. 588/MD/MWMC/06/2020 dated 20.06.2020 (hereinafter called "impugned order") whereby the representer has been blacklisted for a period of three (03) years.

2. Brief facts giving rise to the instant representation are that the procuring agency advertised a tender for the supply of tyres on 09.04.2019 (which was opened on 24.04.2019) and the representer/firm was declared as lowest evaluated bidder. Letter of acceptance (LOA) was issued on 27.07.2019 in favour of representer/firm and draft contract/agreement was sent to representer/firm by procuring agency for signatures on 21.03.2020 but representer/firm failed to sign the contract till date. Hence, procuring agency started blacklisting proceedings

against the representer and issued a show cause notice bearing No. 01/P&C/MWMC/120/2020 dated 14.01.2020 to the representer/firm to explain their position but no response was received from representer/firm. Personal hearing notice bearing No. 06/CEO/MWMC/549/2020 dated 31.01.2020 was also issued to the representer/firm to appear before CEO, MWMC to explain their status, the representer/firm appeared on 24.02.2020 and expressed its willingness to sign the contract and delivery of stores but the representer/firm neither signed the contract nor delivered the supplies. Consequently, the procuring agency blacklisted the representer/firm under rule 21(1) of PPR-14 for a period of three (03) years (alongwith forfeiture of performance guarantee amounting to Rs. 532,906/-) vide impugned order on account of non-compliance of clauses 31.1. & 31.2 of the bidding documents.

3. Both the parties in order to provide an opportunity of personal hearing on 01.12.2020, 17.12.2020, 03.03.2021 and 16.03.2021 were issued notices through the subpoena dated 26.11.2020, 09.12.2020, 18.02.2021 and 05.03.2021 with the direction to attend the office of the Managing Director PPRA to decide the matter as per law. Mr. Imran Rashid (Chief Executive Officer (CEO)), Rana Mehran Advocate (legal adviser) and Shahid Yasin (General Manager (GM)) appeared on behalf of M/s. Ayesha + Marriam and stated that letter of acceptance (LOA) was issued after the expiry of bid validity period. It was further stated that draft agreement was shared by the procuring agency through email on 21.03.2020 i.e. after lapse of 8 months period of the expiry of bid validity period i.e. 14.07.2019 which is a clear cut violation of rule 28(3) read with rule 55 which requires that contract shall be awarded within the bid validity/extended bid validity period. The representer/firm

argued that neither the show cause notice nor personal hearing notice was received to them, they further elaborated that the procuring agency did not issue any purchase order but still they have supplied all the required items (in absence of purchase order) which are also in use of the procuring agency. In order to substantiate this claim copy of bulity No. 5003 dated 26.07.2019 in favour of procuring agency was also furnished by the representer/firm. The representer of the firm emphasized that none of the ground of blacklisting as provided under rule 21 of PPR-14 is attracted in the instant case. While concluding their argument, the firm submitted that there is nothing on the part of the complainant which can be made basis for blacklisting, in such a scenario where proper prescribed procedure as laid down by the schedule providing blacklisting mechanism or process appended to PPR-14 has also not been followed by the procuring agency. Therefore, impugned order is liable to be set-aside.

4. Mr. Anwar-ul-Haq (Manager Procurement) appeared on behalf of the procuring agency and endorsed the contents of impugned order on the basis that the representer/firm was contacted numerous times vide letter No. 01-P&C/MWMC/120/2020 dated 14.01.2020, letter No. 01/P&C/MWMC/155/2020 dated 16.04.2020 and letter No. 02-P&C/MWMC/164/2020 dated 20.05.2020 to sign the contract and send it back to the procuring agency but the representer/firm failed to comply. It was further submitted that delay in the purchase of tyres of operational vehicles for the procuring agency caused hurdles in service delivery to the public, therefore, representer has rightly been blacklisted and instant representation is liable to be dismissed.

5. Parties heard, available record on the file and reply of the procuring agency on the representation made by the representer perused as a result of which following facts have been made out:-

- i) This fact has been fully established that procuring agency failed to issue LOA/award the contract within bid validity period as required under rule 28(3) read with rule 55 of PPR-14 and the firm cannot be held liable for this, the rule ibid stipulates that:-

**"28. Bid validity.- (3)** *"Subject to sub-rule (5), a procuring agency shall ordinarily be under the obligation to process and evaluate the bids within the stipulated bid validity period but, under exceptional circumstances and for reasons to be recorded in writing, if an extension is considered necessary, all the bidders shall be requested to extend their respective bid validity period but such extension shall not be for more than the original period of bid validity or 180 days whichever is more."*

**55. Acceptance of bids.-** *Subject to these rules, the bidder with the lowest evaluated bid, if not in conflict with any other law, shall be awarded the procurement contract within the original or extended bid validity period."*

- ii) In response to a question put by competent authority to the representative of the procuring agency for provision of documentary evidence (receiving, attendance sheet and dispatch receipt etc.) for the delivery of show cause notice/personal hearing notice to the representer/firm, the representative of the procuring agency failed to provide any solid evidence. As intention of the procuring agency and maximum period to blacklist the firm was not mentioned in the show cause notice and in this way, the procuring agency did not observe the requirement of para-2(b) of the schedule providing blacklisting mechanism or process appended to PPR-14 which provides that:

*"The show cause notice shall contain:*

- (b) the maximum period for which the procuring agency proposes to debar the bidder or contractor from participating in any public procurement of the procuring agency;"*

- iii) Non-provision of the attendance sheet signed by the representative of the representer/firm during personal hearing also strengthens the stance of the representer/firm regarding non-receipt of the personal hearing notice and non-provision of the opportunity of personal hearing.
- iv) As per stance of the procuring agency it provided an opportunity of the personal hearing to the representer on 10.02.2020 but impugned order was passed on 20.06.2020 which is a violation of para-8 of the blacklisting mechanism or process of PPR-14 as under ibid para the procuring agency was required to decide the matter within fifteen (15) days, para-8 stipulates that:-



*"The procuring agency shall decide the matter within fifteen days from the date of personal hearing unless the personal hearing is adjourned to a next date and in such an eventuality, the period of personal hearing shall **be reckoned from the last date of personal hearing.**"*

6. Allowing for the above, it appears that in the instant case the procuring agency has acted arbitrarily and has also not observed the procedural requirements while passing the impugned order and as such it had failed to observe substantive due process and procedural due process by not issuing proper show cause notice/personal hearing notice. Therefore, the same protanto is liable to be set aside. Because **due process of law** would mean that every act should be in accordance with the law on the subject (**Reliance 2016 CLC 408**). In another case Supreme Court has held that where a procedure has been provided for doing a thing in a particular manner that manner and in no other way or it should not be done at

all (PLD 2011 SC 927). Government powers must be exercised within the constraints of rules whatever they may be, must be uniformly applied (PLD 2009 SC 879). Discretionary powers are not unbridled and unfettered, the same are to be exercised reasonably, fairly, justly without giving any case of complaint to a person who may be interested in exercise of such discretion (1997 SCMR 641). Furthermore, there are a number of judgments of superior courts where the Honorable courts have set aside the blacklisting orders passed without observing substantive due procedure and therefore, impugned order is also not sustainable in the eye of law.

7. In view of the foregoing facts, in exercise of the power conferred under Rule 21(4) of PPR-14 read with Section 17-A (3) of Punjab Procurement Regulatory Authority Act, 2009, the impugned order passed by Chief Executive Officer Multan Waste Management Company is set asided being the result of **crassa ignorantia** because when a thing is required to be done in a particular manner it has to be done in that manner alone (cum res sit faciendum particulariter tantum modo fieri).

8. Any party aggrieved from this order may file a representation before chairman PPRA/Chief Secretary Punjab within thirty days under rule 21 (5) of PPR-14.



**BY THE ORDER OF  
MANAGING DIRECTOR PPRA**

CC:

1. The Secretary, Govt. of the Punjab Local Government & Community Development Department.



2. The Managing Director, Multan Waste Management Company Property No. 275/RB, Ward No. X-EX, Shamsabad Colony, Near Chungi No. 09/Water Filtration Plant, Multan.
3. The Chief Executive Officer Multan Waste Management Company Property No. 275/RB, Ward No. X-EX, Shamsabad Colony, Near Chungi No. 09/Water Filtration Plant, Multan.
4. M/s. Ayesha + Marriam Pvt. Ltd., 4<sup>th</sup> Floor Legacy Tower, Kohinoor City, Jaranwala Road Faisalabad.
5. PA to MD PPRA.
6. Office copy.

Abdus Salam  
SENIOR LAW OFFICER  
PPRA S&GAD

21/5/21

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Received

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Legal Adviser.

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Rehman