



Government of Sindh  
Sindh Public Procurement Regulatory Authority



3

No.AD(Legal-II)SPPRA/RC-3/2018-19

Karachi, dated

November, 2018

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

(Appeal)

Faiz Scientific Company

Versus

Sindh Madarsatul Islam University, Karachi.

**Facts and background**

1. M/s Ata-Ur-Rehman & Co (Legal Consultants & Advocates) filed an appeal on behalf of M/S Faiz Scientific Company before the Review Committee (RC) of Sindh Public Procurement Regulatory Authority (SPPRA) on 11-10-2018 hereinafter referred to as appellant; stating therein that M/s Faiz Scientific Company participated in a tender bearing No.SMIU/P&D/TEND/2018/21 for procurement of Branded Desktop Computers Core i7 (HP, Dell or Approved Equivalent) at SMIU, Karachi, hereinafter referred to as Procuring Agency (PA). In response to the bids submitted by the appellant the Procuring Agency (PA) informed the appellant through E-mail dated 13.08.2018 that the appellant had failed to meet the BOQ requirements for the following reasons:-

- a. Brand is not compatible with Dell or HP branded System or equivalent.
- b. There is no standard OEM found of this brand
- c. The brand is unfamiliar, so that we have asked vendor for product demo, however company still could not provide any demo of the mentioned product.


2. On 15.08.2018 the Appellant wrote a letter to the Chairman Redressal Committee (CRC) under Rule-31 of SPP Rules, 2010, but CRC was not convened. On another Application dated 28.08.2018 the meeting of CRC was held on 30.08.2018 and its decision was announced on 19.09.2018. The appellant was not satisfied with the decision of CRC as the CRC was not properly constituted and its decision was not in line with SPP Rules according to him.

3. Upon filing the appeal against CRC decision the matter was taken up by R.C under Rule-31(5) of SPPRA Rule 2010. Accordingly notices were issued to the Parties for appearing before the Review Committee and the matter was fixed for hearing on 31-10-2018 at 11.00 am to decide upon the appeal against the decision of CRC through which he was not only disqualified but also blacklisted.

**In Attendance**

From Procuring Agency's side

- i. Ghulam Ali Surhio, Director Finance
- ii. Gulzar Ahmed Mughal, Registrar
- iii. Ali Gohar Larik Executive Engineer



From the Appellant Side

- i. Obaid-Ur-Rehman Advocate, Learnt Counsel, Faiz Scientific Company
- ii. Muhammad Rehman, Faiz Scientific Company
- iii. Mr. Tahir Rizvi, Regional Head Asia, Ultratech group

**Appellant Version**

4. The Appellant, argued that the M/s Faiz Scientific Company participated in a tender bearing No.SMIU/P&D/TEND/2018/21 for procurement of Branded Desktop Computers Core i7 (HP, Dell or Approved Equivalent) by SMIU, Karachi, in which use of brand names was against the SPP Rules.


5. The Appellant further apprised the Review Committee that the impugned order issued by Complaint Rederssal Committee (CRC) was improper and illegal as CRC was unlawfully constituted, neither had an independent professional as a member of committee, nor the CRC was comprising of odd number of members and the decision of CRC was not announced within 07 days as per SPP Rules, 2010. The CRC blacklisted the appellant according to Rule-35(1)(a), of SPP Rules, 2010 (amended 2017) which only applied on convicted firms whereas the appellant is not convicted by any Court of Law. Appellant also apprised the committee that Procuring Agency should specify in bidding documents whether they required Local or International brand. The appellant was previously dis-qualified three times due to the same reason.

**Procuring Agency Version:-**

6. Representative of Procuring Agency apprised the Review Committee that Procurement of Branded Desktop Computers core i7 (HP, Dell or approved equivalent) at SMIU, Karachi” was floated in leading newspapers and SPPRA/SMIU website on 8<sup>th</sup> July 2018. Total 08 firms purchased the tender documents out of which 07 firms submitted their technical & financial bids within the submission deadline. The technical proposals of 07 firms were opened on 30<sup>th</sup> July 2018. M/s Faiz Scientific Company was disqualified, because Brand was not compatible with DELL or HP Branded system or equivalent. Evaluation was done on the basis of following:-

- i. Meet all requirements (i.e. International presence, worldwide sales and support and dealership network.
- ii. Brand should be registered and recognized international computer manufacturer originations, should have legal and Regulatory compliance.
- iii. All products are designed and tested to meet the appropriate standards in each country where intended for sale.
- iv. There should be standard OEM for the brand.

7. Procuring Agency further apprised to the Review Committee that Variation in statements in one certificate One Apple brand declared as manufacturer and having factory at Korangi Karachi. However, in country of origin Certificate it is mentioned that One Apple has computer assembly plant located in Karachi, Pakistan.



Moreover, Distribution Certificate of One Apple provided by a third party named as M/s Ultratech trading Company certify M/S Faiz Scientific Company as country wide distributor. Whereas, M/S Faiz Scientific Company declares that Factory and Service Center of One Apple IT products are situated at Korangi and Technology mall Karachi. The coincidence of same mailing address of One Apple and Faiz Scientific Company, as well as the registration of both domains by same email address and contract information. That means both companies are owned by same and one proprietary. Hence the claim that M/s. Faiz Scientific Company and M/s OneApple are two different entities and that M/s, Faiz Scientific Company are the distributors of OneApple products is highly compromised and contested. However, no other distribution channel of this product found in Pakistan and worldwide. There is an ambiguity in name of the main presenter of OneApple, as in the certificate provided by M/s. Faiz Scientific Company it is mentioned as "ULTRATECH TRADING COMPANY" whereas the logo of the official website states the name as "ULTRATECHTRADING COMPANY". According to Sales Tax Certificate FSC' nature of business is Importer only. The brand is unfamiliar, so that we had asked vendor for product demo, however the company could not provided any demo of the mentioned product

**Review Committee observations:-**

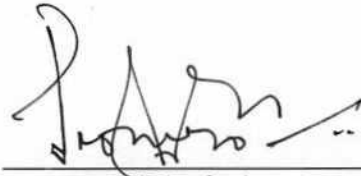
9. After hearing the parties at length and perusal of record the Review Committee observed that the Complaint Redressal Committee (CRC) was not constituted in accordance with Rule-31 of SPP Rules, 2010 (amended 2017). RC observed following deviations in constitution of CRC and the procurement process:-


- The Head / Chairman of CRC should be one rank senior to the head of the procurement committee as required under Rule-31(2).
- Member Secretary of Procurement Committee (PC) is also a member Secretary of Complaint Redressal Committee (CRC) that is conflict of interest and against the norms of justice.
- Evaluation Criteria in the bidding documents was unclear and ambiguous in contravention of rule 21 {A} of SPPR 2010 (amended 2017).
- In NIT the word 'approved equivalent' is violation of Rule-13 of SPP 2010 (amended 2017). This Authority had also pointed out such infirmity at NIT stage through online comments, but was not addressed by PA.
- Independent professional from relevant field concerning the procurement i.e I.T related is not included in CRC, as required under Rule-31(2)(b).
- The instant procurement pertains to procurement of goods whereas P.A has wrongly used bidding documents of works. This infirmity was also pointed out by the Authority through its online portal PPMS but was not rectified by P.A.
- Two of the notified outside members of CRC i.e. Mr. Mohsin Soomro, Assistant Accountant General, A.G Sindh, Karachi and Mr. Muhammad Akbar Khokhar S.O (B&E-XVI), Finance Department did not sign the decision of CRC. However, PA got signatures of some PC members against whom the complaint is filed, that is conflict of interest and against the norms transparency.

**Decision:-**

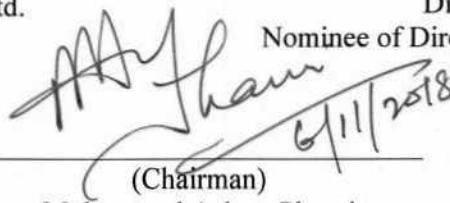
10. After detailed deliberations, the Review Committee unanimously concluded that the Procuring Agency has failed to ensure the compliance of SPP Rules and has violated SPP Rules-7, 21(2) & 31 of SPP Rules 2010 (amended 2017) to procure their preferred brand. Hence, the members of the Review Committee unanimously declared the said procurement as **MIS-PROCUREMENT** in exercise of powers conferred by Rule-32(7)(g), read with Section 2((i) of SPPRA Act 2009. As a consequence, the Competent Authority / head of Administrative department shall take disciplinary action against the officer(s) / Official(s) found guilty of Mis-procurement in term of Rule-32(A)(2). The decision of CRC which was not constituted in accordance with Rules as explained above, is hereby declared as null & void. The Review Committee in terms of Rule-32(7)(e) further decided to order compensation of Rs.10,000 to be paid to the appellant by the officer (s)/Official (s) of P.A found responsible for mis-procurement. The P.A shall ensure payment of the aforesaid compensation amount to the Appellant for cost incurred on preparation of bids within three weeks time.

  
\_\_\_\_\_  
(Member)  
Engineer Saad Rashid  
Representative of Transparency  
International Pakistan  
Member SPPRA Board

  
\_\_\_\_\_  
(Member)  
Asadullah Soomro  
Member SPPRA Board

  
\_\_\_\_\_  
(Member)  
Arif Hussain Khan  
I.T. Department, Sindh Bank Ltd.  
(Independent Professional)

  
\_\_\_\_\_  
(Member)  
Nabiya Sohail  
Director (Audit)  
Nominee of Director General Audit Sindh

  
\_\_\_\_\_  
(Chairman)  
Muhammad Aslam Ghauri  
Managing Director  
Sindh Public Procurement Regulatory Authority