



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-3269/2021-22/ 36

Karachi, dated 21st July, 2022

TO,

- The Director,
School Education (E/S & H/S) of Concerned Region,
School Education & Literacy Department,
MIRPURKHAS.

Subject: DECISION OF THE REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the authority's review committee decision namely **M/s Faiz Scientific Company v/s Director, School Education (E/S & H/S) of Concerned Region, School Education & Literacy Department, Mirpurkhas** held on 22.06.2022, for information.

(ABDUL SATTAR SOOMRO)
ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for necessary action to:

1. The Secretary to the Government of Sindh, School Education & Literacy Department, Karachi.
2. The Director, School Education (Elem: Sec: & HSS) SE&LD Karachi.
3. The PS to Chairman / Members of the Review Committee.
4. Assistant Director I.T. SPPRA (with advice to post the decision on authority website in terms of Rule-32(11) of SPP Rules, 2010).
5. The Appellant.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



No.AD (L-II) SPPRA/CMS-3269/2021-22

Karachi, dated, 04th July, 2022

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

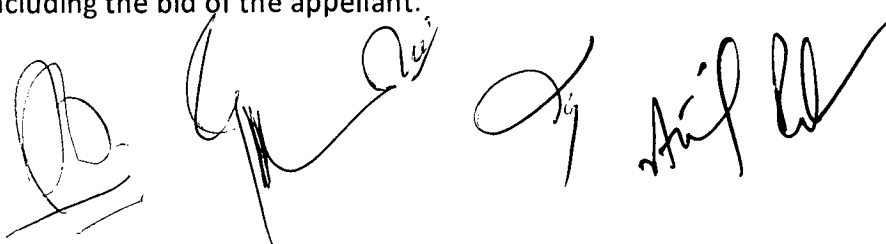
Decision of the Review Committee held on 22.06.2022

Name of Appellant	M/S Faiz Scientific Company
Procuring Agency	The Director School Education E/S & H/S Mirpurkhas
PPMS ID # Reference No.	T01956-21-0004 NIT NO. 213 DATED: 01.04.2022
Appeal Received in Authority Dated	26.05.2022
Complaint addressed to the SELD Karachi	28.4.2022
Dated of Posting Notice Inviting Tender	0 = 05-04-2022 1 = 25-04-2022
Date of Opening of Bids	21.04.2022
Date of Posting Bid Evaluation Report	Various BER's had been uploaded on 20.5.2022 & 04-06-2022
Date of Posting Contract Documents	Not posted up-to 21.06.2022
SPPRA Observations communicated on	24.5.2022
Estimated Cost of NIT Total	Around 150 Million
Total works in NIT	3 Works
Appellant Related work	All Works
Issue involved	Disqualification of the bidder due to lack of Registration as Manufacturer or Supplier
Complaint addressed to the SELD Karachi	28.4.2022
CRC Decision	12 th May 2022

The Appellant Version:-

1. The Appellant complained that the CRC wasted his time and announced a vague decision wherein no relief was granted to him rather matter was referred back to the Procuring Agency for re-evaluation of all bids.

2. The Appellant also complained that his Appeal was not listed for hearing within 10 days as per the SPP Rule 32(10) and contended that the Review Committee could not hear the parties and announce its decision within ten working days of submission of appeal.
3. The Appellant also complained that many mistakes were committed in the letter of the Review Committee that he had received for meeting.
4. The Appellant also complained that letters were received for the meeting of the Review Committee meeting that was to be held not 16.06.2022 but the same was not held which caused inordinate delay in deciding the appeal of the Appellant.
5. The Appellant submitted that matter has been stayed by the Honorable High Court of Sindh vide its order dated 16.06.2022.
6. The Review Committee asked to the Appellant that there were no direction in the order passed by the Honorable High Court of Sindh regarding stay for deciding the matter of the Review Committee. The Appellant was informed that the Review Committee a legal forum for the Procurement matters under the SPP Rules and it would continue to work unless expressly prohibited by the Honorable High Court of Sindh.
7. The Committee held that the petitioner must exhaust remedy before the Review Committee and thereafter he might avail any other remedy as per law.
8. The Appellant was asked why he did not approach the Review Committee when the Complaint Redressal Committee failed to decide the complaint within seven days of the receipt of the complaint. The Appellant said that he was waiting for the decision of CRC.
9. The Committee informed the appellant he was required to approach the Review Committee within 10 days' time if the Complaint Redressal Committee had failed to decide the complaint within seven days. The Appellant could not answer the question satisfactorily and became furious. Thereafter, he misbehaved before the Review Committee and went out shouting that the matter was pending before the Honorable High Court so the Review Committee cannot consider / Review at any cost.
10. The Review Committee decided to adjudicate the matter as mandated by the Rule 32 of the SPP Rules and perused the record available.
11. The Committee noted that the appellant was disqualified by the Procuring Agency as the Appellant's Sales Tax and NTN were neither registered as Manufacturer nor were registered as Supplier.
12. The Appellant approached to the Complaint Redressal Committee on 28.04.2022 against his disqualification vide letter FSC/569/2021-22 dated 28.4.2022 with a request to form complaint Redressal Committee under provision of SPPRA Rules # 31 and address the grievances of the appellant timely.
13. The Complaint Redressal Committee failed to arrive at the decision within seven days but later on the Complaint Redressal called its meeting on 10.5.2022 after 13 days of receipt of the complaint and announced its decision on 12.4.2022 fifteen days after the receipt of the complaint.
14. The Complaint Redressal Committee directed to the Procuring Agency to re-evaluate all the bids including the bid of the appellant.



15. The Appellant kept waiting for the re-evaluation of bids by the Procuring Agency but the Procuring Agency could not announce re-evaluation results till the Appellant filed the Review Appeal before the Review Committee of SPPRA on 26.05.2022 after 29 days of the submission of complaint before the Complaint Redressal Committee.
16. The Appeal submitted by the Appellant is on the record wherein the Appellant submitted that he had not received the CRC decision since 10.5.2022 till the filing of the review appeal so he wanted to apply for the Review Committee under provision of SPPRA Rules.
17. The Appellant also contended that the Procuring Agency qualified M/s Akash & Company even he did not submit the required criteria.
18. The Review Committee also noted that in letter NO FSC/582/2021-22 dated 23rd May 2022 (received to this Authority on 29.5.2022) the Appellant maintained that the Procuring Agency shall not award the contract till the final decision.
19. The Appellant also complained that the disqualification on the matter of non-registration as a manufacturer was unjustified and unreasonable.
20. The Appellant also complained that the re-evaluation of bids would take him in a position to get the contract and disqualification prevented him from getting the contract.

The Procuring Agency's Version:-

21. The Procuring Agency contended that the Appeal was not maintainable in terms of Rule 31(5) and informed that the Appellant was disqualified because he was not registered as Manufacturer neither he submitted Authorization letter.
22. The Procuring Agency also submitted that the Appellant's bid was re-scrutinized on the directions by procuring agency and it was found that he could not get the minimum 50% score in many fields of evaluation criteria such as Contract Experience, Tools and Machinery, Ware house / Storage Capacity and skilled labor.
23. The Procuring Agency also informed that the Appellant was asked to be present for re-scrutiny of documents but did not come.
24. The Procuring Agency also submitted that work orders were issued to the successful bidder after the expiry of appeal period in terms of Proviso of Rule 31(7).
25. The Procuring Agency also contended that the appellant was neither Manufacturer nor authorized dealer therefore the details of tools, machinery and warehouse/ storage capacity are questionable.

Findings of the Review Committee:-

26. From the perusal of record, bare reading of the complaint, appeal and statements submitted by the Procuring Agency, the Review Committee found that there are following issues/questions to be resolved by the Review Committee:
 1. Whether the decision of Complaint Redressal Committee was within time limits or beyond the prescribed time limits?
 2. Whether the Appeal is time barred under the SPP Rules or not?



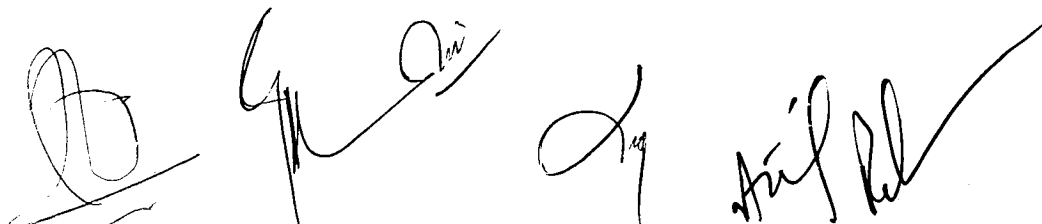
3. Whether the Appellant was required to approach the Review Committee or wait for CRC decision?
4. Whether the Procuring Agency was under obligation to not award the contract till the final decision or the PROCURING AGENCY was allowed to award the contract?
5. Whether the disqualification on the matter of non-registration was unjustified and unreasonable or the disqualification was as per terms and conditions of the NIT and bidding documents?
6. Whether the Order dated 16.6.2022 passed by the Honorable High Court of Sindh in the C.P NO 919 of 2022 restrained the Review Committee to decide the matter as per the SPP Rules or there was no prohibition for the Review Committee in order dated 16.6.2022?

Observations of the Review Committee:-

27. As a matter fact, the SPP Rules provide a detailed mechanism for the timely, speedy and efficient Redressal of Grievances to protect the rights of the bidders in a transparent manner. The SPP Rules have established a two-tier independent Redressal mechanism with binding authority to direct remedial measures within well-defined time and with well-defined authority and functions. This two-tier Redressal mechanism includes the establishment of a Complaint Redressal Committee under Rule 31 of the SPP Rules with the aim of investigating and resolving complaints by timely accessing any procuring agency's functions, data and documents. Besides that, a second tier of complaint Redressal includes the Review Committee of SPPRA under Rule 32 of the SPP Rules, in case the CRC fails to arrive at decision within seven days or the bidder is not satisfied with the decision of CRC, taken within seven days, as the case may be.
28. The Review Committee observed that the decision of Complaint Redressal Committee was taken after the time limits prescribed under the SPP Rules and decision of the CRC was without legal authority, as the decision was taken after the lapse of time limit of 15 days instead of within seven days. For convenience and easiness, the Rule 31(5) is reproduced as under:

31 (5) [The complaint Redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32,]2 [if the aggrieved bidder files the review appeal within ten (10) days of such transfer

29. The Complaint Redressal Committee had no legal authority to decide the complaint of M/s Faiz Scientific Company after seven days of the receipt of the complaint. After the lapse of seven days, the complaint had transferred to the Review Committee and the authority of the Complaint Redressal Committee stand ceased. M/s Faiz Scientific Company was required to approach the Review Committee within 10 days of the transfer of the Review Appeal. However, M/s Faiz Scientific Company did not approach to the Review Committee within legal time of



ten days. Hence there was no legal worth of the complaint of the bidder after the expiry of appeal period.

Whether the Appeal is time barred under the SPP Rules or not

30. The Rule 31(5) & 32(1) provide the time limits for any bidder to approach the Review Committee.

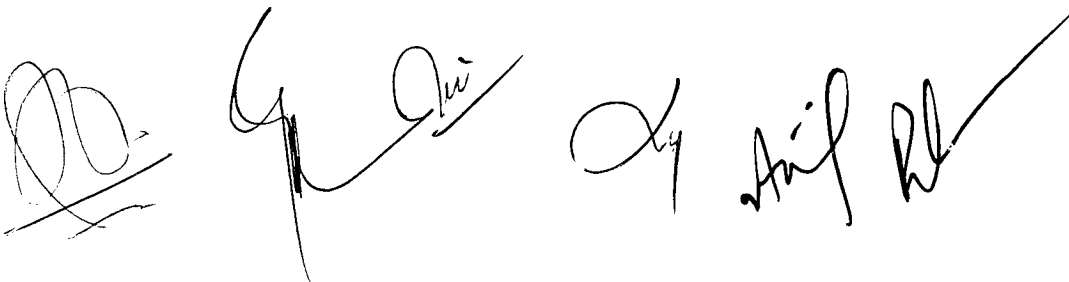
Rule 31(5)

The complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32,12 [if the aggrieved bidder files the review appeal within ten (10) days of such transfer;]3

Rule 32(1)

A bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review Committee [within ten (10) days of announcement of the decision]' provided that he has not withdrawn the bid security, if any, deposited by him.

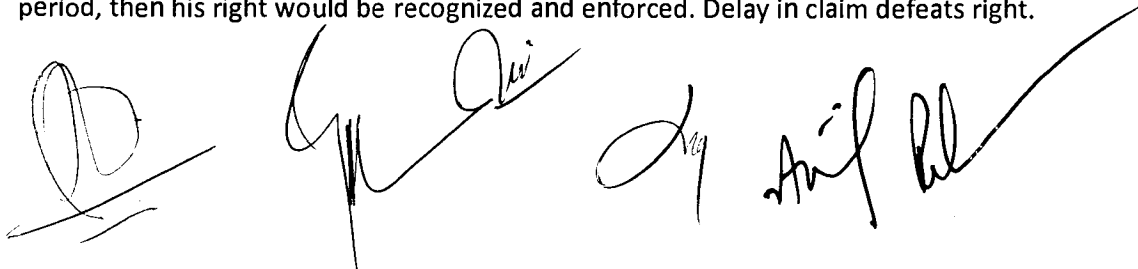
31. From reading and analysis of the rules mentioned supra, it is evident that there are two ways to approach the Review Committee-by transfer or dissatisfaction from CRC decision. Approaching by transfer-is to approach the Review Committee in case the Complaint Redressal Committee fails to arrive at the decision within 7 of the receipt of the complaint. In this case, the appeal stands transferred to the Review Committee which is authorized to dispose of the complaint provided that the aggrieved bidder files the review appeal within ten **(10) days of such transfer.**
32. Another way to approach the Review Committee is after the announcement of the decision of Complaint Redressal Committee. In this case also the complainant is required to approach the Review Committee within ten (10) days of the announcement of the decision.
33. It may be noted that in either of the cases whether failure of CRC to decide the matter or dissatisfaction of the bidder from CRC decision, the bidder was required to approach the Review Committee within 10 days. In accordance with the rules, any appeal received after 10 days' time shall not be maintainable. In the instant matter, the bidder was not successful to approach the right forum at right time. He approached the Complaint Redressal Committee on 28.04.2022 but the complaint Redressal Committee failed to arrive at the decision within seven (7) days. Resultantly, the appellant approached to the review Committee on 26.5.2022 (vide letter dated 23.5.2022) after the lapse of about twenty nine days which is not allowed as per SPP Rules.
34. The above discussion is summarized in table below.



Way of Approaching the Review Committee	Condition	Time limitation	In Appellant's case
By Transfer Rule 31(5)	If the CRC fails to arrive at the decision If the aggrieved bidder files the Review Appeal within ten days of such transfer.	Within 10 days of the transfer of appeal.	The complainant filed complaint on 28.4.2022. The CRC failed to arrive at the decision within seven days (7). The Appellant filed the Review Appeal on 26.5.2022. The appellant filed appeal after 22 days of the transfer of appeal whereas he was required to approach the Review Committee within 10 days of the transfer of the complaint.
Dissatisfaction From the Decision of the Complaint Redressal Committee Rule 32.	If CRC announces its decision and the complaint is dissatisfied If the complainant lodges appeal within ten days of the announcement of decision.		

Whether the Appellant was required to approach the Review Committee or wait for CRC decision?

35. The Appellant contended that he was waiting for CRC decision announcement therefore he could not approach the Review Committee within time. The Review Committee held that It is a well settled principle of law that Vigilance is required for the claim and infringement of rights. Vigilance requires that those who wish to seek assistance of law must move with speed to do so. "law aids the vigilant and not the indolent." If one sleeps upon his rights, his rights will slip away from him and therefore this maxim is expressed. If someone has any right, he must come to the Right forum for remedy within stipulated time period as laid down in the law. If he comes within fixed time period, then his right would be recognized and enforced. Delay in claim defeats right.



36. Furthermore, the Appellant claims that he has experience Of 27 years in business so surely he should not be unaware of the Right forums and time limits for making complaints.
37. It must also be noted that the Appellant has referred to the Rule 31 of the SPP Rules in his correspondence then how it could be assumed that he was not aware about filing the Review Appeal within time. Furthermore, if the procurement related issues are not resolved within time it would lead to the expiry of bid validity period leading to cancellation of the procurement process and causing unnecessary loss of time and creating inconvenience for the procurement entities.
38. The Review Committee reiterated the importance of challenging procurement decisions at the right time.
Whether the Procuring Agency was under obligation to not award the contract till the final decision or the PROCURING AGENCY was allowed to award the contract?

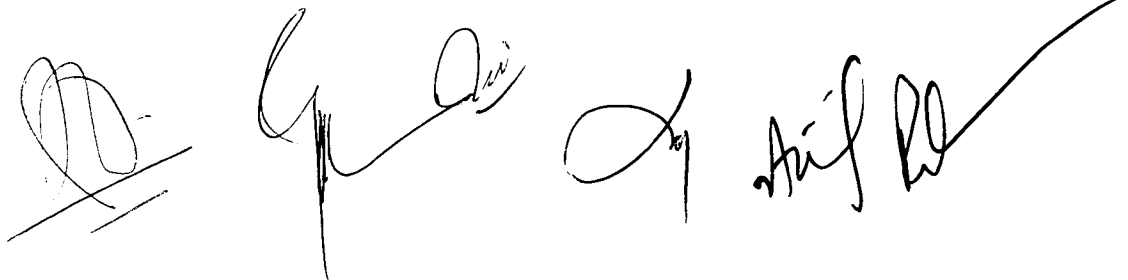
39. The Appellant complained that the procuring Agency was required to not award the contract till the final decision reliance has been taken on Rule 31(7) of the SPP Rules.

The Review Committee observed that the appellant contended that the Procuring Agency awarded contract in contravention with the SPP Rule 31(7) which requires that the procuring agency shall not award the contract unless the complaint is decided by the CRC or the appeal period is expired. For convenience and ready reference the Rule 31(6) and the Rule 31(7) are reproduced as under:

6. The Procuring Agency shall award the contract after the decision of the complaint redressal committee
7. Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;

Provided that in case of failure of the Complaint Redressal Committee to decide the complaint; the procuring agency shall not award the contract, [until the expiry of appeal period or the final adjudication by the Review Committee.]

40. The Rule 31(6) states that the Procuring Agency shall award the contract after the decision of the complaint redressal committee (the decision arrived at within Seven days in terms of Rule 31(5) of the SPP Rules in case the decision is arrived at after seven days such days shall not be considered as valid because the same would be taken after the prescribed period of 7 days) whereas the proviso of Rule 31(7) bars the Procuring Agency from awarding the contract in case of failure of the Complaint Redressal Committee to decide the complaint within stipulated time till the expiry of appeal period i.e ten days period after transfer of the complaint or the final adjudication by the Review Committee in case the complainant approaches within 10 days of the complaint.
41. In the instant matter, the Complaint Redressal Committee failed to decide the complaint within stipulated time and the complaint transferred to the Review Committee but the appellant could to approach to the Review Committee consequently appeal period had been expired and bar on the



procuring agency had been lifted with the expiry of appeal period. The Procuring Agency was at liberty to award the contract. The matter is illustrated as below:

42. Total Period of Complaint Redressal Committee to decide the matter (7 days from 28th April to 4th May).

28	29	30	1 st May	2	3	4

43. CRC Failed to decide the matter and the Appeal transferred to the Review Committee and appeal period started on 5th May 2022 and ended on 14th May 2022 but the Appellant did not approach to the Review Committee.

5	6	7	8	9	10	11	12	13	14 th May

44. Bar on the Procuring had been lifted on 4th May 2022 when the appeal period had expired and the Appellant could not file the Review Appeal. Therefore, The Procuring Agency was at liberty to award the contract. Hence, signing of contract after the expiry appeal period had been allowed under the SPP Rules and such cannot be contended.

45. The Review Committee noted that the Appeal period had expired and the Appellant failed to approach to the Review Committee.

Whether the disqualification on the matter of non-registration as Manufacturer was unjustified and unreasonable or the disqualification was as per terms and conditions of the NIT and bidding documents?

46. The Appellant was disqualified by the Procuring Agency on the basis the he was not registered as Manufacturer with FBR rather his NTN and Sales Tax registrations show him registered as wholesaler and General Order supplier. In order to understand the matter fully the operative para of the Sales Tax registration is pasted as below:

Sr.	Business/ Branch Name	Business/ Branch Address	Principal Activity
1	FAIZ SCIENTIFIC COMPANY	FLAT 303-B, FALCON PLAZA TARIQ ROAD	
2	FAIZ SCIENTIFIC COMPANY	2 WALI CENTER SB 6 BLOCK 13 C GULSHAN E IQBAL	
	M/S FAIZ SCIENTIFIC COMPANY	SHOWROOM D-28, D MARKET, BLOCK 6, PECHS, SHAHRAH-E-FAISAL, Karachi East Janshad Town	010000- Importer/Exporter/Importer/Importer
	M/S FAIZ SCIENTIFIC COMPANY	2-WALI CENTRE, SB-6, BLOCK-13/C, GULSHAN-E-IQBAL	169000- Wholesale and retail trade, repair of motor vehicles and motorcycles/Non-specialized wholesale trade/Non-specialized wholesale trade

(Handwritten signatures)

47. The Appellant contended that the Procuring Agency clearly mentioned in the NIT that the Original Manufacturer/their Authorized distributors/Supplier were allowed to participate in the bidding process. Hence, disqualification on the basis that the Appellant was not a manufacturer was unjustified and unreasonable. The operative Para relied upon by the Appellant is reproduced as under:

The Directorate of Schools Education (ES&HS) Mirpurkhas Division Mirpurkhas, School Education & Literacy Department now invites sealed bids from eligible bidders and original manufacturers / their authorized distributors / suppliers registered with Income Tax, Sales Tax & SRB / FBR etc. for the supply of above packages on item rate basis. Interested/eligible bidders may obtain further information from the P&D Branch of Directorate of School Education (ES&HS), Mirpurkhas Division Mirpurkhas.

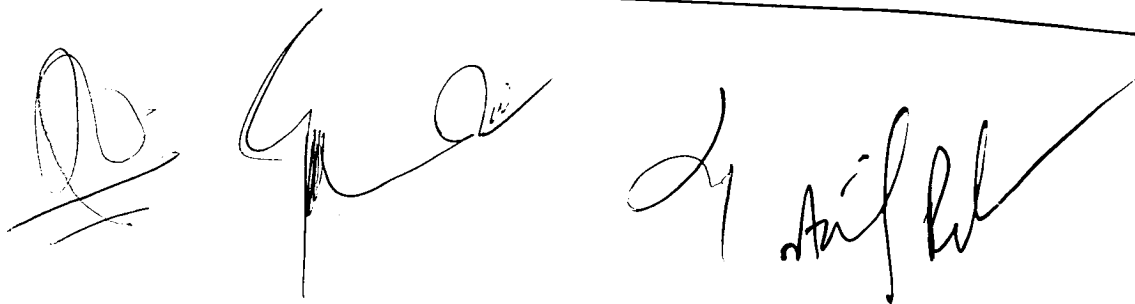
48. The Review Committee observed that the Appellant has disqualification has challenged his disqualification on two grounds:

1. The Appellant is a registered Whole seller so and General Supplier and he should be included in Bidding Process.
2. In Earlier tenders, the Appellant was allowed to participate in the bidding process but now he has been prevented from participating

49. The Review Committee noted that it was an admitted position that the appellant was not a manufacturer. Therefore, the appellant was required to submit **Manufacturer's Authorization Form** duly filled and signed by the Manufacturer wherein the Appellant was to be authorized to submit a bid, and subsequently negotiate and sign the Contract for the goods to be manufactured by the registered Manufacturer. Furthermore, the Manufacturer had to extend full guarantee and warranty as per Clause 15 of the General Conditions of Contract for the goods offered for supply by the Appellant against the Invitation for Bids. However, the Appellant failed to submit **Manufacturer's Authorization Form with the technical bid even the instructions in the bidding documents clearly asked for authorization. The instructions mentioned in the bidding documents are mentioned below:**

11.1 (g) Furnish Technical Proposal:

i) Each bidder has to submit a Technical Proposal containing all the required category wise information/data as described in the Technical Evaluation Criteria given as Annexure-1 to Bidding Data to demonstrate the adequacy of the bidder meeting the requirements for timely supply/delivery of Furniture & Fixture items. Each bidder must also submit technical drawings of all the Furniture & Fixture items mentioned in the BOQ. **Manufacturer's or relevant supplier Authorization (on the format provided as Schedule-C) (in case the Bidder is not a manufacturing company/firm or relevant supplier); In order to get formal authorization, the form No.6 was attached to the bidding documents to be filled by the Manufacturer. The Form NO.6 is reproduced as under:**



6. Manufacturer's Authorization Form

[See Clause 13.3 (a) of the Instructions to Bidders.]

To:

WHEREAS *[name of the Manufacturer]* who are established and reputable manufacturers of *[name and/or description of the goods]* having factories at *[address of factory]*

do hereby authorize *[name and address of Agent]* to submit a bid, and subsequently negotiate and sign the Contract with you against IFB No. *[reference of the Invitation to Bid]* for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 15 of the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Bids.

[signature for and on behalf of Manufacturer]

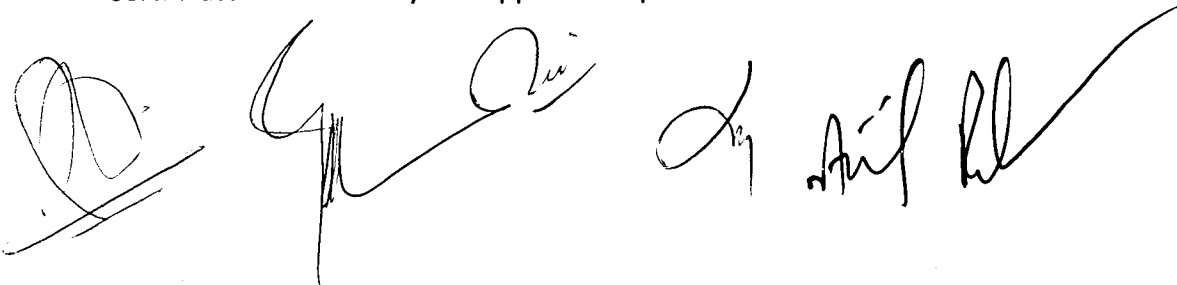
Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the Bidder in its bid.

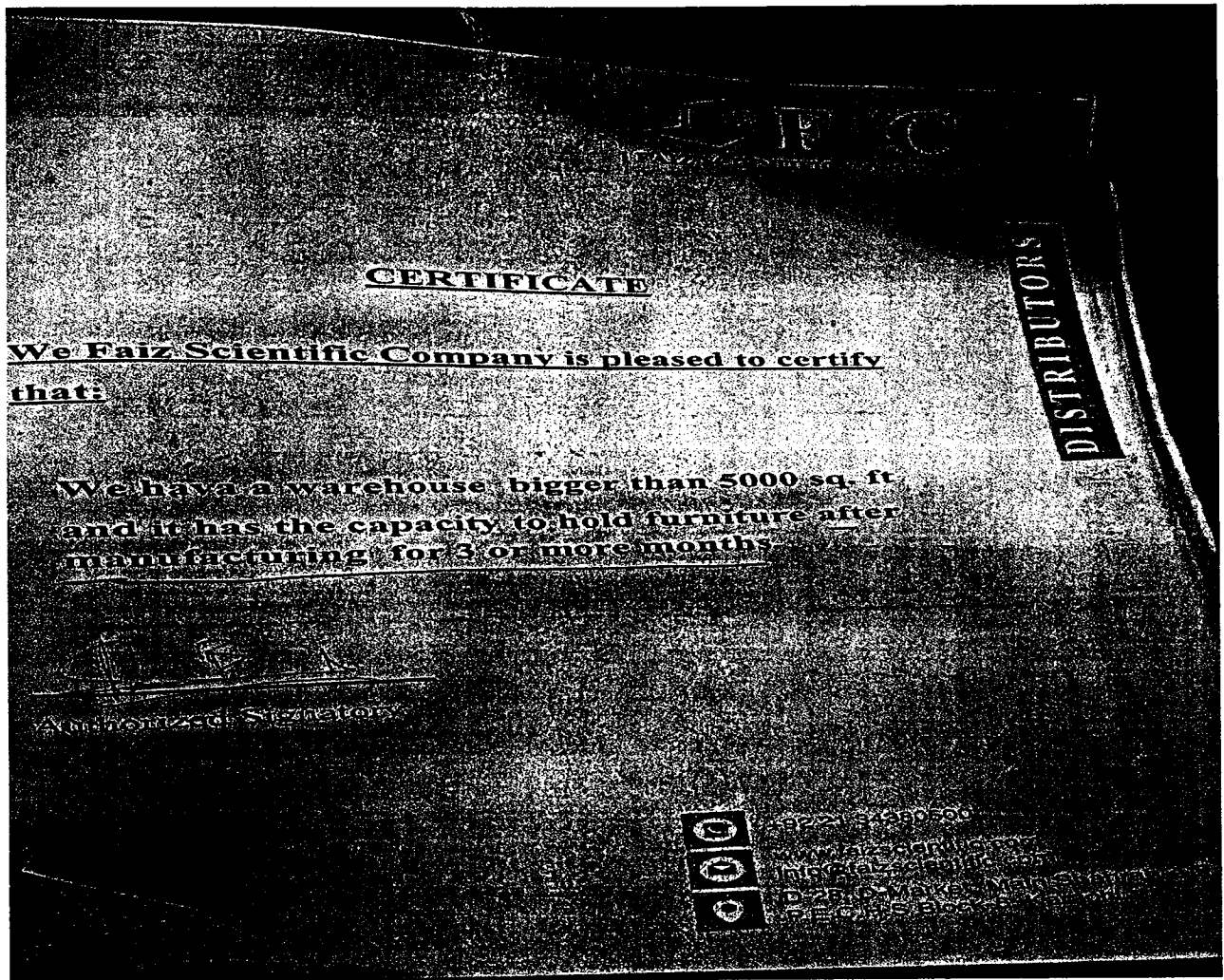
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50. The Authorization was required to be on the letterhead of the Manufacturer and was to be signed by a person competent and having the power of attorney to **bind the Manufacturer** and the same was to be included by the Bidder in its bid
51. In the Instant matter, the Appellant did not submit any Authorization form to be filled by the **Manufacturer to bind him and get his Guarantee for the supplies.**

As the Appellant was neither manufacturer nor Authorized by the Manufacturer, there was no question to include his bid.

Ware House/Storage Capacity:-

52. The Appellant submitted its own certificate that they have a ware house bigger than 5000 sq.ft and it has capacity to hold the furniture after manufacturing for 3 or more months. The Certificate submitted by the Appellant is pasted below:





53. The Review Committee observed that it is admitted by the Appellant that he was not a registered manufacturer then the certificate of ware house where furniture is held after manufacturing for 3 or more months is questionable.

Whether the Order dated 16.6.2022 passed by the Honorable High Court of Sindh in the C.P NO 919 of 2022 restrained the Review Committee to decide the matter as per the SPP Rules or there was no prohibition for the Review Committee in order dated 16.6.2022?

54. The Review Committee noted that an application was submitted by the Appellant with reference to his advocate Learned ASC Khawaja Shams-ul-Islam wherein the Learned ASC contended that the Review Committee shall withdraw the letters of hearing of the Review Committee till the final decision by the Honorable High Court of Sindh.

55. The Appellant also contended that the Honorable High Court of Sindh in the C.P NO 919 of 2022 vide order dated 16.6.2022 restrained the Review Committee to decide the matter.

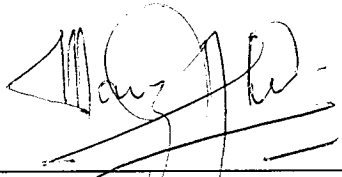
56. The Review Committee perused the order Honorable High Court of Sindh in the C.P NO 919 dated 16.6.2022. The operative Para of the order is reproduced as under:

Let the notice be issued to the defendants for 06.07.2022. In the meanwhile, the operation of the award of the defendants NO 9 to 15 shall remain suspended till the next date of hearing and the defendants NO.5 to 7 are directed not to release any sum in favor of defendants 9 to 15.

57. The Review Committee observed that the Honorable High Court of Sindh neither expressly nor impliedly barred the Review Committee from its legal work. The submission made by the Learned ASC Khawaja Shams-ul-Islam and contention of the Appellant are out of the context.

Decision of the Review Committee:

Given the proceedings, findings, observations and after due deliberation, in exercise of power conferred by the Rule 32(7)(a) of the SPP Rules, the Review Committee rejects the appeal as the appeal is time barred under the SPP Rules 2010(amended up-to-date) and devoid of merits for the reasons recorded supra in the observations of the Review Committee.



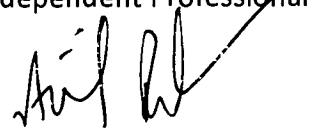
Member
(Manzoor Ahmed Memon)
Member SPPRA Board



Member
(Munir Ahmed Shaikh)
Independent Professional



Member
(G. Mohiuddin Asim)
Representative of P & D Board ,P&
Development Department Karachi



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