



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-930/2019-20/1804

Karachi, dated the 19th February, 2020

To,

The Registrar,
Dawood University of Engineering & Technology,
Karachi.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY (APPEAL LODGED BY M/S DARBAR CATERERS & DECORATORS VERSUS DAWOOD UNIVERSITY OF ENGINEERING & TECHNOLOGY KARACHI.

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision (*M/s Darbar Caterers & Decorators v Dawood University of Engineering & Technology*) held in its meeting on 13th February, 2020, for your information and further necessary action under intimation to this Authority, at the earliest.

19/02/2020
ASSISTANT DIRECTOR (LEGAL-II)

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

1. The Secretary to Govt. of Sindh, Universities & Boards Irrigation Dept., Karachi.
2. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
3. The Assistant Director (I.T), SPPRA [*with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010*].
4. The Staff Officer to the Chairman/ Members Review Committee.
5. The Staff Officer to Vice Chancellor, Dawood University of Engineering & Technology, Karachi.
6. M/s Darbar Caterers & Decorators, Jamshed Road # 1, Karachi.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-930/2019-20

Karachi, dated the February, 2019

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

(Appeal)

M/s Darbar Caterers & Decorators
Versus

Dawood University of Engineering & Technology
(NIT ID # T00517-19-0004 dated 20.12.2019)

Facts and background

The appellant, M/s Darbar Caterers & Decorators, Karachi, lodged a complaint (vide letter dated 13.01.2020) addressed to Dr. Syed Asif Ali Shah, Acting Registrar/ Chairman Complaints Redressal Committee (CRC), Dawood University of Engineering & Technology (DUET) and copy endorsed to this Authority against the NIT # DUET/Convocation 2020/01 dated 20.12.2019 floated by Assistant Director Finance DUET, Karachi *'the procuring agency'* for procurement of *'decoration, sound & multimedia setup, catering, photographic & film coverage, designing, printing services and supply of gold & silver medals for convocation 2020'*¹ whereby the appellant raised concern over award of procurement contract to the lowest submitted bidder – M/s Libra International² – without conforming the bidder's minimum eligibility criteria³. In turn, the Authority (vide letter dated 17.01.2020) also forwarded the matter to the procuring agency's CRC with an advice to redress the appellant's grievances and furnish its decision within stipulated time period as specified under Rule-31(5) of SPP Rules, 2010 (Amended 2019)⁴.

2. Subsequently, the appellant (vide letter dated 22.01.2020) preferred an appeal, along with review appeal fee⁵, stating that the CRC has failed to redress their grievances and requested the Authority to place their case before the Review Committee. Resultantly, the Authority (vide letter dated 28.01.2020) forwarded the appellant's matter to the procuring agency with an advice to update/ confirm status of the appellant's bid security, latest by 31.01.2020, in terms of Rule-32(1) of SPP Rules, 2010⁶, for ascertaining the maintainability of the case; however, the procuring agency failed to respond within prescribed time.

3. Accordingly, the appellant's case was taken up by the Authority's Review Committee for hearing in its meeting scheduled on 13.02.2020 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 04.02.2020) to appear before the Committee on scheduled dated, time, and venue. In compliance, Mr. Asif Ali Khan, Deputy Director Finance, Dawood University of Engineering & Technology *'representative of the procuring agency'* and Mr. Junaid ur Rehman, Proprietor, M/s Darbar Caterers & Decorators *'the appellant'* appeared before the Committee's meeting.

REVIEW COMMITTEE PROCEEDINGS

4. The Chairperson of the Review Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/ version on the instant procurement before the committee.

¹ Detailed description/ nature of the goods can be accessed through instant procurement's NIT available on the PPMS website at ID # T00517-19-0004 [<https://ppms.pprasindh.gov.pk/PPMS/public/portal/notice-inviting-tender>]

² Fourth lowest submitted bidder

³ Single stage one envelope bidding procedure

⁴ Rule-31(5) provides that 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 under rule 32, if the aggrieved bidder files the review appeal within ten (10) days of such transfer.

⁵ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

⁶ Rule-32(1) provides that the 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.

Appellant's Version

5. Mr. Junaid ur Rehman, Proprietor 'the appellant' apprised the Committee of his submission of bid, along with requisite documents, under instant procurement whereby the procuring agency disqualified the appellant due to non-submission of General Sales Tax certificate issued by the Federal Board of Revenue. The appellant claimed that they are registered (active on list) with Sindh Revenue Board (SRB) and submitted the SRB certificate along with the bid as the instant tender falls under procurement of services and not the supply of goods. Similar to the instant procurement, they had participated and successfully completed procurement contracts with various procuring agencies viz. Karachi University and Dawood University etc. Secondly, they quoted competitive bid as PKR 3.39 million – third lowest bidder – nevertheless, the procuring agency disqualified the appellant without assigning any reason and awarded procurement contract to M/s Libra – fourth lowest bidder – which quoted bid as PKR 4.35 million.

- Syed Adil Gilani (Member of Review Committee) raised a query with regard to the appellant's current status of registration under GST;
 - ◆ The appellant's representative stated they were registered with the GST; however, after 2013 (devolution of powers under 18th Constitutional Amendment of 2010)⁷ they had to delist/ unregister the firm from the GST as the services related tax – provincial level – is solely collected by the SRB in terms of Sindh Sales Tax on Services Act⁸. The FBR in this regard also issued an amendment where the service related sector firms were advised to register themselves with the provincial sales tax authorities. The appellant further stated that they successfully completed similar nature of procurement contract with the procuring agency in last year on the basis of similar eligibility criteria including registration with the SRB. Subsequently – after the procuring agency's clarification as highlighted at para 6, the appellant withdrew his case/ appeal before the Review Committee by submitting a written statement as reproduced verbatim herewith [please refer to the letter dated 04.02.2020, on the subject 'Service of Process – Review Appeal', we inform that we are withdrawing the appeal in order to save the reputation of University and for the benefit of students as they are our children and future of Pakistan. We believe that we have strong case and the procurement was not done as per SPPRA Rules but we are sure that in future the University would follow the SPPRA Rules. (Signed by Junaid- ur-Rehman, M/s Darbar Xaterers & Decorators on dated 12.02.2020)]

Procuring Agency's Version

6. Mr. Asif Ali Khan, Deputy Director Finance 'representative of the procuring agency' clarified that the instant procurement, having estimated cost of PKR 4.00 million, falls under supply of goods and services, therefore, it was expressly mentioned in the NIT that the prospective bidder(s) needs to be registered with GST/ NTN and SRB to be eligible/ qualify under the criteria⁹. The supplies of goods were included designing & printing material (invitation cards, degree folders, shields, certificates, newsletter, and silver & gold medals etc.) where the general sales tax applies; on the other hand hiring of services comprised of decoration & ambiance setup, sound & multimedia setup, photographic & film coverage production, food/ catering arrangement, and decoration & catering arrangement, where service related tax applies¹⁰.

- Syed Adil Gilani pointed out that the appellant's firm was not registered with the GST then why the procuring agency awarded the procurement contract of similar nature in last year;
 - ◆ The procuring agency's representative stated that it was a unilateral mistake of the procuring agency where the procurement contract was awarded in the absence of valid registration with the tax authorities. Such mistake was rectified under instant procurement as required under the law/ rules.

⁷ Sindh Sales Tax on Services (<http://www.srb.gos.pk/AboutUs/bg-SSToS.jsp>)

⁸ <https://e.srb.gos.pk/SOP/SINDHSALESTAXONSERVICESACT2011.pdf>

⁹ See bidder's eligibility criteria under NIT and bid documents – ibid.

¹⁰ See complete details of procurement of goods & services under schedule of requirements given in the bid document – ibid

Review Committee's Findings

7. After hearing the parties at length, the Committee is of view that the instant procurement was a combination of supply of goods and services, as followed by the procuring agency, which required the prospective bidder(s) to have valid registration with FBR as well as SRB in terms of Rule-46(1)(a)(iii) read with Rule-42(1) of SPP Rules, 2010¹¹ and the appellant presumably agreed to such condition while submitting bid to the procuring agency. The Committee stated obiter that the sales tax is applicable on supply of all goods except the ones which are exempted by the government as per Sales Tax Act, 1990¹². *The appellant's rest of the concerns including the procuring agency's failure to announce the bid evaluation results and redress the grievances etc. in a timely manner were justified, albeit, the appellant had voluntarily withdrawn from such concerns by submitting verbal and written statement before the Committee while hearing the case*¹³.

Review Committee Decision

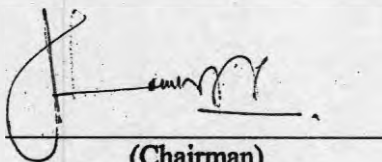
8. In light of the above findings/ reasons, as under para-7, and after due deliberation, the Review Committee unanimously decides to reject/ dismiss the appeal in the light of SPP Rule-32(7)(a) of SPP Rules, 2010¹⁴.



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



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



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

¹¹ Rule-46(1)(a)(iii) provides that [save as otherwise provided in these rules, the following procedures shall be permissible for open competitive bidding – Single Stage One Envelope Procedure] [Notice Inviting Tenders and bidding documents of this method shall contain the following eligibility criteria] registration with Federal Board of Revenue (FBR), for Income Tax and Sales Tax in case of procurement of goods, registration with the Sindh Revenue Board (SRB) in case of procurement of work and services, and registration with Pakistan Engineering Council (where applicable). Rule-42(1) provides that all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.

¹² Ibid.

¹³ See para-5 (appellant's version)

¹⁴ Rule-32(7)(a) provides that [the Review Committee may] reject the reference, stating its reasons and vacate the bar provided for in the proviso of sub-rule (7) of Rule-31.