F. No. PPRA/AP-43/2026
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
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ORDER

M/s Asian Consulting Engineers (Pvt.) Ltd.

...the "Appellant"

Vs.

Pakistan Airports Authority (PAA), etc.

...the "Respondents"

Date of Hearing	Mr. M. Shahid Piracha (ASC), Mr. Mustafa Piracha (Advocate)
	(On behalf of Appellant)
18.08.2026	Mr. Khizer Hayat Malik, Mr. Arsalan Ghous (Member GRC)
	Engr. Faizullah Khattak, Engr. Zafar Iqbal *[attended through Zoom]*
	(On behalf of Respondents)

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004 AGAINST THE ORDER DATED 16.06.2026 PASSED BY GRIEVANCE REDRESSAL COMMITTEE

The Authority received the titled Appeal on 13.07.2026, filed under Rule 48(7) of the Public Procurement Rules, 2004. The Authority on receipt of the Appeal issued notices to the parties wherein it was directed to appear in person or through their nominated representatives or Counsel before the Authority on 18.08.2026 before the Appellate Committee in the Committee Room of this Authority.

2. On the said date of hearing (18.08.2026), the above-mentioned learned counsel and representatives of the parties appeared before the Committee and presented their arguments at length. The Respondents provided written arguments to the Committee.

3. The learned counsel for the Appellant submitted that the subject matter of the appeal falls within the jurisdiction of the Authority. The appellant further declares that the appeal is within the limitation period as prescribed in Rule 48 (7) of the Public Procurement Rules, 2004.

4. The counsel for the Appellant further submitted that the Appellant, M/s Asian Consulting Engineers (Pvt.) Ltd. (hereinafter "the Appellant" or "ACE"), is a firm of professional engineering consultants duly registered under the Companies Act 2017 and empanelled with the Pakistan Engineering Council. The Respondent, Pakistan Airports Authority (PAA), is a statutory body and a "procuring agency" within the meaning of Rule 2 of the Public Procurement Rules, 2004 (hereinafter "the Rules").

5. Further submitted that the Respondent issued a Request for Proposals (RFP) for "Consulting Services for Expansion of Jinnah Terminal Complex (JTC) and Allied Airside & Landside Facilities at Jinnah International Airport (JIAP) Karachi" (hereinafter "the Tender"). Clause 21.1(vii) of the RFP made it a Mandatory Requirement that bidders submit "Satisfactory Performance Certificates" in respect of ongoing assignments from the respective employers.

6. Further submitted that the Appellant, by letter dated 8th June 2026, addressed to the Director Planning & Development, PAA, Karachi, invoked Rule 32 of the Rules and requested waiver of Clause 21.1(vii) on the ground that the said condition is discriminatory and difficult to meet, inasmuch as formal performance certificates are customarily issued only upon completion of assignments and not during their execution; that the procuring agency itself has full and ready access to all performance data for ongoing assignments; and that the impugned condition operates to exclude otherwise qualified and experienced consultants from participation, thereby

restricting competition in violation of the letter and spirit of the PPRA framework.

7. Further submitted that the Appellant, by grievance petition dated 09.06.2026, filed under Rule 48(2) of the Rules before the Bidders' Grievance Redressal Committee (GRC) (Respondent No: 03), formally challenged Clause 21.1(vii) of the RFP bidding conditions. The respondent No: 03, vide order dated 16.06.2026 (Ref No. HQPAA/1811/03/05/PDCT/171), dismissed the grievance petition and upheld the impugned condition. The Appellant, being aggrieved, files this Appeal under Rule 48(7) of the Rules against the said order.

8. Further submitted that this Appeal is filed within thirty (30) days of communication of the Grievance Redressal Committee decision dated 16.06.2026 and is therefore within limitation under Rule 48(7) of the Rules. Furthermore, Appellant respectfully submits that the impugned order dated 16.06.2026 of the Grievance Redressal Committee is liable to be set aside on the following grounds, which are pleaded cumulatively and in the alternative:

GROUND I: THE IMPUGNED CONDITION VIOLATES RULE 32 (DISCRIMINATORY AND DIFFICULT CONDITIONS)

a. That Rule 32 of the Public Procurement Rules, 2004 expressly provides:

Quote:

"32. Discriminatory and difficult conditions: - Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related."

Unquote:

b. That the respondent No: 3 failed to apply the correct legal test mandated by Rule 32. The said Rule establishes a composite test: a condition is impermissible if it either (a) discriminates between bidders, or (b) is difficult to meet, having regard to the ordinary practices of the relevant trade or service. Both limbs are independently sufficient to invalidate a condition, and reference must be made to industry practice, not merely to the internal logic of the procuring agency.

c. That in the consultancy services industry, which is the relevant trade for the purposes of Rule 32, it is the universal and settled practice that performance certificates or completion certificates are issued by employers only upon the satisfactory conclusion of an assignment. This is the practice followed by all major procuring agencies in Pakistan, including the Federal Government's standard consultancy procurement guidelines, and is reflected in the PEC Consultancy Procurement Guidelines relied upon by the respondent No: 3 itself. The requirement to produce a "Satisfactory Performance Certificate" for an "ongoing" assignment is therefore a condition that is impossible to meet in ordinary practice and is inherently inconsistent with the nature of the document demanded.

d. That the condition discriminates between two categories of bidders on an irrational basis:

(i) Consultants who have completed all prior assignments who can furnish certificates are advantaged; and completion

(ii) Consultants with substantial ongoing assignments, who may have richer and more current experience, precisely the expertise needed for an active expansion project are disadvantaged and effectively excluded, not on any merit-based ground, but solely because their employers have not yet issued completion certificates for work still in progress.

e. That this discrimination is particularly prejudicial in the context of a complex assignment such as the expansion of an operational international airport terminal, where active, ongoing experience with comparable airport projects is a superior indicator of current competence than the possession of historical completion certificates for finished works. The impugned condition thus inverts the purpose of evaluation criteria and operates perversely against the procurement objective.

f. That the GRC erred in holding, without any factual or legal basis, that the condition "does not operate as a blanket disqualification inasmuch as it applies exclusively to consultants already engaged with the PAA." This finding is both factually incorrect and legally irrelevant. The Clause 21.1(vii) requirement is not confined to PAA's own consultants; it applies to all bidders in respect of all their ongoing assignments with any employer. Furthermore, even if it were confined to PAA consultants, discrimination within a sub-class of bidders is equally impermissible under Rule 32.

GROUND II: VIOLATION OF RULE 10 (SPECIFICATIONS) MUST ALLOW WIDEST POSSIBLE COMPETITION

g. That Rule 10(1) of the Public Procurement Rules, 2004 provides:

Quote:

"10. Specifications. - The procuring agency shall allow the widest possible competition by defining such specifications that shall not favor any single contractor or supplier nor put others at a disadvantage."

Unquote:

h. That while Rule 10 of PPRA Rules 2004 is primarily addressed to technical specifications for goods and works, it enunciates a foundational principle of the PPRA framework; that procurement conditions, including eligibility and qualification criteria, must be designed to maximize competition. This principle pervades the entire statutory scheme, as reflected in Rule 4 (fair and transparent procurement), Rule 32 (non-discriminatory conditions), and Rule 29 (evaluation criteria must be appropriate and unambiguous).

i. That Clause 21.1 (vii), by requiring performance certificates for ongoing assignments; a document that is structurally unavailable by the nature of the work operates as a de facto barrier to participation that unjustifiably narrows the field of competition. The respondent No: 3 erred in failing to examine the condition against this overarching principle and instead narrowly confined its analysis to the internal consistency of the RFP without measuring the condition against the statutory framework.

GROUND III: VIOLATION OF THE PRINCIPLES OF FAIR AND TRANSPARENT PROCUREMENT UNDER RULE 4

j. That Rule 4 of the PPRA Rules 2004 provides that procuring agencies "shall ensure that the procurements are conducted in a fair and transparent manner" and that "the procurement process is efficient and economical". Fairness in procurement connotes that eligibility criteria must be rationally connected to the object of the procurement and must not impose unnecessary barriers to participation. Transparency requires that criteria be objectively measurable, consistent in their application, and not be susceptible to selective enforcement.

k. That the impugned condition satisfies none of these tests. "Satisfactory Performance Certificate" for ongoing work is not an objectively defined document; no standard form or authority is prescribed; whether an employer issues such a certificate and in what terms is entirely at the discretion of the employer, whose interests may or may not align with those of the consultant. The condition therefore introduces a subjective and uncontrollable element into the qualification stage that is antithetical to transparency and uniformity.

l. That respondent No: 3 compounded the Respondent's error by holding that the Respondent itself as the employer for ongoing PAA assignment, was the same entity assessing performance. This reasoning reveals a structural conflict of interest: the procuring agency is simultaneously the gatekeeper of performance certification and the evaluator of bids. This arrangement, far from curing the defect, amplifies the non-transparency of the criterion and places the Respondent in a position to exercise unchecked, unreviewable discretion over the qualification of its existing consultants, in violation of the arms'-length principle that underlies fair procurement.

GROUND IV: THE GRC MISREAD AND MISAPPLIED RULE 29 EVALUATION CRITERIA MUST BE APPROPRIATE

m. That Rule 29 of the Rules provides that "procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated" and that "failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement." The word "appropriate" in Rule 29 is a statutory limitation: evaluation criteria must be fit for purpose, proportionate, and capable of objective and uniform application.

n. That the GRC held that the Respondent is "entitled to prescribe reasonable evaluation criteria relevant to the nature and complexity of the assignment, provided such criteria are disclosed in advance and applied uniformly." The GRC thereby correctly identified the legal standard but failed to apply it. The Appellant does not dispute the Respondent's entitlement to prescribe stringent qualification criteria. What the Appellant challenges is a criterion that is inherently incapable of being met, not because of a bidder's performance deficiency, but because of the stage of completion of existing work, a circumstance entirely beyond the bidder's control. Such a criterion fails the "reasonableness" and "appropriate" tests as a matter of law.

o. That the GRC further erred in holding that the impugned condition is "in line with Rule 29" merely on the basis that it is disclosed in the RFP and applies to all bidders. Disclosure and uniform application are necessary but not sufficient conditions under Rule 29; a criterion that is uniformly impossible to meet remains a mis-procurement, since "uniformity" of an arbitrary standard does not cure its arbitrariness.

GROUND V: THE GRC ORDER IS PERVERSE AND CONTRARY TO THE PUBLIC POLICY UNDERLYING THE PPRA FRAMEWORK

p. That the PPRA framework, as a whole, is founded on the public policy of ensuring value for money for public expenditure through open, fair, and competitive procurement. Undue restriction of participation limits the pool of competing consultants, thereby reducing competition, distorting prices, and undermining the quality of outcomes. Any condition that, without rational justification, eliminates experienced and capable consultants from the bidding process is therefore contrary to the public policy that animates the Rules.

q. That it is a principle of statutory interpretation, consistently applied by the superior courts of Pakistan, that delegated legislation must be interpreted and applied in a manner consistent with the parent statute's purpose. The PPRA Ordinance, 2002 and the Rules made thereunder are designed to protect public interest through competitive procurement. The GRC's decision, which endorses a condition that contracts rather than expands the field of competition without any rational basis, is therefore contrary to the legislative intent and the public policy of the PPRA framework.

r. That respondent No: 02 contention before the respondent No: 03 that the condition "serves to uphold competitive integrity while simultaneously excluding underperforming bidders", is self-contradictory. The condition does not exclude underperforming bidders; it excludes performing bidders whose work is ongoing. A bidder with a currently ongoing, successfully progressing assignment is demonstrably not underperforming. The respondent No: 03 accepted this internally inconsistent reasoning without scrutiny, thereby rendering its decision perverse.

GROUND VI: VIABLE AND LESS RESTRICTIVE ALTERNATIVES EXIST THE CONDITION IS DISPROPORTIONATE

s. That even if a procuring agency has a legitimate interest in assessing the performance quality of bidders on ongoing assignments, the impugned condition is disproportionate because less restrictive means is available that fully satisfy that interest without excluding qualified bidders. Such alternatives include:

(i) Requiring submission of progress reports or monthly/quarterly reporting documents evidencing satisfactory performance in lieu of formal completion certificates;

(ii) Permitting a declaration or certificate from the bidder's authorized representative, subject to verification by the procuring agency from the employer directly;

(iii) Direct inquiry by the procuring agency with the employer of the ongoing assignment, which is an option expressly recognized in the Appellant's waiver request; and

(iv) Substitution of a satisfactory performance certificate for ongoing assignments with a self-certification to be verified post-evaluation and prior to award.

t. That respondent No: 03 failed to consider these alternatives and instead accepted the Respondent's binary framing without independent analysis. A regulatory body charged with protecting bidders' rights is obligated to examine whether the procurement objective can be achieved through means less restrictive of competition. The respondent No: 03 failure to conduct this analysis renders its order legally deficient.

GROUND VII: THE GRC PROCEEDINGS SUFFERED FROM STRUCTURAL INFIRMITY MEMBER OF GRC WAS AN OFFICER OF THE PROCURING AGENCY

u. That Grievance Redressal Committee order is signed by Mr. Arslan Ghous, Deputy Director Contract Management, PAA, in his capacity as a Member of the GRC. The President and other members of the GRC are also officers of the Respondent PAA, as is apparent from the copy endorsements on the order. A Grievance Redressal Committee constituted entirely of officers of the procuring agency, and charged with deciding a complaint against that very agency's own bidding conditions, violates the fundamental principle that no person should be a judge in a cause in which they have an interest. The GRC was structurally unable to act as an independent or impartial forum in the present matter, and its decision is therefore vitiated by this foundational infirmity.

v. That Rule 48(1) of the PPRA Rules 2004 requires the procuring agency to constitute a committee "with necessary powers and authorizations, to address the complaints of bidders." The requirement of "necessary powers" imports an obligation of institutional independence sufficient to adjudicate complaints against the procuring agency's own conditions. A committee composed entirely of the procuring agency's own officers does not satisfy this requirement in disputes concerning the agency's own bidding documents.

9. Further submitted that as per Regulations 6 "Criteria for short-listing of consultants" and 7 "Criteria for prequalification of consultants" of the Procurement of Consultancy Services Regulations, 2010, which states:

> **6. Criteria for short-listing of consultants.–**
>
> (1) Whenever shortlisting is deemed necessary, the procuring agency shall predetermine a criterion for short listing. Except for single source, there will normally be a minimum of three consultants in the shortlist, but there is no upper limit for number of candidates to be short-listed. However, if less than three candidates apply, their proposals may be considered on merit.
>
> (2) The procuring agency while engaged in short-listing of consultants will take into consideration the following factors, namely: -
>
> > (i) qualification; (ii) experience; and (iii) any other factor that a procuring agency may deem relevant, not inconsistent with these regulations or Public Procurement Rules, 2004.
>
> (3) All applicants shall be informed whether or not they have been shortlisted.
>
> **7. Criteria for prequalification of consultants.–**
>
> (1) Whether shortlisting is done or not, the procuring agency may engage in prequalification of consultants in case of complex assignments.
>
> (2) The procuring agency while engaged in prequalification of consultants will take into consideration the following factors, namely: - (i) qualification; (ii) general experience; (iii) specific experience; (iv) past performance; and (v) any other factor that a procuring agency may deem relevant, not inconsistent with these regulations or Public Procurement Rules, 2004.

In the instant procurement process, neither short-listing nor prequalification was undertaken. Past Performance nonetheless appears – but only as an unscored pass / fail gate against PAAs own consultants, and nowhere in the 100-point matrix.

10. Further submitted that in terms of Regulations 3 B (ii) a-b, which states:

> (ii) Procedures for selection under the quality and cost-based selection. -
>
> (a) a request for expression of interest as laid down in regulation 5 is advertised to invite interested applicants or firms to contest;
>
> (b) a request for proposals shall be prepared and sent to shortlisted consultants selected following the laid down criteria.

However, no EOI was advertised and no short-list was drawn. The RFP was published directly and downloadable free of cost from eprocure.gov.pk. Yet ITC 2.1 and ITC 13.1 still speak of those listed in the letter of Invitation and of amendments sent to all shortlisted consultants.

11. Further submitted that the RFP was invited directly without first undertaking the prescribed process of inviting an Expression of Interest (EOI) in accordance with the Procurement of Consultancy Services Regulations, 2010. Regulation 5(1) expressly provides that a request for expression of interest shall be advertised, allowing prospective applicants at least fifteen (15) calendar days for national competition and thirty (30) calendar days for international competition to express their interest in providing consultancy services. The direct issuance of the RFP, in substitution for the EOI and short-listing process, therefore appears to have circumvented the competitive and transparent procedure prescribed under the Regulations. The direct invitation of the RFP, instead of advertising an EOI and undertaking the prescribed competitive process, constitutes a material procedural irregularity and raises serious concerns regarding transparency, equal opportunity, open competition and fairness in public procurement.

12. Further submitted that Clause 21.1(vii) of the RFP has prescribed, as a mandatory requirement, the submission of "Satisfactory Performance Certificates" in respect of ongoing assignments from the respective employers. The said requirement, particularly to the extent that it effectively necessitates a performance certificate from PAA or from employers/consultants having an existing working relationship with PAA, appears to operate as a restrictive and discriminatory eligibility condition. In practical terms, such a condition may confer an undue advantage upon consultants who have previously undertaken assignments for PAA, while placing other otherwise qualified and competent consultants at a substantial disadvantage merely because they have not previously worked for PAA. Such a condition is prima facie inconsistent with Rule 32 of the Public Procurement Rules, 2004, which provides that, save as otherwise provided, a procuring agency shall not introduce any condition which discriminates between bidders or which is considered difficult to meet. The Rule further requires the discriminatory or difficult nature of a condition to be assessed with reference to the ordinary practices of the relevant trade, business or service. Accordingly, making a certificate emanating specifically from PAA, or effectively restricting acceptable satisfactory-performance evidence to consultants who have previously worked for PAA, may amount to an artificially restrictive qualification condition having the effect of narrowing competition and excluding otherwise eligible consultants without a demonstrable nexus to the actual requirements of the consultancy assignment.

13. Further submitted that the requirement contained in Clause 21.1(vii) further appears to have converted past performance into an absolute mandatory/pass-fail eligibility condition rather than treating relevant experience and past performance in accordance with a properly structured and objectively measurable evaluation methodology. Regulation 6 of the

Procurement of Consultancy Services Regulations, 2010 provides that, where short-listing is undertaken, the procuring agency is to predetermine the short-listing criteria and may take into consideration qualification, experience and other relevant factors consistent with the Regulations and the Public Procurement Rules, 2004. In the case of prequalification for complex assignments, the Regulations specifically identify general experience, specific experience and past performance among the factors that may be considered. Therefore, where past performance is relied upon as an evaluation factor, the criterion should be formulated in an objective, relevant, proportionate and verifiable manner, rather than being framed so broadly that possession of a particular certificate from a particular procuring agency becomes an absolute condition for participation. A criterion that effectively operates on a "pass/fail" basis, without objective gradation, measurable benchmarks or a demonstrable justification linked to the nature and complexity of the assignment, may unnecessarily restrict competition and defeat the purpose of an open and transparent consultancy selection process.

14. Further submitted that the cumulative effect of:

    1. directly inviting the RFP without following the prescribed EOI process;
    2. prescribing a mandatory satisfactory-performance certificate;
    3. effectively limiting such certification to PAA-related assignments or employers; and
    4. treating past performance as an absolute pass/fail requirement, is liable to create an unequal playing field among prospective consultants. The procurement framework requires the selection process to be conducted through predetermined, objective and transparent criteria. The 2010 Regulations specifically require the RFP and instructions to consultants to contain information that enables consultants to prepare responsive proposals and to bring transparency to the selection system. A criterion which is so broad or restrictive that it effectively benefits a particular class of existing or previous PAA consultants, while excluding other consultants possessing comparable qualifications, experience and professional capability, may

therefore be construed as discriminatory within the meaning of Rule 32 of the Public Procurement Rules, 2004.

15. Further submitted that the procurement process appears to suffer from substantive procedural and regulatory deficiencies which may have the effect of restricting competition, compromise equal treatment of prospective consultants and undermine the transparency and fairness of the procurement process.

16. Further submitted that the appellants rely upon and produces the following documents:

Sr. No.	**Description**
1.	Impugned Order of GRC dated 16.06.2026.
2.	Letter for Request for Waiver of Mandatory Requirement dated 08.06.2026
3.	Request for Proposals Consulting Services March 2026
4.	Board Resolution dated 29.06.2026, authorizing Engr. Arslan Hanif, Chief Executive Officer to file appeal before Public Procurement Regulatory Authority against the order dated 16.06.2026, passed by Grievance Redressal Committee.

17. The representative of the Respondents No. 1, 2 & 3 (Pakistan Airport Authority) submitted that the Respondents are a statutory body and a "procuring agency" within the meaning of Rule 2 of the Public Procurement Rules, 2004 (hereinafter "the Rules"). The Respondents are fully compliant with the PPRA framework and have always acted in accordance with the principles of fairness, transparency, and economy in all procurement proceedings.

18. Further submitted that the present Appeal under Rule 48(7) of the Rules is misconceived, devoid of merit, and liable to be dismissed with costs. The Appellant has failed to make out any case for interference with the well-reasoned Order of the Grievance Redressal Committee (GRC) dated 16.06.2026.

19. Further submitted that the Respondents adopt and reiterate the findings and reasoning contained in the GRC Order dated 16.06.2026 and rely upon the same as fully set forth herein.

The Respondents further submitted that Appellant concealed the flowing facts:

- The Appellant was engaged by Pakistan Airports Authority (hereinafter "PAA") in an ongoing consultancy assignment for the Extension/Upgradation of Area Control Centre (ACC) Building at Jinnah International Airport, Karachi, under a Consultancy Services Agreement dated 25th June 2025.

- That the Appellant requested PAA to issue a Satisfactory Performance Certificate for this ongoing assignment.

- That PAA, in response to the Appellant's request, issued a Performance Certificate vide letter Ref. No. HQPAA/1822/120/PDDS/1/ dated 10th April 2026.

- That the said Performance Certificate recorded that the Appellant's performance was "below contractual expectations" and "not satisfactory", and concluded that a Satisfactory Performance Certificate could not be issued at that stage.

20. Further submitted that the Respondents have no record of having received the said communication, whether in hard copy or by e-mail. The Respondents' records have been diligently searched and disclose no trace of any such letter. The burden of proving receipt lies upon the Appellant, and they have produced no acknowledgment, delivery receipt, return receipt, email delivery confirmation, or any other corroborative evidence to substantiate their claim. A bare assertion of dispatch, unsupported by verifiable proof, cannot establish delivery. Furthermore, even if the Appellant's assertion of dispatch were accepted, their subsequent conduct is revealing. On 09th June 2026 at 0818 hours, the Appellant filed a complaint before the GRC, on substantially identical grounds. This chronology demonstrates that the Appellant did not await, nor did they genuinely anticipate, any response from the Respondents. The immediate escalation of the matter to a separate forum within twenty-four hours of the alleged correspondence indicates that the purported letter was not a

bona fide attempt at clarification, but a pro forma exercise designed to lay a foundation for the complaint that followed. The Appellant cannot now be heard to argue that they were prejudiced by the absence of a response to a communication that they themselves treated as inconsequential, and which, in any event, was never received by the Respondents. The contention is accordingly rejected as being unsubstantiated, inconsistent with the Appellant' own conduct, and unsupported by the record.

21. Further submitted that the Respondent No. 3 correctly and judiciously applied Rule 32 of the Rules, having due regard to the attending circumstances. That Rule operates on two determinative prongs: (i) whether the impugned condition discriminates between bidders; and (ii) whether the condition is difficult to meet within the ordinary practices of the relevant trade or service. The requirement of a satisfactory performance certificate withstands scrutiny on both counts. First, the condition was not discriminatory. It applied uniformly to all firms that had a prior or existing contractual relationship with the Respondents. This classification is eminently reasonable and rationally connected to the legitimate objective of evaluating demonstrable performance, and it does not attract the vice of discrimination under Rule 32. Second, the condition was not difficult to meet. The Appellant' own conduct puts this beyond dispute. It is an admitted fact that the Appellant themselves were in receipt of the Performance Certificate. However, being dissatisfied with its contents, they opted to conceal it from the Respondents and the Honourable PPRA Appellate Committee. This conduct is revealing: The Appellant cannot now be heard to argue that the condition was structurally unavailable or unreasonably onerous, when they themselves satisfied it but withheld the document to avoid the adverse assessment it contained. The Appellant has come to this Authority with unclean hands and its Appeal must be dismissed on this ground alone.

22. Further submitted that International best practice-including the EU Public Procurement Directive and UK Crown Commercial Service guidelines-affirms that contracting authorities have both the right and the duty to request verifiable proof of past performance to ensure the competitiveness and effectiveness of the procurement process. The appellant's concerns are therefore unfounded, as the requirement imposed in this procurement fully complies with the above principles and does not deviate from established international standards. Satisfactory Performance Certificates for on-going assignments with PAA help the Procuring Agency to evaluate as best, the firm's compliance to project timelines and deliverables. On the other hand, Completion Certificates confirm presence; they do not confirm quality. They tell us that a contractor carried out similar works, but they tell us nothing about reliability, the frequency of disputes, or the standard of compliance actually achieved. Satisfactory Performance evaluation offers that distinction. It informs the assessment of risk, provides a basis for predicting future conduct, and establishes a proportionate incentive for good performance short of formal exclusion. To require it is not an added burden nor discrimination-it is the ordinary exercise of prudent procurement, as enshrined under Rule 4 of the Rules.

23. Further submitted that the condition is not irrational and neither is it discriminatory, but rather a means to filter out poor performing Consultants to prevent harm to national exchequer. Further submitted that the appellant's contention suffers from a fundamental contradiction. It asserts that ongoing experience with comparable airport projects is a "superior indicator" of current competence, yet it resists the very mechanism by which that ongoing experience is to be verified. The Respondents do not quarrel with the premise - they agree that current performance matters. That is precisely why a certificate is required for those very projects. A

satisfactory performance certificate for an ongoing contract is not a historical relic; it is a contemporaneous account of delivery, adjudicated by the entity best placed to assess it. The impugned condition does not invert the evaluation criteria-it gives them practical effect. It requires proof of the very quality the appellant itself claims to possess. To waive that requirement would be to abandon our duty to evaluate on a rational, evidenced basis, and to substitute judgment with mere assertion.

24. Further submitted that Clause 21.1(vii) of the RFP, expressly states: "In case, the Consulting Firm/JV (either as a lead or JV member) is already engaged in Engineering Design/Supervision Consulting Services with Pakistan Airports Authority (PAA), a satisfactory Performance Certificate (ANNEXURE-2) shall be submitted for each engagement duly signed by the Employer/Project Director/Focal Person.", with the Employer in question being PAA. The clause expressly applies to consultants already engaged with PAA and does not apply, as the appellant asserts, to any employer. Further, the same is not discriminatory for reasons noted in aforementioned paras.

25. Further submitted that the appellant's reliance on Rule 10 of the Rules is misplaced. A plain reading of Rule 10 confines its operation to the domain of technical specifications that is, the physical, functional, or qualitative characteristics of the goods, works, or services being procured. It addresses matters such as brand names, model numbers, catalogue references, and country of origin. It does not, and was not intended to, govern eligibility criteria, qualification requirements, or the documentary evidence by which a bidder's past or ongoing performance is to be proved. The appellant seeks to elevate Rule 10 into an overarching substantive right that overrides all other provisions of the framework. This is unsustainable. Rules 4, 29, and 32 each serve distinct purposes. Rule 29, for

instance, deals expressly with evaluation criteria and requires them to be "appropriate and unambiguous" and the impugned condition satisfies that requirement. Rule 32 addresses non-discriminatory conditions, but a condition that applies equally to all bidders and is rationally connected to the assessment of capability does not amount to discrimination. To read Rule 10 as the Appellant suggests would collapse the entire structure of the Rules into a single, amorphous principle of "maximum competition" that would render meaningless the specific, targeted provisions dealing with qualification and evaluation. Furthermore, the assertion that the certificate for ongoing assignments is "structurally unavailable" is factually incorrect, as the same was already provided to the Appellant on 10th April 2026, as previously submitted.

26. Further submitted that the Respondents have acted with due diligence to ensure that the instant procurement process adheres to the statutory mandates of fairness, transparency, efficiency, and economy, as enjoined by Rule 4 of the Rules. The Appellant's assumption that seeking a satisfactory performance Certificate is a barrier to fairness in unfounded and untenable. As the same is required to ensure efficiency and respect for value for money by the Respondents as the Procuring Agency. Clause 21.1(vii) of the RFP expressly refers to Annexure A-2, which contains the prescribed format for the performance certificate. The contents and criteria for assessment are thus known and ascertainable, leaving no room for arbitrariness or undisclosed standards. The Appellant's suggestion that the certificate reflects the subjective discretion of the Respondents is misconceived. The certificate does not record a discretionary opinion; it documents a factual assessment of the consultant's performance during the currency of the contract. It is a practical, verifiable output, not an expression of preference. Its purpose is to safeguard the efficient utilization of public funds by ensuring that only consultants who have demonstrated

satisfactory performance are entrusted with further public works. This is not an exercise of discretion-it is an exercise of prudent stewardship.

27. Further submitted that as regards the claim that the Respondents, as the employer, are not competent to assess their own consultants, the submission is untenable. The employer is not only competent but uniquely placed to evaluate the performance of its consultants, having direct and continuous oversight of their work throughout the contract period. No other entity possesses the same degree of familiarity with the consultant's performance, compliance, and delivery standards. To suggest that this assessment creates a "structural conflict of interest" is to ignore the ordinary principles of contractual accountability.

28. Further submitted that the Respondent No. 03 ensured judicious application of Rule 29 of the Rules. The criterion in question was neither dis-proportionate, nor without purpose and neither was it discriminatorily applied as previously submitted in aforementioned paras. The Appellant's assertion that the same is "inherently incapable of being met" is denied by their own receipt of the "Performance Certificate". The impugned condition did not restrict participation in any manner whatsoever. The Appellant's own receipt of the certificate shows that the impugned condition filtered out under-performing bidders and same is being challenged because of Appellant's own in-efficiencies in previous assignments. The Appellant's performance record on the ACC Project is directly relevant to the legitimacy of the condition. The Appellant failed to submit a recovery plan despite repeated directions. They also failed to submit a formal Extension of Time request; their multiple deliverables (PC-1 Versions 1 & 2, Preliminary Design, PQ Documents) rejected/returned for revision due to serious quality deficiencies and only 2 out of 8 major deliverables were accepted on first or second

submission; it is also noteworthy that the Appellant was issued a formal notice, under Clause 20.1 of General Conditions of Contract, Clause 2.1 and 14.1 of Special Conditions of Contract, on 29th January 2026. These facts demonstrate exactly why the performance certificate requirement is necessary - to prevent consultants with unsatisfactory performance from being awarded further critical projects without verification. The impugned condition protects public interest and is strictly in line with legislative intent and the policy framework of PPRA.

29. Further submitted that the Appellant's suggested alternatives (progress reports, self-certification, etc.) are inadequate substitutes for a formal performance certificate issued by the employer. Progress reports are internal documents that may not reflect overall performance; self-certification is self-serving and unverifiable. The impugned condition provides an objective and reliable assessment of performance, which is essential for critical infrastructure procurement.

30. Further submitted that the composition of the GRC is fully in accordance with the PPRA framework and the Redressal of Grievances Regulations, 2021. The GRC is constituted by the procuring agency as per the prescribed procedure and is the first-tier grievance redressal mechanism under Rule 48 of the Rules. The Appellant did not raise any objection to the composition of the GRC during the proceedings. The Appellant is now estopped from challenging the GRC's composition after having participated in the proceedings and received an adverse decision. Further that, the GRC's decision is well-reasoned, legally sound, and based on the correct interpretation of the PPRA Rules. There is no infirmity in the GRC's composition or procedure.

31. The counsel for the Appellant through rejoinder to the reply of the Respondents submitted that the written reply filed on

behalf of Respondents No. 1, 2 and 3 discloses no answer in law to the Appeal. The Appeal raises a pure question of law, namely whether Clause 21.1(vii) of the Request for Proposals ("the RFP"), insofar as it requires the submission of a "Satisfactory Performance Certificate" in respect of ongoing assignments, is discriminatory and difficult to meet within the meaning of Rule 32 of the Public Procurement Rules, 2004, and is otherwise repugnant to Rules 4, 10 and 29. The legality of a bidding condition falls to be tested against the Rules and the ordinary practices of the relevant trade not against the individual conduct or contractual performance of the party challenging it.

32. Further submitted that being unable to defend the impugned condition on its merits, the Respondents have sought to divert this Honourable Appellate Authority from the legal question by manufacturing a plea of "concealment" and "unclean hands founded upon a unilateral, self-serving and disputed document of the Respondents' own making. That endeavour is misconceived in fact and untenable in law, for the reasons set out below.

33. Further submitted that the document upon which the Reply is built the Respondents' own communication bearing Ref. No. HQPAA / 1822 / 120 / PDDS / 1 vide letter dated 10.04.2026, by which the Respondents declined to issue a satisfactory certificate for the Appellant's ongoing Area Control Centre ("ACC"), assignment does not answer the Appeal. On the contrary, it proves the Appeal. It is the clearest possible demonstration that whether a bidder can ever satisfy Clause 21.1(vii) rests entirely upon the unilateral and unreviewable pleasure of the very entity that is simultaneously the employer, the certifier, the Procuring Agency and through its own officers the Grievance Redressal Committee ("GRC") (Respondent No: 3). That is precisely the discriminatory, non-transparent and conflicted arrangement of which the Appeal complains.

34. Further submitted that there can be no "concealment" of a fact which is, and always was, within the exclusive knowledge and possession of the party alleging concealment. The document dated 10.04.2026 was authored, issued and held by the Respondents themselves. A party cannot conceal from its opponent the opponent's own document. The Respondents' ability to annex it to their Reply is itself proof that nothing was, or could have been, withheld from them.

35. Further submitted that the Reply impermissibly seeks to convert a narrow procurement-law appeal under Rule 48(7) into a contractual performance trial concerning the separate ACC Consultancy Services Agreement dated 25.06.2025. The Appellant's alleged performance on that distinct contract whether concerning recovery plans, extension-of-time requests, deliverables or the notice dated 29.01.2026 is a contractual dispute governed by that Agreement's own dispute-resolution machinery. It is extraneous to the jurisdiction of this Honourable Committee, which is confined to the legality of the impugned condition under the Rules. Those disputed allegations are denied, and the Appellant reserves the right to contest them in the appropriate forum.

36. Further submitted that the Reply is, in any event, internally contradictory. The Respondents assert (at Para 3 of the para-wise response) that they never received the Appellant's waiver request dated 08.06.2026, while at the same time engaging with, and answering, its very substance throughout the Reply. The respondents cannot both disclaim and rely upon the same correspondence. Moreover, submitted that the Reply's central concession is fatal to the Respondents' case. At Para (f) of the para-wise response the Respondents expressly plead that Clause 21.1(vii) *"expressly applies to consultants already engaged with PAA and does not apply to any employer."* On the Respondents' own construction, therefore, the condition

singles out a defined sub-class of bidders the Procuring Agency's own existing consultants and makes their very eligibility turn upon a "satisfactory" certificate issued by the Procuring Agency itself.

37. Further submitted that that the plea of "unclean hands" is misconceived in law. The maxim bars relief only where the alleged misconduct bears an immediate and necessary relation to the very relief claimed. The relief sought in the Appeal is the setting aside of an unlawful RFP condition in the public interest; the Appellant's alleged performance on the separate ACC contract has no such nexus. An equitable maxim cannot be deployed to immunize an illegal condition from scrutiny, nor to oust the statutory right of appeal conferred by Rule 48(7). The Public Procurement Regulatory Authority is charged with enforcing the Rules in the public interest, an interest that transcends the private conduct of any individual bidder. That the document dated 10.04.2026 cannot be received as an admitted or adjudicated fact. It is a unilateral and contested instrument, generated by a party that is at once the Appellant's employer and its competitor's gatekeeper, its correctness is expressly denied; and it is the living embodiment of the very vice the Appeal identifies that a "satisfactory certificate" for an ongoing engagement is available only at the Procuring Agency's unilateral discretion. A document that proves the Appellant's case on the illegality of the condition cannot simultaneously defeat it on the ground of "concealment." That the chronology is telling and is respectfully commended to this Honourable Appellate Authority. On the Respondents' own showing, they had already issued a formal notice to the Appellant on 29.01.2026 that is, before the RFP was floated. A condition subsequently requiring a "satisfactory" certificate for ongoing PAA engagements, framed against that backdrop and controllable at the Procuring Agency's sole will, operates as a tailor-made exclusion of the very consultant against whom the Procuring Agency had already taken an adverse position. Such

tailoring is antithetical to the level playing field the Rules guarantee.

38. Further submitted that the waiver request dated 8 June 2026 was duly addressed and dispatched to the Director (Planning & Development), PAA. In any event, a request for waiver under Rule 32 is not a statutory pre-condition to the filing of a grievance under Rule 48(2), nor to the present Appeal under Rule 48(7); the Appellant's statutory remedies are independent of it. The short interval between the request and the grievance reflects the urgency created by the impending bid-submission deadline, not any absence of bona fides. Most importantly, the receipt or non-receipt of the waiver letter is wholly immaterial to the legality of Clause 21.1(vii), which is the only question before this Committee.

39. Further submitted that the Respondents concede, correctly, that Rule 32 operates on two independent limbs discrimination and difficulty either of which suffices to invalidate a condition. The impugned condition offends both. It discriminates because, on the Respondents' own construction, it targets a defined sub-class the Procuring Agency's existing consultants and conditions their eligibility on the Procuring Agency's own goodwill. It is difficult (indeed impossible) to meet because, in the ordinary practice of the consultancy trade, a "satisfactory performance certificate for work still in progress is not a document a bidder can procure as of right; its issuance depends entirely upon the unilateral discretion of the employer. The Respondents' own refusal on 10.04.2026 is the proof of that impossibility, not the refutation of it.

40. Further submitted that the Respondents' reliance on the Appellant's receipt of an adverse communication to argue that the condition "was not difficult to meet" is a non sequitur. The condition does not call for a certificate; it calls for a satisfactory one. Receipt of an unsatisfactory assessment demonstrates

only that compliance lies beyond the bidder's control and within the employer's gift which is the essence of a condition "considered to be met with difficulty" under Rule 32. The Respondents invoke "international best practice," including the EU Public Procurement Directive and United Kingdom guidance, in support of the condition. That invocation is self-defeating. The very regimes relied upon are founded upon the principles of equal treatment, non-discrimination, proportionality, transparency and objectivity, and they specifically condemn qualification criteria that confer excessive or unfettered discretion upon the contracting authority. Those authorities, addressed in the Legal Submissions below, support the Appellant, not the Respondents.

41. Further submitted that the Appellant does not dispute that current performance matters, nor that a Procuring Agency may lawfully assess it. What the Appellant challenges is a mechanism of verification that is placed exclusively in the hands of one interested party. The legitimate objective of assessing ongoing performance can be fully achieved by proportionate and objective means progress reports, client references, or direct verification by the Procuring Agency without conferring on the employer an unreviewable power to exclude a competitor by simply withholding a "satisfactory" label.

42. Further submitted that the Respondents' concession that the clause applies solely to firms "already engaged with Pakistan Airports Authority" does not cure the discrimination but it establishes it. A condition confined to a sub-class of bidders, and operated by reference to a certificate the Procuring Agency alone controls, is discriminatory within that class and structurally conflicted, contrary to Rules 4 and 32.

43. Further submitted that the Appellant does not contend that Rule 10 is a free-standing right that "overrides" the scheme;

the Appeal pleads Rule 10 as the enunciation of a foundational principle by the widest possible competition that pervades the entire framework and informs the construction of Rules 4, 29 and 32. A condition that is structurally unavailable to a class of qualified bidders, save at the discretion of an interested party, offends that principle whether it is labelled a specification, an eligibility criterion or a qualification requirement.

44. Further submitted that the Respondents' contention that the employer is "uniquely placed to assess its consultant misses the point entirely. The objection is not to the employer's knowledge; it is to the employer's role. When the same entity is at once the employer, the sole certifier of "satisfactory performance, the Procuring Agency framing the tender, and through its officers, the forum adjudicating grievances against that tender, the criterion is no longer an exercise of prudent stewardship; it is an exercise of unchecked and unreviewable discretion, in violation of the arms'-length principle that underlies fair and transparent procurement under Rule 4. The conflict of interest in the present case is not merely institutional but personal, and is graver still. It seems that the self-same officer, Mr. Faiz Ullah Khattak, framed and authored the qualification requirements of the RFP, has by those very requirements, been designated the "Focal Person" responsible for the assessment and signing of the "Satisfactory Performance Certificate" for ongoing PAA engagements under Clause 21.1(vii), the clause itself requiring the certificate to be signed by the "Employer / Project Director/Focal Person." He is thus, at one and the same time, the author of the condition and the sole assessor of compliance with it, the maker of the rule and the judge of the bidder's conformity to it. To frame a requirement and, by that very requirement, appoint oneself the exclusive arbiter of whether it is satisfied is to constitute oneself judge and jury in one's own cause. This is a flagrant violation of the cardinal principal nemo judex in causa sua that

no person may be a judge in a matter in which he is interested and of the elementary requirements of natural justice. A qualification criterion whose satisfaction turns upon the certificate of the very person who devised it is, for that reason alone, arbitrary, void and unenforceable.

45. Further submitted that the existence of a prescribed format does not answer the objection. A form does not make objective that which is, in substance, discretionary: the format governs how a certificate is recorded, not whether the interested employer chooses to certify performance as "satisfactory." A criterion that is uniformly incapable of being met save at the pleasure of one party is not rendered "appropriate" under Rule 29 by uniformity or disclosure; uniformity of an arbitrary standard does not cure its arbitrariness, and a mis-procurement is not cured by being evenly imposed.

46. Further submitted that the Respondents' dismissal of the Appellant's proposed alternatives i.e. progresses reports, client references, self-certification subject to verification, and direct inquiry by the Procuring Agency as "inadequate" and "self-serving" is precisely the binary framing the Appeal criticizes. The Respondents nowhere explain why the legitimate objective of verifying ongoing performance cannot be achieved by any of these proportionate means. A condition is disproportionate where its objective can be secured by measures less restrictive of competition; the burden of demonstrating that no such measure suffices lies on the Procuring Agency, and it has not been discharged.

47. Further submitted that the principle of nemo judex in causa sua that no person may be a judge in a cause in which he is interested is a fundamental rule of natural justice that goes to jurisdiction and cannot be waived by mere participation, nor cured by the plea of estoppel. The impugned order was signed by an officer of the Procuring Agency and issued "with consent

of a GRC composed entirely of the Procuring Agency's own officers, adjudicating a challenge to the Procuring Agency's own bidding condition. Such a forum cannot satisfy the institutional independence that Rule 48(1) imports. The statutory appeal to this independent Appellate Authority is the appropriate stage at which to raise, and cure, that foundational infirmity, participation before a structurally partial forum does not estop the Appellant from doing so.

48. Further submitted that the relief sought in the Reply is liable to be refused. For the reasons in the Appeal and this Rejoinder, the Appeal is neither misconceived nor an abuse of process; it raises a substantial question as to the legality of Clause 21.1(vii); and no case of "concealment" is made out. The prayer for costs is wholly unmerited and is opposed.

LEGAL SUBMISSIONS IN SUPPORT OF THE APPELLANT (CASE LAW)

A. Public procurement must maximise competition and must not favour, or disfavour, a particular bidder or class of bidders

49. In case titled as *Messrs Muhammad Hanif & Co. v. Chief Engineer North. Pak PWD reported as 2023 CLC 443* it was held that "the principles of fairness, transparency, efficiency and economy lie at the heart of the PPRA framework," that the framework "requires that all prospective bidders should have equal and similar access and an equal opportunity to compete," and, critically, that the process "has to be run in a manner that engenders maximum competition 26 as opposed to favouring a particular bidder or class of bidders." The learned Court further recognised a constitutional right to a "level playing field," and held that state authority in procurement is fiduciary in nature, to be exercised as a trust for the benefit of citizens and "not in an arbitrary manner." Clause 21.1(vii), which on the Respondents' own case is confined to a class of bidders and is

operated at the Procuring Agency's discretion, offends each of these principles.

This principle is squarely engaged here: the impugned condition does not enlarge competition but contracts it, and it does so by reference to a class of bidders and a certificate the Procuring Agency alone controls.

B. Restrictions on competition must be reasonable, non-arbitrary and non: discriminatory; departures from open competition are construed strictly and proportionately

50. In case titled as *Raja Mujahid Muzaffar v. Federation of Pakistan reported as 2012 SCMR 1651*, the Honourable Supreme Court of Pakistan held that "transparency lies at the heart of every transaction entered into by, or on behalf of, a public body," and that any "reservations or restrictions should not be arbitrary and must be justifiable on the basis of some policy or valid principles, which by themselves are reasonable and not discriminatory." The Court further held that exceptions to open competition "must be construed strictly keeping in view the proportionality of the requirement." A condition that excludes qualified consultants for reasons beyond their control, and without proportionate justification, cannot survive this test.

51. The reasonableness standard is confirmed in case titled as *Pegasus* Consultancy *(Pvt.) Ltd. v. Federation of Pakistan reported as 2022 CLC 2036*, where the Court held that the validity of a qualification criterion turns on "whether the same ensued for reason(s) that could reasonably be regarded as being valid," and that judicial oversight guards against "arbitrariness or favouritism." A criterion that can be satisfied only at the discretion of an interested party is, by definition, not one that can "reasonably be regarded as valid," and it is respectfully distinguishable from the ordinary experience and financial thresholds upheld in that case.

C. The "international best practice" invoked by the Respondents condemns criteria that confer unfettered discretion on the contracting authority

52. The Respondents having invoked the EU and United Kingdom procurement regimes, those very authorities are respectfully relied upon against them. In case titled as *Easycoach Ltd. v. Department for Regional Development reported as [2012] NIQB 10.* McCloskey, J. held that the purpose of the requirement of objectivity is "the avoidance of unrestricted freedom of choice by the contracting authority," and that the court "will be alert to any selection or award criteria which are formulated so as to confer excessive discretion and subjective assessment on the contracting authority," because "excessive freedom of choice on the part of the contracting authority is inimical to the overarching principles of free and fair access to the market concerned, non-discrimination and equal treatment." Clause 21.1(vii) is the paradigm of such a criterion.

53. The same judgment, citing *Fabricom SA v. Belgian State*, reaffirms that "the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified," and disapproved a blanket exclusion of a class of bidders for want of objective justification. The blanket exclusion of consultants with ongoing assignments, absent objective justification, is likewise impermissible.

54. In case titled as *Letting International Ltd. v. London Borough of Newham* reported *as [2008] EWHC 1583 (QB)*, Silber, J. held that the requirement of transparency confers on tenderers "the right to be informed of the criteria to be used and their respective significance," and that award/qualification criteria must be objective, disclosed in advance and correctly applied. A "satisfactory performance certificate" whose issuance

depends on the unilateral will of the employer is neither objective nor capable of consistent, transparent application.

55. In case titled as *Dredging International NV v. European Maritime Safety Agency (Case T-8/09, General Court, 13 September 2011)*, the Court applied the principles of proportionality, equal treatment, non-discrimination and transparency to the evaluation of tenders, confirming that these principles are the touchstone of the EU regime the Respondents invoke. To like effect is Irish Waste Services Ltd. v. Northern Ireland Water Ltd. ([2010] NIQB 13), which holds that procurement must be conducted through processes that are "transparent and non-discriminatory, evaluating bids fairly on the basis of award criteria that are set out in advance."

D. An equitable plea of "unclean hands" cannot immunize an unlawful condition or oust a statutory appeal; the public interest is paramount

56. The enforcement of the Rules is a matter of public interest that transcends the conduct of the individual challenger. In both 2012 SCMR 1651 and 2023 CLC 443, the superior courts struck down unlawful procurement notwithstanding advanced performance and disbursement of public funds, because "no sanctity attaches to a contract which is a product of an illegal procurement process," and because the power is fiduciary and must be exercised for the public benefit. It follows that the legality of Clause 21.1(vii) cannot be defended by reference to the Appellant's alleged conduct on a separate contract; illegality is not cured, nor a statutory appeal defeated, by the identity or the alleged demerits of the party who exposes it.

E. Structural bias vitiates the impugned order

57. A tribunal or an assessor who acts in his own cause cannot satisfy the requirements of natural justice. This vice is present twice over in the present case: first, in the person of Mr. Faiz Ullah Khattak, who authored the impugned requirement and,

by that requirement, made himself the "Focal Person" who alone certifies compliance with it, thereby becoming judge and jury in his own cause; and secondly, in a GRC composed exclusively of the officers of the party whose condition is impugned. The fiduciary, non-arbitrary character of procurement power (2023 CLC 443) and the imperative of objectivity free from "unrestricted freedom of choice" ([2012] NIQB 10) condemn the former, the principle nemo judex in causa sua condemns both. Neither infirmity can be waived, and together they vitiate the impugned order dated 16.06.2026.

58. The Appellate Committee has heard the learned counsel(s) and representatives of the parties and examined the Appeal, written replies and rejoinder, the impugned decision of the Bidders' Grievance Redressal Committee ("GRC"), the bidding documents, and the relevant provisions of the Public Procurement Rules, 2004 and the Procurement of Consultancy Services Regulations, 2010.

59. In terms of Rules 29 & 30 of the Public Procurement Rules, 2004, which is reproduced as under:

29. Evaluation criteria: -

Procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated. Such evaluation criteria shall form an integral part of the bidding documents. Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.

30. Evaluation of bids. –

(1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in

sub-clause (iv) of clause (c) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

60. It is pertinent to mention that no deviation from the specifications, terms and conditions specified in the bidding documents & evaluation criteria is permissible. The procuring agency shall proceed strictly in accordance with terms and conditions set forth in the bidding documents. All participants in the bidding process are bound by the terms and conditions of tender documents and cannot go beyond the purview and ambit of the tender documents.

61. In terms of Rule 32 of the Public Procurement Rules, 2004, which provides:

> *"Discriminatory and difficult conditions. —Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related."*

62. In terms of Regulation 3 "Methods for selection of consultants" of the Procurement of Consultancy Services Regulations, 2010, which states:

> *The method for selection of consultants shall be determined by the procuring agency prior to issuance of the request for proposals from prospective consultants. A procuring agency may utilize one of the following methods for selection of consultants, namely: -*
>
> *B. (i) Quality and cost-based selection.*
>
> *This method shall be used where high quality is the prime consideration while cost is a secondary consideration; and (ii) Procedures for selection under the quality and cost-based selection.*
>
> *(a) a request for expression of interest as laid down in regulation 5 is advertised to invite interested applicants or firms to contest;*

(b) a request for proposals shall be prepared and sent to shortlisted consultants selected following the laid down criteria; and

(c) the evaluation of proposals shall be carried out in two stages in the following manner, namely: -

- *(i)* *the technical proposals shall be evaluated and the procuring agency may discuss technical details, if it may deem necessary;*
- *(ii)* *the financial proposals of technically responsive proposals shall be opened in the presence of the applicants or their representatives who may wish to attend the opening session; and*
- (iii) *a combined evaluation of technical and financial proposals shall follow and the applicant with the winning proposal will be accepted.*

63. In terms of Clause 21.1(vii) of the RFP, which expressly states:

> *"In case, the Consulting Firm/JV (either as a lead or JV member) is already engaged in Engineering Design/Supervision Consulting Services with Pakistan Airports Authority (PAA), a satisfactory Performance Certificate (ANNEXURE-2) shall be submitted for each engagement duly signed by the Employer/Project Director/Focal Person."*

64. Rule 48(2) expressly permits an aggrieved party to challenge eligibility parameters, evaluation criteria and other terms and conditions contained in bidding documents where such conditions are alleged to be contrary to the procurement regulatory framework. Rule 48(7) further provides a statutory right of appeal against the decision of the GRC within thirty days of communication of such decision.

65. The GRC passed the impugned order on 16.06.2026, bearing Ref. No. HQPAA/1811/03/05/PDCT/171. The present Appeal has been filed within the prescribed period. No sufficient material has been produced before this Committee to establish that the Appeal is barred by limitation. Accordingly, the Appeal is maintainable and within limitation under Rule 48(7) of the Public Procurement Rules, 2004.

66. The plain language of the Clause 21.1(vii) of the RFP makes a satisfactory performance certificate a mandatory requirement for consultants already engaged with PAA. The certificate is not merely a scored evaluation factor; failure to furnish the prescribed certificate operates at the eligibility stage.

67. The Appellate Committee finds that this distinction is material. Possession of the specified certificate operates as a mandatory eligibility/pass-fail requirement. Qualification, general experience, specific experience and past performance may legitimately constitute relevant considerations in the selection of consultants. However, the means adopted by a procuring agency for assessing those factors must itself conform to the Public Procurement Rules, 2004 and the Procurement of Consultancy Regulations, 2010.

68. There is no dispute that qualification, experience, specific experience and past performance may constitute relevant considerations in the procurement of consultancy services. Indeed, the 2010 Regulations expressly recognize qualification and experience in shortlisting and general experience, specific experience and past performance in prequalification for complex assignments.

69. The Appellate Committee is of the considered view that the impugned condition, in its present form, attracts the discrimination contemplated by Rule 32 of the Public Procurement Rules, 2004 and the particular mechanism adopted for that purpose is not consistent with the Public Procurement Rules, 2004 and the Procurement of Consultancy Services Regulations, 2010.

70. For consultants having ongoing assignments with PAA, eligibility is made dependent upon obtaining a "satisfactory" certificate from their existing employer, which is also the procuring agency conducting the impugned procurement. Consequently, PAA simultaneously assumes the roles of:

1. employer of the consultant;
2. issuer of the performance certificate;
3. procuring agency; and
4. entity whose certification determines compliance with the mandatory eligibility condition.

71. The Appellate Committee observed that the Respondents have not demonstrated any sufficient and objective justification for making the participation of an existing PAA consultant dependent upon such certification, particularly when the relevant performance could be established through other objectively verifiable means.

72. The Appellate Committee further finds that the requirement is difficult to meet within the meaning of Rule 32 of the Public Procurement Rules, 2004, because the issuance of a "satisfactory" certificate for an ongoing assignment is substantially dependent upon an assessment and certification by the existing employer. The bidder has no independent right or effective control over whether the employer will issue such certification or what assessment it will record.

73. The fact that a performance certificate may technically be issued does not, by itself, answer the question whether the prescribed condition is difficult to meet. The relevant consideration under Rule 32 is the practical ability of bidders to satisfy the condition having regard to the ordinary practice of the relevant consultancy services.

74. The legitimate objective of assessing the current performance of consultants is not, in itself, objectionable. A procuring agency is entitled to take appropriate measures to protect public interest and ensure that consultants engaged on important public projects possess the requisite professional capability and performance record.

75. The Appellate Committee observed that the Respondents have not satisfactorily established why the same objective could not be achieved through objectively verifiable means, including, where appropriate:

- progress reports;
- employer/client references;
- independently verifiable performance records;
- documented assessments of ongoing assignments; or
- direct verification by the Procuring Agency.

76. Accordingly, the mandatory certification requirement, in its present form, is disproportionate to the legitimate objective sought to be achieved.
77. The Appellate Committee observed that the uniform application of the impugned condition to consultants already engaged with PAA does not, by itself, make it lawful or non-discriminatory, as a condition may still place a particular class of prospective bidders at a material disadvantage without sufficient objective justification; the Committee further noted that, by linking eligibility to a performance assessment / certification issued by PAA itself in respect of ongoing engagements, the condition does not constitute a neutral, objective and independently verifiable measure of professional capability, but substantially makes the eligibility of such consultants dependent upon the procuring agency's own certification.

78. The Appellate Committee accordingly finds that the impugned condition has a discriminatory effect within the meaning of Rule 32 of the Public Procurement Rules, 2004.

79. Regulation 3 of the Procurement of Consultancy Services Regulations, 2010 sets out methods for selection of consultants and, in the case of Quality and Cost Based Selection, contemplates an EOI followed by preparation and issuance of RFPs to shortlisted consultants.

80. Regulation 5 of the Procurement of Consultancy Services Regulations, 2010 further provides for advertisement of an EOI, with the prescribed response period for national and international competition.

81. Regulations 6 and 7 of the Procurement of Consultancy Regulations, 2010 permit relevant factors, including qualification and experience, to be considered for short-listing and, in the case of prequalification for complex assignments, expressly recognize past performance as a relevant factor.

82. The record placed before the Appellate Committee does not satisfactorily demonstrate the regulatory basis upon which the RFP was directly issued without first undertaking the EOI/shortlisting process contemplated by the Procurement of Consultancy Services Regulations, 2010.

83. The Appellate Committee therefore considers that the Respondent is required to re-examine the procurement process in light of the applicable provisions of the 2010 Regulations, particularly the provisions relating to EOI, short-listing and the selection methodology.

84. Since the impugned performance condition has already been found inconsistent with Rule 32 of the Public Procurement Rules, 2004, it would not be appropriate for the procurement to proceed on the existing bidding documents without corrective measures.

85. Therefore, the Appellate Committee finds that the GRC did not adequately examine the impugned condition against the statutory tests contained in Rules 29 and 32 of the Public Procurement Rules, 2004 and the relevant provisions of the Procurement of Consultancy Regulations, 2010.

86. The mere fact that the condition was disclosed in the RFP and applied to the consultants falling within its scope was insufficient to establish its legality. The GRC was required to

determine whether the condition was objectively justified, proportionate and capable of being met without introducing discrimination or undue difficulty.

87. In view of the foregoing, the Appeal is **allowed**. The order dated 16.06.2026, bearing Ref. No.HQPAA/1811/03/05/PDCT/171, passed by the Bidders' Grievance Redressal Committee, Pakistan Airports Authority, ***is hereby set aside***. Clause 21.1(vii) of the RFP, insofar as it makes a "Satisfactory Performance Certificate" for ongoing PAA assignments a mandatory eligibility / pass-fail criterion, is declared inconsistent with Rule 32 of the Public Procurement Rules, 2004 and unsustainable in its present form. Pakistan Airports Authority shall accordingly amend the said clause to provide for objective, proportionate and independently verifiable performance criteria.

88. Accordingly, the appeal in hand stands **disposed of**.

(Dr. Muhammad Aslam Waseem)
Director General (Legal)
(Member)

(Abdul Majeed)
Sr. Specialist (M&E)
(Member)

(Hasnat Ahmed Qureshi)
Managing Director (PPRA)
(Chairman of the Committee)

Dated: 27th August, 2026

Each page of the order has been signed by all members of the Committee. The order comprises thirty nine (39) pages.