



Appeal No. PPRA/A&RP-31/2023
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 Abdul Qayyum Mazari & Umer Baloch Enterprises (JV)

...the "Appellant"

Vs.

National Highway Authority (NHA) etc.

...the "Respondent"

<u>Date of Hearing</u>	<i>Mr. Usama Rauf, Advocate High Court</i>
29.03.2024	<i>(On behalf of Appellant)</i>
	<i>Sardar M. Haroon Sami, Advocate Supreme Court, Mr. M. Imran Nazeer (DD Plg, NHA), Mr. Arsalan Yasir Mughal [M/s Contract Plus]</i>
	<i>(On behalf of Respondent)</i>

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004 AGAINST ORDER OF THE GRIEVANCE REDRESSAL COMMITTEE OF THE RESPONDENT, DATED 20.11.2023

The above-mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Appellate Committee (the Committee) on the date and time fixed for hearing.

2. At the very outset of the hearing, the learned counsel of the appellant (M/s Abdul Qayyum Mazari & Umer Baloch Enterprises JV) submitted before the Committee that the respondent i.e., National Highway Authority (NHA) advertised the tender for 08 Permanent Weigh Stations and 03 Packages Mobile Weigh Stations on National Highways till the period ending 30.06.2024. These included the following Permanent Weigh Stations and the Mobile Weigh Stations:

Permanent Weigh Stations

Package No.	Location/Package No
PWS-(NH)-22-23	Kohat Tunnel (NB&SB) Access Road (N-55)
PWS-(NH)-22-24	Sukkur (NB&SB) (N-56)
PWS-(NH)-22-25	Pipri (NB) (N-5/KTHH)
PWS-(NH)-22-26	Petaro (NB) (N-55)
PWS-(NH)-22-27	Hyderabad Bypass/Matyari (NB) (N-5)
PWS-(NH)-22-28	Bhan Saeedabad/Sehwan (SB) (N-55)
PWS-(NH)-22-29	Ratodero/Larkana (SB) (N-55)
PWS-(NH)-22-30	Kotri (SB) (N-5/KTHH)

Mobile Weigh Stations

Package No.	Location/Package No
MWS-(NH)-22-31	Havelian (N-35)
MWS-(NH)-22-32	Swat Mingora (N-95)
MWS-(NH)-22-33	Shalmani (N-55)

After submission of bids, the Technical Evaluation Report was issued on 04.07.2023, wherein 21 bidders were qualified and one bidder was declared as disqualified.



3. The learned counsel of the appellant further submitted that on 02.08.2023, respondent (NHA) issued the Final Evaluation Report whereby the bids of the bidders were declared as non-responsive and the bidding for three weigh stations i.e. PWS-Sukkur, PWS-Pipri and MWS- Shalmani, declared non responsive bidder and the bidding process was accordingly annulled. Thereafter, in August 2023, respondent once again floated a request for proposal in respect of Operation, Management and Maintenance (OM&M) of 03 Packages of Permanent Weigh Stations (PWS) and 01 Package of Mobile Weigh Station (MWS) of National Highways till the period ending 30.06.2025. The bids were accordingly submitted in the fresh tender process and the appellant was shortlisted in the firms qualified under the Technical Evaluation Report. Subsequently, on 11.08.2023, the respondent (NHA) uploaded the Final Evaluation Report and the appellant JV was declared as most responsive bidder in respect of the Sukkur Weigh Station. However, one M/s A.Z & Company filed a grievance with the Grievance Redressal Committee against the procurement / tender of the PWS- Sukkur. This grievance was made and entertained despite of the fact that M/s A.Z & Company was neither a bidder nor had any *locus standi* to institute such a complaint. Vide Order dated 28.09.2023, M/s A.Z & Company's appeal was allowed by the Public Procurement Regulatory Authority (PPRA) and the entire procurement process was set at naught. Afterwards, the said Order dated 28.09.2023 was assailed by the appellant before the Honorable Sindh High Court by way of Suit No.1697/2023.




4. The learned counsel of the appellant added that, respondent issued the Final Evaluation Report dated 05.10.2023 which declared the appellant as the most responsive bidder for the subject weigh station. Later, one M/s Contract Plus filed its grievance before the Grievance Redressal Committee. Despite being declared the most responsive bidder, the appellant was not impleaded as a party and only after an application by the appellant to become a party to the GRC proceedings.

5. It is further added by the learned counsel of the appellant that on 26.10.2023, the Hon'ble High Court of Sindh took cognizance of the mischief of M/s A.Z & Co. and vide order dated 26.10.2023, ordered that the second round in the process of procurement be finalized. Accordingly, Letter of Acceptance dated 30.10.2023 was issued to the appellant. However, on 31.10.2023, respondent no. 03 i.e., M/s Contract Plus filed Constitution Petition No. 5053/2023 before the High Court of Sindh wherein pre-admission notice was issued and directions were issued for the intervening period. Further, that despite the mandatory directions of the Honorable High Court of Sindh vide order dated 26.10.2023 in another Suit no. 1697/2023, the respondents refused to carry out the procurement process and vide order dated 20.11.2023, the GRC annulled the procurement process altogether. The conclusions of the impugned order are as follows:

“27. Foregoing in view, GRC concludes that:

- a. *The procurement of said 2x packages of weigh stations' O&M be annulled by withdrawing the illegally issued LOAs and re-tendered as per the terms and conditions of the first bidding process as:
 - i. *The estimated cost was reduced without any rationale and approval;*
 - ii. *Defaulters were not disqualified/made in-eligible; and*
 - iii. *One Bid per Bidder PEC Rule has been violated which resulted in parallel 2x bids by owners/partners/directors of a company against one single contract.**
- b. *GRC fee due on M/s AQM be recovered by deducting the same from the available guarantees or invoice (if any) on account of failure to submit the GRC fee.*
- c. *Defaulter's list be sent to Blacklisting Committee of NHA for further proceedings and decision.*
- d. *One Bid per Bidder as per the PEC Policy be ensured in every procurement."*

Hence, being aggrieved of the order dated 20.11.2023 passed by the GRC, the appellant filed the instant appeal.

6. On the other hand, no one appeared on behalf of the respondent no. 01 (NHA, department), however, respondent no. 02 (GRC of NHA) tendered appearance through counsel and submitted that the order dated 20.11.2023 passed by the GRC of NHA is in accordance with law and defend the same. Moreover, the representative of counsel of the respondent no. 03 attended the hearing and submitted that the main counsel i.e., Mr. Irfan Farooq is not available for today's hearing due to illness however, no written request has been submitted in this regard. It is relevant to mention that the written reply /



comments has already been submitted on behalf of the respondent no. 03, so the Committee proceeded the hearing by mutual consent of both the parties present during the hearing.

7. The learned counsel of the respondent no.3 i.e. M/s Contract Plus submitted that through his written reply / comments, M/s Umar Baloch Enterprises (Pvt.) Limited was declared wilful defaulter by PPRA in Case No. PPRA/A&RP-21/2023 (Re: A.Z. & Company v. NHA) on account of its deliberate failure to pay an amount of Rs. 141,439,088/- on account of Revenue and Rs. 11,168,434/-on account of Tax shortfall against Rohri Toll Plaza in joint venture with M/s Goodluck Enterprises, which shows that it is not a law-abiding company.

8. Further, the answering respondent is a registered partnership firm and is also registered with Pakistan Engineering Council in Operators Category. It has more than 15 years of experience of working with NHA, and have successfully completed various contracts for operation, maintenance and management of weigh stations, toll tax, and fine collection etc. Needless to emphasize its profile includes completion of 6-7 contracts for OM&M for weigh stations, which is identical to the instant matter.

9. It is further submitted that the answering respondent participated in the said procurement process for provision of OM&M of weigh stations till the period ending on 30.06.2024. Their technical bid was found responsive in the technical evaluation report. However, it is clarified that all financial bids in respect of PWS Sukkur and MWS Shalmani were rejected on account of not

meeting the Estimated Cost as per clause 13.2 of ITBs. The Estimated Cost was not disclosed in the RFP, but was announced at the time of opening of financial bid in presence of all bidders, and the same was Rs. 1,460,855/- per month for PWS Sukkur. Needless to emphasize that the only ground for rejection of all financial bids was that the bids quoted were less than the Estimated Cost per month.

10. It is submitted that although answering respondent was technically qualified, however, financial evaluation report shows that M/s Abdul Qayyum Mazari & M/s Umer Baloch Enterprises (Pvt.) Ltd. (JV) has been declared substantially responsive lowest bidders for PWS Sukkur. It is pertinent to mention here that the financial bid of the appellant was substantially lower than the Estimated Cost in the first round of procurement for the same packages. However, the same was decreased from Rs. 1,460,855/- to Rs. 1,297,950/- in respect of PWS Sukkur without any plausible reason or justification or intimation to the bidders. It was only disclosed after opening of the financial bid.

11. That the stark reduction in the Estimated Cost was made without any rationale and reason that too without any intimation to all participating bidders, which is contrary to the principles of procurement as defined in Rule 4 of the Public Procurement Rules, 2004. Non-disclosure of reduction in Estimated Cost to all bidders was arbitrary and unfair and this Honorable Authority in Appeal No. PPRA/A&RP-22/2023 has already declared the same unlawful. It is pertinent to mention here that this Honourable Authority was pleased to hold

that evaluation criteria prescribed by NHA by not disclosing reserve price (estimated cost) is tantamount to difficult and discriminatory condition and the appeal was disposed of with directions to NHA to revise the bidding documents by removing such difficult conditions.

12. Moreover, the declaration of appellant as successful bidder is contrary to law, inasmuch as, NHA did not disclose the estimated cost in the bidding documents, which is unlawful. The Honourable Supreme Court of Pakistan in the case of “Alleged Corruption in Rental Power Plants etc” reported in 2012 SCMR 773 has categorically held that in absence of reserved prices, there would not be transparent competition and accountability of the bidders and procurer. Moreover, the estimated cost was reduced in a clandestine manner without any change in the specifications of the nature of work. It manifests that such reduction was made to benefit the appellant, which is not permissible in law. Without prejudice to the illegality and unreasonableness of reduction of estimated cost, it is submitted that acceptance of bid, which is almost 25% less than the Estimated Cost is not permissible in view of clause 13.2 of the ITBs. The financial bids in the previous attempt were rejected solely on the ground of quoting less price than the Estimated Cost, whereas, it has been accepted now. Clause 13.2 is very clear in this regard and such bids cannot be accepted for not meeting the requirements under the law. Therefore, the acceptance of financial bids substantially lower than the Estimated Cost is contrary to the conditions prescribed in the bidding document.





13. Further, submitted that M/s A.Z & Company unsuccessfully filed complaint before GRC against annulment of procurement proceedings in respect of PWS Sukkur. Later, the order of GRC was challenged by it before this Honourable Authority, and the same was disposed of vide Order dated 28.09.2023 with directions to NHA to disclose Reserve Price (Estimated Cost) and remove unambiguity from the bidding documents.

14. Moreover, the Honourable Authority passed a categorical and clear order that non-disclosure of reserve price is discriminatory and ambiguous, therefore, the bidding may be held afresh after removing such disparities. It is pertinent to mention here that declaration of Financial Evaluation Report dated 05.10.2023 by NHA was in violation of this Honourable Authority's Order dated 28.09.2023. It is clarified that this suit was filed against and in relation to order passed by this learned Authority in Appeal No: PPRA/A&RP-21/2023. It is further submitted that while filing the suit, the appellant also concealed the fact from the Hon'ble High Court that the matter is already pending before GRC of the NHA. The Order dated 26.10.2023 passed in Suit No: 1697/2023 and relied upon by the appellant was suspended vide Order dated 31.10.2023 by the learned Division Bench of the Hon'ble Sindh High Court in HCA No. 386 of 2023. It is pertinent to mention here that the GRC decided answering Respondent's complaint after thoroughly hearing all concerned parties in the light of facts brought on record, which clearly and unambiguously showed the illegalities and defaults committed by the appellant or its sister companies. Needless to emphasize that M/s Umar Baloch Enterprises (Pvt.) Limited was



declared wilful defaulter by PPRA in Case No. PPRA/A&RP- 21/2023 (Re: A.Z. & Company v. NHA) on account of its deliberate failure to pay an amount of Rs. 141,439,088/- on account of Revenue and Rs. 11168434/- on account of Tax shortfall against Rohri Toll Plaza in joint venture with M/s Goodluck Enterprises.

15. That the answering respondent challenged the Financial (Final) Evaluation Report dated 05.10.2023 before the GRC on 06.10.2023 before filing of the suit by the appellant. The appellant, however, filed Suit No. 1697 of 2023 in order to circumvent the proceedings pending before GRC and without impleading the answering respondent as party therein and obtained Order dated 26.10.2023 by concealment of facts. The said order was challenged by M/s A.Z. & Co. in HCA No. 386 of 2023. On the other hand, NHA issued Letter of Acceptance in favour of the Appellant vide Letter dated 30.10.2023 in obscene haste, which was suspended by the learned Division Bench of the Honorable High Court vide Order dated 31.10.2023 passed in the above-mentioned HCA. The answering Respondent also challenged Letter of Acceptance in C.P. No: D-5303 of 2023, and vide Order dated 31.10.2023, the Honourable High Court was pleased to restrain NHA from acting further in pursuance thereof. Simultaneously, GRC issued Letter dated 31.10.2023 against the illegal issuance of Letter of Acceptance by the Procurement Committee.

16. It is pertinent to mention here and submitted that the GRC decided answering respondent's complaint after thoroughly hearing all concerned



parties including the appellant, in the light of facts brought on record, which clearly and unambiguously showed the illegalities and defaults committed by the appellant or its sister companies. The appellant was given ample opportunity of hearing and they properly filed their reply on which answering respondent also filed rejoinder and the appellant had attended all the meetings of NHA's GRC. Needless to emphasize that JV Partner, namely, M/s Umar Baloch Enterprises (Pvt.) Limited was declared wilful defaulter by PPRA in Case No. PPRA/A&RP-21/2023 (Re: A.Z. & Company v. NHA) on account of its deliberate failure to pay an amount of Rs. 141,439,088/- on account of Revenue and Rs. 11168434/- on account of Tax shortfall against Rohri Toll Plaza in joint venture with M/s Goodluck Enterprises.

17. The counsel of the respondent no. 03 further added that M/s Umar Baloch Enterprises (Pvt.) Limited is owned by 1) Mst. Ameer Zadi, 2) Umer Hakim Jaskani, 3) Salman Khan s/o Dost Ali, and M/s Goodluck Enterprises, which is a registered partnership firm, comprising of following partners: 1) Hakim Ali s/o Muhammad Ayub Khan, 2) Mst. Ameer Zadi w/o Hakim Ali, 3) Umer Hakim Jaskani s/o Hakim Ali, 4) Master Ali Raza Jaskani s/o Hakim Ali & 5) Asad Hakim Jaskani s/o Hakim Ali. Both M/s Umar Baloch Enterprises Pvt. Ltd. and M/s Goodluck Enterprises participated in the same tender process and for the same package, which is clear violation of law, hence request for dismissal of the instant appeal.

18. After perusal of all available record and arguments made by both the parties, the appellate Committee (“the Committee”) observed that the appellant in this appeal never been blacklisted / barred or declared defaulter by the respondent (NHA) and nor any blacklisting order exist in a field as per the Rule 19 of the Public Procurement Rules, 2004, so raising the objection by the respondent regarding the same is not tenable.

19. The Committee also observed that the respondent issued the Final Evaluation Report dated 05.10.2023 wherein, the appellant was declared as the most responsive bidder for the Shalmani weigh station and Letter of Acceptance dated 30.10.2023 was accordingly issued to the appellant. On the later stage, respondent withdraw the Letter of Acceptance (LoA) by declaring that the estimated cost was reduced without any rationale and approval and defaulters were not disqualified and one Bid per Bidder PEC Rule has been violated and compromised. Committee observed that there are no rules related to one bid per bid, but such provisions are provided in PEC bidding documents. However, NHA may refer such condition, if same is provided in the bidding documents for the instant procurement, that is not the case. It is relevant to mention that after issuance of LoA the respondent cannot be agitated such grounds / restrictions and declared the appellant as disqualified on these grounds.

20. The Committee is of the considered opinion that if any violation made by the appellant and scrutiny was required for the said procurement process then it must be carried out by the respondent at the technical evaluation stage. After issuance of LoA, such action by the respondent against the

appellant is merely against the Public Procurement Rules, 2004 and against the spirit of fair competition.

21. In the light of foregoing, the instant appeal is **allowed** and the respondent's orders / GRC decision dated 20.11.2023 is hereby declared as illegal and the same is set-aside.

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

(Dr. Asim J. Abro)
Director (M&E)
(Member)

(Maqbool Ahmad Gondal)
Managing Director (PPRA)
(Head of the Committee)

Dated: 04.04.2024

Note: Each page of the order has been signed by all members of the Appellate Committee. The order comprises of thirteen (13) pages.



