



Appeal No. PPRA/A&RP-32/2023
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 Ittehad Enterprises – KKBA Enterprises (JV)

...the “Appellant”

Vs.

National Highway Authority (NHA) etc.

...the “Respondent”

<u>Date of Hearing</u> 14.03.2024	<i>Mr. Shahid Hussain Jagra, Advocate High Court, Mr. Jameel Hussain Qureshi, Advocate Supreme Court</i> <i>(On behalf of the Appellant)</i> <i>Sardar Haroon Sami, Advocate Supreme Court, Mr Imran Ullah Mohmand, Deputy Director (Rev-Contracts, NHA), [Mr. Babar Butt, on behalf of the R. No.04 i.e. M/s Ijaz & Co.</i> <i>(On behalf of the Respondents)</i>
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APPEAL FILED UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The abovementioned learned counsel(s) and representative(s) of the parties tendered appearance before the Appellate Committee (“the Committee”) at the date and time fixed for hearing and made their arguments at length.

2. At the very outset of the hearing, the learned counsel of M/s Ittehad Enterprises – KKBA Enterprises JV (“the Appellant”) submitted that National

Highway Authority (NHA / Respondent No. 1) published "Invitation for e-Bids" (IFB) on 31.08.2023 for provision Operation, Management and Maintenance (OM&M) of Sangjani (NB&SB) Weigh Station against Package - PWS - (NH)-03-2023-24 on National Highway (N-5) for a period ending on 30.06.2025 with bid security of rupees One Million based on Single Stage-Two Envelop procedure.

3. It is further submitted by learned counsel of the Appellant that in the said procurement process, the technical bids were opened on 15.09.2023, wherein, the appellant declared as qualified in Technical Evaluation Report as announced by the Tender Opening and Evaluation Committee of the respondent no. 01 on 21.09.2023 as per Rule 35 of Public Procurement Rules, 2004. Moreover, that the appellant was called for financial bids opening held on 28.09.2023 and he was found most advantageous and lowest bidder with quoted amount of Rs.648,450/- per month against said procurement phase in line with the Instructions to Bidders (ITBs) / RFP. The counsel of the appellant added that his bids for other weigh stations were not considered as the appellant was already declared lowest in Sangjani Weigh Station bid.

4. The counsel of the appellant further added that the lawful proceedings by the respondent (procuring agency NHA) had already been culminated into the opening and announcement of Financial Bids of the Technical Qualified Bidders under the prevailing procurement laws and, the appellant, being lowest and most advantageous bidder, is entitled for issuance of Letter of Acceptance for the said weigh station. However, the respondent no. 1 failed to issue the same in favour of the appellant.

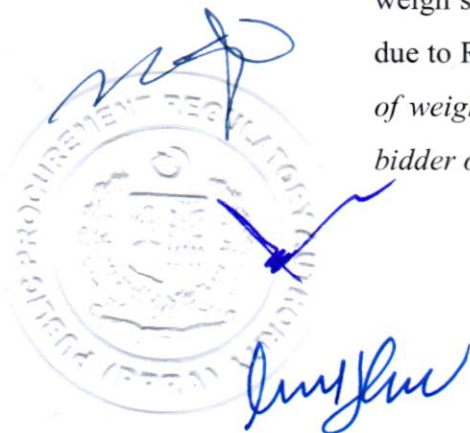
5. It is further argued by the counsel of the appellant that in final Evaluation Report, the appellant was declared as non-responsive as per Rule 38 of the Public Procurement Rules, 2004 without any legal justification. Thereafter, the appellant filed a grievance petition before the respondent no. 2 i.e. Convener, Grievance Redressal Committee (GRC) of the procuring

agency, and GRC passed the order vide letter No. 2(210)/NHA/Planning section /2023/1028 dated 22.12.023 (“Impugned Order”) stating wherein that *“the procuring section applied a minimum wage threshold of Rs. 32,000/- per month to each bid. Those bids were made Non-Responsive as per the PPRA Rule 38 where the petitioners/other bidders violated the minimum wage limit prescribed by Federal Government.”*

6. The learned counsel of the appellant concluded that the appellant is aggrieved and dissatisfied with said Impugn Order, wherein, the bid of the appellant was declared as Non-Responsive, hence, filed the instant appeal.

7. On the other hand, the learned counsel of the respondent no. 01 (NHA) submitted that Procurement for Ten (10) packages of Weigh Stations on national highways and motorways was initiated through open competitive bidding as per Rule 21 of the Public Procurement Rules, 2004. An IFB was advertised in print and electronic media dated 31.08.2023 with bid submission date 15.09.2023. A pre-bid meeting for the said procurement was held on 08.09.2023.

8. The learned counsel of respondent (NHA) further submitted that the technical bids were opened on 15.09.2023 and were evaluated by Tender Opening & Evaluation Committee (TO&EC) in conformance with RFP clauses. The technical bid evaluation report was uploaded on NHA as well as PPRA websites on 21.09.2023. Thereafter, the financial bids of technically qualified bidders were opened on 28.09.2023 by TO&EC in the presence of the authorized representatives of the bidders. The Bidders who were “as announced lowest bidder” during financial bid opening in one package of weigh station, their bids in next packages of weigh stations were not opened due to RFP Clause-13.1 i.e., *“Only one no. of package in the current bidding of weigh stations shall be awarded to one bidder participated either as sole bidder or as a partner in JV”*.



9. It is argued by the learned counsel of respondent (NHA) that during detailed financial evaluation of the bids, it was noted by the TO&EC that few bidders announced lowest on 28.09.2023 were found non-responsive due to violations of Public Procurement Rules, 2004 and RFP provisions, and to give all such bidders an equal opportunity, their sealed financial bids in next packages were opened on 22.10.2023. The final evaluation report of the procurement was uploaded on NHA and PPRA websites on 14.12.2023. Further, the appellant along with M/s Progressive Multi Engineers (Pvt.) Ltd. and M/s Fast Lane, being aggrieved, approached the GRC of NHA and, the GRC announced final decision dated 22.12.2023 on the grievances of said three aggrieved bidders. The decision is reproduced below:

“The Grievance Redressal Committee has unanimously concluded that there was no pick & choose in award of various weigh stations packages of the procurement as claimed by the aggrieved bidders. The procuring section applied a minimum wage threshold of Rs.32,000/- per month to each bid. Those bids were made non-responsive as the PPRA Rule-38 where the petitioners / other bidders violated the minimum wage limit prescribed by the Federal Government. The petitions are not maintainable and therefore disposed of.”

10. It is further highlighted by the learned counsel of respondent (NHA) that the term “as announced results” refers to unofficial / unconfirmed results which are yet to be evaluated, finalized and confirmed by TO&EC. During detailed financial evaluation following deficiencies were found in the financial bid of the appellant:

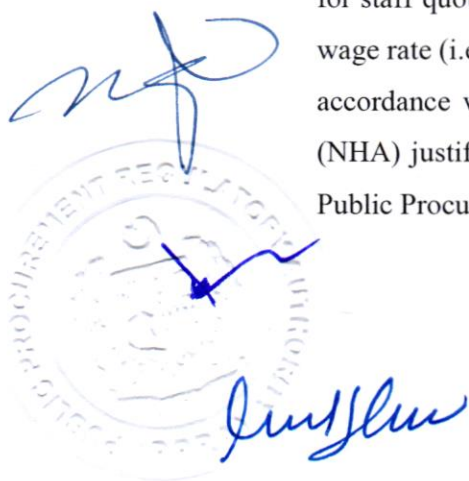
During detailed bid evaluation for Sangjani Weigh Station, it was noted by TO&EC that M/s Ittehad Enterprises- KKBA (JV) has offered rebate of 45% on his quoted bid. The rebate when applied on Bill No. 1 for Staff Salary, the monthly salaries of staff falls

below the salary amount mentioned in minimum wages notification by the Government of Pakistan. The bid was therefore declared as non-responsive by TO&EC as per Rule-38 of the Public Procurement Rules, 2004.

11. In the light of above submissions, the learned counsel of respondent (NHA) concluded his arguments with the submission that the instant procurement has been carried out in transparent manner in accordance with Public Procurement Rules, 2004 and other relevant provisions of RFP document, hence request for dismissal of the instant appeal. On the other side, the Committee inquired from the respondent no. 04 i.e., M/s Ijaz & Co. about the expenses and bill(s) details in the said procurement process. In response, the representative of the respondent no. 04 submitted his arguments and presented the details of expenses and bills related to the instant procurement process.


12. After perusal of all available record and arguments made by both the parties, the Committee observed that the appellant has not followed the minimum wages threshold regarding the salaries of staff as provided in the Minimum Wages Ordinance and the notification issued by the Federal Government. The Committee also observed that the appellant did not meet the conditions clearly defined in the bidding documents regarding the minimum wages and violated the same.

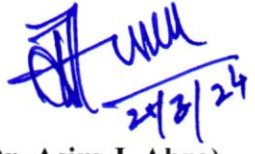
13. In light of above, the Committee is of the consider opinion that the appellant has failed to establish his case. The committee opined that the salaries for staff quoted by the appellant in his bid was not complied with the minimum wage rate (i.e., Rs. 32,000/- per month) as notified by the Federal Government in accordance with Minimum Wages Ordinance, 1961 as well. Hence, the GRC (NHA) justified to declare the bid as non-responsive in terms of Rule 38 of the Public Procurement Rules, 2004.




14. Further, the Committee, directed to the respondent (NHA) with regard to prescription of an unambiguous evaluation criteria as well as specific instructions, guidelines and requirements must be provided in the RFP document for evaluation to avoid bedlam at later stage, which ultimately delays procurement process and leads to mis-procurement.

15. In light of the above and the reasons recorded, the Committee is of the considered opinion that the instant Appeal is hereby dismissed being devoid of merit.


(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: 20.03.2024

Note: Each page of the order has been signed by all members of the Appellate Committee. The order comprises of Six (06) pages.

