



Appeal No. PPRA/A&RP-34/2023
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 Fast Lane & Co.

...the "Appellant"

Vs.

National Highway Authority (NHA) etc.

...the "Respondent"

<u>Date of Hearing</u>	<i>Mr. M. Atif, Advocate</i>
14.03.2024	<i>(On behalf of the Appellant)</i>
	<i>Mr. Imran Ullah Mohmand, Deputy Director (Rev-Contracts, NHA)</i>
	<i>(On behalf of the Respondent)</i>

APPEAL FILED UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The abovementioned learned counsel and representative 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 Fast Lane & Co. ("the Appellant") submitted that the respondent no.1 (NHA) through respondent no. 3 i.e. General Manager (Revenue), NHA invited bids vide IFT dated 31.08.2023 for Operation and Management & Maintenance (OM&M) of 10X packages of permanent and Mobile Weigh Stations on

National Highways and Motorways till the period ending on 30.06.2025 with Bid Security of rupees One Million based on Single Stage-Two Envelope procedure. The technical bid was opened on 15.09.2023, and the appellant qualified all the Technical Evaluations of all the bids. That, on 28.09.2023 Financial Bid of the appellant along with other bidders was opened and the appellant was declared as the lowest bidder for package No. **WS-(M-4)-17-2023-24 on Shorkot Inter (NB&SB) Din pur M-4 (04)**.

3. It is further submitted by learned counsel of the appellant that after opening of Financial Bid, the respondent remained silent for about two months and then declared the appellant as non-responsive illegally and unlawfully. The appellant challenged the Evaluation Report before the Grievance Redressal Committee (respondent no. 02). However, during the pendency of petition before respondent no. 02, and restraining order dated 22.11.2023 by respondent no. 02, the respondent no. 03 (GM, Revenue NHA) illegally issued Final Evaluation Report for one package i.e., (Shorkot Inter (NB&SB) Din pur M-4) Weigh Station and called for meeting of opening of other bids on 22.11.2023. Thereafter, on the direction of respondent no. 02 Final Evaluation Report for remaining packages was announced on 14.12.2023 and as the Grievance of the appellant was not addressed, hence, being aggrieved, filed this appeal.

4. 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 process 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.

5. The learned counsel of the 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*”.

6. It is argued by the learned counsel of the 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 Ittehad Enterprises – KKBA Enterprises (JV) and M/s Progressive Multi Engineers (Pvt.) Ltd., 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.”

7. It is further highlighted by the learned counsel of 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 bid evaluation of Shorkot Inter-Dinpur Inter Weigh Station, it was noted by TO&EC that the appellant i.e., M/s Fast Lane & Co quoted the monthly salaries of staff 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.

8. In the light of above submissions, the learned counsel of the respondent (NHA) concluded his arguments with the submission that the instant procurement process has been carried out in the fair and transparent manner in accordance with Public Procurement Rules, 2004 and other relevant provisions of RFP document, hence, request for dismissal of the instant appeal.

9. 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.

10. 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.

11. 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.

12. 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 Five (05) pages.