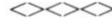




Review Petition No. PPRA/RP-35/2024
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad



ORDER

M/s Shoukat Khan & Company (Pvt.) Limited

...the "Petitioner"

Vs.

Water and Power Development Authority (WAPDA)

...the "Respondent"

<u>Date of Hearing</u> 19.03.2024	Mr. Ashfaq Khan (Advocate), Mr. Shahzeb Khan (Director, M/s SKC) <i>(On behalf of the Petitioner)</i> Mr. Ahmed Bashir (Advocate), Mr. Akhtar Abbas (WAPDA) <i>(On behalf of the Respondent)</i>
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The above mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Review Petition Committee ("the Committee") at the date and time fixed for hearing.

2. At the outset of hearing, learned counsel of the petitioner, Mr. Ashfaq Khan submitted that the petitioner i.e. M/s Shoukat Khan & Company (Pvt.) Ltd ("SKC") was selected as successful bidder to execute the contract "Waran Canal System & Minors (Contract No. GZD-03 Package-F) with a sum of Rs. 248 million on 11.11.2013. The bid of the petitioner was accepted by the respondent i.e., WAPDA / the procuring agency.

3. The counsel of the petitioner also submitted that the petitioner authorized Mr. Atta Ullah Jan s/o Sikandar Khan & Mr. Aman Ullah Khan s/o Malay Khan through power of authority dated 25.06.2014 to represent the Petitioner's company for the project of Gomal Zam Dam Multipurpose Project-Contract No. GZD-03-F Minors of Waran Canal and Appurtenant Structures (43Km 2nd Reach).

4. The counsel of the petitioner further submitted that the Letter of Acceptance (LoA) was issued by the respondent on 23.05.2014 which was duly accepted by Mr. Atta Ullah Khan s/o Skinder Khan on behalf of petitioner being attorney holder. On 04.08.2014, a contract was signed between GM Projects North WAPDA and Mr. Atta Ullah Khan on behalf of M/s Shoukat Khan & Company.

5. The counsel of the petitioner argued that after the commencement of work and some payments made to the petitioner, the petitioner sent a letter dated 09.09.2015 to the Manager MCB Model Town Branch Humak, Islamabad for renewal of Mobilization Advance Bank Guarantee. In response, the bank declared that the bank guarantee is fake and never issued by them. After that, the respondent (WAPDA) sent notice of explanation to the petitioner on 15.10.2015 regarding the submission of fake bank guarantee.

6. The counsel of the petitioner further argued that, the petitioner sent a detailed reply of the explanation notice to the respondent on 26.10.2015 in which they denied all allegations regarding submission of fake bank guarantee and attributed the same to their authorized agent i.e. Mr. Atta Ullah Jan. The petitioner also requested that they may be given an opportunity to submit a fresh bank guarantee. It is relevant to mention that the respondent constituted an inquiry committee on 30.10.2015 and, on 25.11.2015, Mr. Shoukat Ali Khan, Chief Executive of SKC along with Mr. Atta



Ullah Jan appeared before the inquiry committee and submitted / filed all documents required by the inquiry committee.

7. The counsel of the petitioner further added that, after detailed hearing, the inquiry committee of respondent (WAPDA) prepared its detailed report, findings and recommendations on 27.11.2015. Wherein, it was concluded with the recommendation that the petitioner / SKC should submit fresh bank guarantee and initiate legal action / FIR against Mr. Attullah Jan authorized representative of the petitioner. In light of the recommendations of the inquiry committee, the petitioner not only submitted fresh bank guarantee but also registered FIR against Mr. Attal Ullah Jan. That, the project has been completed eight (08) years ago with the satisfaction of the respondent but after completion of the project and against the recommendations of the inquiry committee constituted by the respondent themselves, this dead issue has once again raised by the respondent with mala fide intentions and ulterior motives and issued blacklisting notification against the petitioner on 04.12.2023, hence, file instant review petition.

8. On the other hand, the learned counsel of the respondent presented their arguments at length and denied all the assertions made by the petitioner side and argued that the petitioner submitted false, fabricated and forged documents to the respondent (WAPDA) during the bidding process of Package-10 of Diamer Bhasha Dam Project. Resultantly, respondent debarred the petitioner for a period of twelve (12) months vide Notification No. GM(C&M)W/CEC/DBDO/01-1613-35 dated 25.11.2015.

9. The counsel of the respondent submitted that a lenient view was taken in the interest of the Project (i.e., Minors of Waran Canal and Appurtenant Structures (43 KM, 2nd Reach), as part of the Gomal Zam Dam Multipurpose Project), because it was essential to finish it on time. Moreover, since the lodging of FIR, the petitioner

did not provided any detailed with regard to the proceedings against Attaullah Jan. Despite repeated requests by respondent, after passing of eight (08) years the case against Mr. Attaullah has not been concluded yet.

10. The counsel of the respondent also submitted that the Inquiry Report dated 30.11.2015 was issued after due consideration by the respondent, duly approved by Member (Water), the petitioner was informed to resume the execution in order to compete the remaining work in time, vide letter dated 11.03.2016. However, the petitioner continued his unprofessional and lethargic behaviour and could not complete the works within the designated additional time of three (03) years.

11. The counsel of the respondent further submitted that, due to persistent wilful failure of the petitioner, the Central Contract Cell of respondent (WAPDA) recommended initiation of the process for blacklisting of the petitioner. Therefore, with no other option, the respondent decided in a meeting dated 31.01.2019, to terminate the petitioner's contract (Package-F) as per sub- clause 63.1 (Default of Contractor) of FIDIC Conditions of Contract Red Book 1987. It may be specifically noted that at the time of termination, Physical Progress achieved by the petitioner was merely 68% in 1,288 days.

12. The counsel of the respondent added that, due to petitioner's wilful unprofessional attitude, the remaining work of Package-F was awarded to M/S Kundi Development Corporation on 27.03.2019 at petitioner's risk and cost. That respondent has not issued "Final Payment Certificate" to the petitioner, as per sub-clause 60.8 of the GCC. After that the remaining works were substantially completed by M/s Kundi Development Corporation till 16.09.2020. After substantial completion of remaining works, the proceedings for

blacklisting of the Petitioner were initiated as per the direction of the respondent's Authority.

13. The counsel of the respondent further added that the petitioner was fully responsible for the acts and omissions of the person who was, admittedly, its authorized representative. In this regard, a reference may be made to FIDIC GCC Sub-clause 4.1 (Subcontracting), which in the relevant part reads as under:-

"The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen".

14. After perusal of all available record and arguments made by both the parties, the Review Petition Committee ("the Committee") observed that the respondent issued a notice of explanation to the petitioner on 15.10.2015 and sought clarification / explanation regarding the fake bank guarantee as submitted by the authorized representative of the petitioner i.e., Mr. Atta Ullah Jan. Thereafter, an inquiry committee was constituted by the respondent on 30.10.2015 to probe the said issue.

15. The Committee also observed that an inquiry report was concluded with the recommendation that the petitioner (contractor) should submit fresh genuine bank guarantees and initiate the legal action / proceeding against the culprits Mr. Attaullah Jan and Mr. Amanullah Khan. In the light of committee's recommendation, the

petitioner i.e., M/s SKC submitted the fresh genuine bank guarantee(s) and initiated legal proceedings against culprits by lodging FIR against Mr. Attaullah Jan and Mr. Amanullah Khan. Moreover, as per the record provided by the petitioner, police also conducted inquiry about furnishing of fake bank guarantees and Mr. Attaullah Jan and Mr. Amanullah Khan admitted that they had furnished and submitted the fake bank guarantees. Moreover, as per minutes of the respondent's meeting, the respondent admitted that the petitioner (contractor) approached MCB Humak Branch for extension of bank guarantee vide letter no. SKC-3129 dated 09.09.2015.

16. Further, the Committee noticed that respondent (WAPDA) did not conduct any inquiry and take any action against the officers who were responsible for the verification of the bank guarantee, prime facie such act of fraud may not be executed without the mutual connivance of respondent (WAPDA) officers and contractor's representative.

17. It is also worth mentioning here that by demanding the fresh bank guarantee by the respondent from the petitioner tantamount to exonerate the petitioner from the allegations regarding the fake bank guarantee. Moreover, after a period of eight (08) years of completion of projects, the respondent concealed the facts and violated the recommendations of the said inquiry report. On one side fresh genuine bank guarantees were taken from the petitioner (contractor) and on the other side after completion of work, the petitioner was blacklisted by the respondent.

18. In light of above observations, the Committee is of the considered opinion that the petitioner established his case and the act of respondent to blacklist the petitioner is not justified in the eye of law and contrary to procurement laws and principal of natural justice.



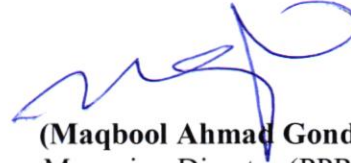
19. Hence, the instant review petition is **allowed** and the blacklisting notification / order dated 04.12.2023 passed by the respondent i.e., Water and Power Development Authority (WAPDA) is hereby **set-aside**.



(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: A copy of this order is being forwarded to the Director General-IT (PPRA) for implementation of this order and to de-list the petitioner's company i.e., **M/s Shoukat Khan & Company (Pvt.) Limited** from the list of active blacklisted / debarred firms on PPRA's website.

Each page of the order has been signed by all members of the Review Petition Committee. The order comprises seven (07) pages.

