



**Appeal No. PPRA/AP-38/2024**  
Government of Pakistan  
**Public Procurement Regulatory Authority**  
(Appeal & Review Petition Secretariat)  
1<sup>st</sup> Floor, FBC Building, G-5/2, Islamabad



**ORDER**

M/s WSKB Operator (Pvt.) Ltd.

*...the "Appellant"*

Vs.

National Highway Authority (NHA)

*...the "Respondent"*

<b><u>Date of Hearing</u></b>	<i>Mr. Ali Nawaz Kharal, Advocate Supreme Court, Mr. Hassan Muneeb Zia, Advocate</i>
<b>20.03.2024</b>	<i>(On behalf of Appellant)</i>
	<i>Sardar M. Haroon Sami, Advocate Supreme Court</i>
	<i>(On behalf of Respondent)</i>

**APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004  
AGAINST ORDER / LETTER DATED 30.01.2024 AND 31.01.2024**

The above-mentioned 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.

2. At the very outset of the hearing, the learned counsel of the appellant (M/s WSKB Operator (Pvt.) Ltd.) submitted before the Committee that the Respondent i.e. National Highway Authority (NHA) invited bids by issuance of RIFP from eligible and qualified bidders regarding "Procurement of Provision of Operation and Management (O&M) of 02 × Packages of Police

Fine Collection Units on National Highways till the period ending 30.06.2025".

The bidding documents for the said contract contained "Qualification and Technical Evaluation Criteria" of the eligibility and technical responsiveness of the bidders. The sealed envelopes containing Technical and Financial Bids were received by the respondent (NHA) on 05.12.2023 and the envelopes containing the technical bids were opened on the same date.

3. The learned counsel of the appellant further submitted that the appellant submitted an online bid. The appellant was disqualified / de-barred by virtue of letter bearing vide No. 55(15)/NHA/DD(F-C)/2024/153 issued by the respondent (NHA) dated 12.01.2024, communicated without being given an opportunity as per Clause 10 "Clarification of Bids" of "Instructions to Bidders" to provide any clarifications for the alleged issue in the audit report.

4. The learned counsel of the appellant added that the appellant i.e., M/s WSKB Operator (Pvt.) Ltd. filed grievance against the instant procurement process on 18.01.2024 under Rule 48 of the Public Procurement Rules, 2004 before the Grievance Redressal Committee ("GRC") of the respondent. Moreover, the appellant challenged the Technical Evaluation Report dated 12.01.2024 by virtue of which the appellant was disqualified by relying on RFP Clause 12.2(A) on the basis that the audit report was unacceptable.

5. The learned counsel of the appellant further added that the Complaint was filed challenging therein the whole procurement process with respect to the subject matter RIFP and the procurement process, since the appellant being a duly qualified and eligible party for participation and award of tender was

denied the right of participation and has been disqualified. Furthermore, the appellant was not provided with any opportunity to give clarification for the defect highlighted in the Technical Evaluation Report. That, by virtue of Orders / Letters dated 30.01.2024 and 31.01.2024 (“Impugned Orders / Letters”) communicated vide Letter No.2(210)/NHA/GM(P1g)/2023/62 and No.55(10)/NHA/ DD(F-C)/2024/173, the respondent / GRC upheld their previous disqualification decision without providing any reasons for the disqualification. Hence, filed instant appeal before the PPRA Authority under Rule 48(7) of the Public Procurement Rules, 2004, against the Order / Letter issued by the respondent (NHA) dated 30-01-2024 and 31-01-2024.

6. On the other hand, the counsel of the respondent (NHA) submitted that Procurement for two (02) packages of Police Fine Collection Units on National Highways was initiated through open competitive bidding and IFB was advertised in print and electronic media dated 14.11.2023 with bid submission date of 05.12.2023. A pre-bid meeting for the procurement was held on 23.11.2023.

7. The counsel of the respondent further submitted that the technical bids for the procurement were opened on 05.12.2023 and were evaluated by Tender Opening & Evaluation Committee (TO&EC) in light of the RFP clause. The technical bid evaluation report was uploaded on NHA and PPRA website on 12.01.2024. The appellant was disqualified on the basis of RFP Clause 12.2 (A) i.e. audit report(s) submitted by the appellant was unacceptable. Afterwards, the aggrieved bidder (the appellant) approached GRC of the respondent i.e., NHA. The GRC meeting was held on 22.01.2024 to conclude

the grievance. The GRC decision was received on 30.01.2024, which is reproduced below:

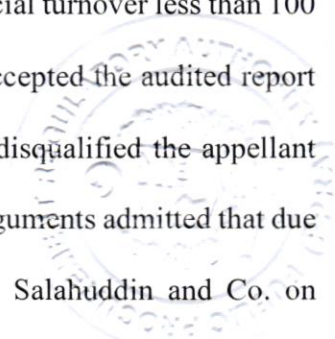
*“GRC unanimously decides that the complaint of the Complainant cannot be entertained and maintains the technical disqualification of the complainant”*

8. After perusal of all available record and arguments made by both the parties, the Appellate Committee (“the Committee”) observed that the respondent turned down the complaint filed by the appellant on the ground of financial error in the audit report which was later on rectified by the appellant. Therefore, on this ground only, the complaint of the complainant can not be declined and disqualified by the respondent in the procurement process.

9. The Committee also observed that if the audit report has been verified by the certified charter accountant and on the later stage, any error revealed in the said report then the respondent may proceed in accordance with prevailing laws and the said error / report may be referred to SECP for taking action against the charter accountant who certified the said audit report. Further, the Committee pointed out that the respondent (NHA) was not authorised to decline the complaint and to disqualify the appellant from the bidding process on said ground and the same was not justified in accordance with procurement laws.

10. The Committee heard arguments at length and perused all available record. As per available record the respondent advertised procurement of provision of operation and management (O&M) of 2 x packages of police fine collection units on National Highways till the period ending 30.06.2023. The last date for submission of bid was 05.012.2023 and the appellant submitted his


bid accordingly. The respondent on 12.01.2024 announced technical evaluation report under Rule 35 of Public Procurement Rules, 2004 and declared the appellant as technically disqualified in terms of RFP clause 12.2 (a) qualification and technical evaluation criteria at Sr. No.02 audit report is not acceptable. Feeling aggrieved by the decision of the procuring agency the bidder filed complaint before the GRC under Rule 48(3) of Public Procurement Rules, 2004. The Grievance Redressal Committee dismissed the complaint unanimously and maintained the technical disqualification of the appellant. The appellant filed appeal against the decision of GRC before the Authority (PPRA). In the light of the available record and as per evaluation criteria prescribed in part 12.2 (a) of qualification and technical evaluation criteria prescribed in the bidding documents 100 marks were allocated for technical bid and 60 marks were declared as qualifying marks. As per evaluation criteria 10 marks were allocated for annual turnover along with certified bank over last three years duly audited and attested by chartered accountant and signed by the operator. The respondent also prescribed three brackets for award of contract and in case of the financial turnover is more than 150 million rupees, total 10 marks will be awarded to the bidders. If financial turnover is less than 150 million and more than 100 million then 7 marks will be allocated to the bidders and 5 marks will be awarded to the bidder if the financial turnover less than 100 million. In the instant case, the respondent has not accepted the audited report of the appellant and on the sole ground technically disqualified the appellant from the procurement process. The appellant in his arguments admitted that due to the defect in the audited report audited by M/s Salahuddin and Co. on 20.07.2023 the appellant has again audited their annual reports form another




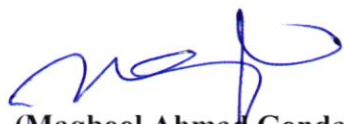
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charter accountant namely M/s Sehgal Chartered accountant on 10.10.2023 but erroneously at the time of bid submission they have attached the defected audit report audited by M/s Salahuddin and Co. Later on, the appellant provided the corrected audit report to GRC of net profit of Rs.126 million. The appellate committee in the light of arguments observed that the respondent rather to award marks to the appellant in the respected category of annual turnover in accordance with the financial brackets technically disqualified the appellant which is not in accordance with evaluation criteria.

11. In light of above, the Committee is of the view that the respondent is directed to re-evaluate the technical bid of the appellant and award marks in accordance with the financial brackets prescribed in the clause 12.2 (a) of the qualification and technical evaluation criteria prescribed in the bidding documents. Hence the appeal is **allowed** and dispose of accordingly.

  
(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 six (06) pages.*