



Review Petition No. PPRA/RP-41/2024
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 Pinggao-AKAY-Transmark

...the "Petitioner"

Vs.

Water and Power Development Authority (WAPDA)

...the "Respondent"

Date of Hearing(s)	
17.12.2024 04.07.2024	Hafiz Arfat Ahmad Ch. (Advocate Supreme Court), Mr. Farooq Ahmad, Advocate, Mr. Muhammad Amin (Inaam Energy Corporation, PINGGAO-AKAY-Transmark) <p style="text-align: right;">(On behalf of Petitioner)</p> Mr. Syed Hassan Ali Raza (Advocate Supreme Court), Mr. Nadeem Iqbal (GM WAPDA), Mr. Muhammad Tariq (CE WAPDA), Syed Hamza Hassan (WAPDA) <p style="text-align: right;">(On behalf of Respondent)</p>

REVIEW PETITION UNDER RULE 19(3) OF THE PUBLIC PROCUREMENT RULES, 2004

The above mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Review Petition Committee and furnished their arguments at length.

2. At the outset of the hearing, the learned counsel of the petitioner i.e., M/s Pinggao-AKAY-Transmark submitted that the respondent namely, Water and Power Development Authority (WAPDA) floated / published a tender bearing No.

OP/ITR-763 for Design, Supply, Installation, Testing & Commissioning of 500 KV Switchyard at Tarbela Power Station. It was a single stage one envelope tender as contemplated in Rule 36(a) of the Public Procurement Rules, 2004.

3. The counsel of the petitioner also submitted that M/s National Transmission & Despatch Company ("NTDC") was appointed as consultant ("the Consultant") by WAPDA for the said tender. The petitioner, a Joint Venture participated in the said tender with Pinggao Group Company Limited China along with another bidder. The tender was opened on 19.09.2023 in which the petitioner stood as the responsive / lowest bidder.

4. The counsel of the petitioner further submitted that the lead partner of the JV i.e., Pinggao Group Company Ltd. had earlier participated in some Asian Development Bank's ("ADB") funded project in Uzbekistan. Wherein, M/s Pinggao Group Company Ltd. participated in the said project as JV member with another Chinese company whose documents unfortunately had some issues which eventually became the cause for debarment of the said JV. Being a JV partner in the said procurement, debarment was also inflicted on Pinggao Group Company Ltd. along with the other partner by ADB in December, 2022. The said debarment is to remain in field from 22.12.2022 to 22.12.2026.

5. The counsel of the petitioner added that during the technical evaluation of the bid in relation to the respondent's

tender, the issue of debarment of M/s Pinggao Group Company Ltd. by ADB in Uzbekistan procurement attracted the attention of the Consultant and the respondent. Since M/s Pinggao Group Company Ltd. has orders in hand from NTDC which are prior to the said debarment and also they are going to bid in the upcoming projects to be financed under other funding agencies loans as well NTDC own funded projects, therefore, Pinggao Group Company Ltd. felt it appropriate to apprise the Consultant that this debarment does not fall within the definition of cross debarment.

6. The counsel of the petitioner further added that M/s Pinggao wrote a letter dated 18.12.2023 wherein, they were requested to NTDC / the Consultant as under:

“it is clarified that we have been debarred by ADB, however we understand that this is limited to ADB funded projects only and not a cross debarment. Therefore NTDC may seek clarification / confirmation from ADB to avoid its application on other funded projects.”

Resultantly, the Consultant (NTDC) accordingly approached ADB and after seeking clarification from ADB, the Consultant formally shared the outcome with the petitioner vide letter no. CE/PMU/NTDC/ADB/303-17 dated 11.01.2024 along with emails exchanged between ADB and NTDC. The contents of the said letter are as under:

“...it is intimated that ADB vide its email at ref [1] has clarified that ADB's sanction of debarment imposed on

M/s Pinggao ("Pinggao Group Co. Ltd") is not cross debarment. It implies that if there is no cross debarment then M/s Pinggao China Co. Ltd. can bid for contracts financed by other Multilateral Development Banks (MDBs) or International Financial Institutions (IFIs) until and unless they are debarred by other MDBs or IFIs"

7. The counsel of the petitioner also submitted that despite the above go-ahead by the Consultant, the process of procurement did not witness any progress for the last several months for no plausible reasons resulting in serious pressure on the petitioner whose bid security of Rs. 30 Million is lying with the respondent (WAPDA) in the form of monetary guarantee since submission of bid by it. Quite recently, the respondent has requested for extension of bid validity (which expired on 16.03.2024) for another 180 days with a further request to extend the bid security making it valid for a period of twenty eight (28) days beyond the bid validity date.

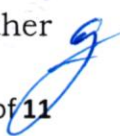
8. The counsel of the petitioner further submitted that although after the above clarification by ADB and satisfaction expressed by the Consultant over such clarification, there remained no impediment in the award of contract to the petitioner, however, the respondent decided to approach the Authority (PPRA) on the said matter and wrote a letter and sought guidance on the same issue in the month January 2024. Thereafter, the petitioner also approached the Authority by

writing a letter dated 01.04.2024 through its counsel requesting for grant of opportunity of hearing in the matter.

9. The counsel of the petitioner further added that on 08.04.2024, the Authority, in its self-explanatory response issued to the counsel for the petitioner, wherein, the petitioner firm was directed by the Authority to file a Review Petition under Rule 19(3) of the Public Procurement Rules, 2004 and in accordance with Regulations for "Procedure of filing and disposal of Review Petition under Rule 19(3), 2021, hence filed the instant Review Petition.

10. At the last, the counsel of the petitioner argued that the ADB has itself clarified that said debarment was not cross-debarment, therefore it crystal clear that the same is not to be applied on projects funded from other sources. Further argued that the project for which the respondent floated the tender is 100% financed by respondent's own resources and without any involvement of ADB. Therefore, the delay in award of formal contract to the petitioner is without any legal basis.

11. On the other hand, the learned counsel of the respondent i.e., Water and Power Development Authority (WAPDA) presented their arguments at length. At the first instance they submitted that an International Tender No. OP/ITR-763 for upgrading equipment of 500KV Tarbela Switchyard (Units 11-14) was opened on 19.09.2023 (11:30 Hrs.) at WAPDA Auditorium, WAPDA House, Lahore. Further



submitted that two (02) firms submitted their bids with the following bid prices:-

Sr.#	Name of firm	Bid Prices		
		Foreign Currency Component	Local Currency Component	Equivalent PKR (Million)
1	PG-AK-AY-TRANSMARK (JV)	US \$11,369,138 (Equiv. PKR 3,368,107,132)	840,320,001	4,208.43
2	CCCE-ETERN (JV)	US \$13,688,221 (Equiv. PKR 4,055,135,569)	886,931,276.73	4,942.06

Moreover, after detailed technical, commercial and financial evaluation the evaluation committee recommended to award the contract to lowest bidder M/s Pinggao-AKAY-Transmark (JV).

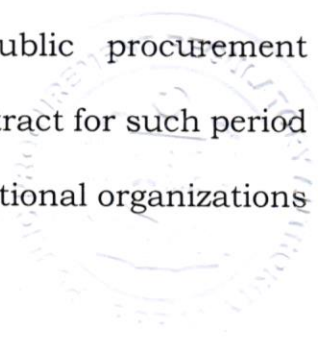
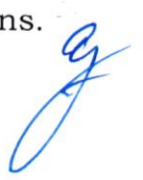
12. The counsel of the respondent also submitted that the Evaluation report was reviewed by respondent (WAPDA) Standing Review Committee (SRC) and Central Contract Cell (CCC). The review reports endorsed the recommendations of the Evaluation Committee. The representative further added that technical evaluation was also reviewed by Chief Engineer (Substation Design) NTDCL, being (Engineer's Representative) of the project. As per review / comments of M/s NTDCL reveals that , one Member of Joint Venture M/s Pinggao Group Co China has debarment issue with Asian Development Bank (ADB).

13. The counsel of the respondent further argued that, on the debarment of M/s Pinggao Group Co China is available on ADB website. The matter was clarified by ADB through M/s NTDCL that M/s Pinggao Group Co. China is not cross debarred

and hence M/s Pinggao Group Co China may participate in bids for contracts financed by other Banks or Institutions. Therefore, the case was submitted for approval of the respondent's Authority (WAPDA) for award of contract to M/ Pinggao-AKAY-Transmark JV. However, the respondent's Authority directed that the matter regarding debarment of M/s Pinggao Group Co by ADB may be referred to PPRA for clarification.

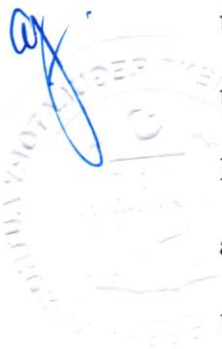
14. The counsel of the respondent also submitted that it is important to mention that no information regarding the debarment of M/s Pinggao Group Co China is available on ADB website, PPRA Website or any other online forum. Further mentioned that the Bids were opened on 19.09.2023 and M/s Pinggao Group Co. debarment notification was issued by ADB to NTDCL on 16.10.2023, the same was transmitted to the respondent by NTDCL along with technical review of bids on 14.11.2023.

15. The counsel of the respondent further argued on the point of Rule 19(4) of the Public Procurement Rules, 2004 and submit that if a bidder who has been declared blacklisted or debarred by a foreign country, international organization or other foreign institutions shall be treated as blacklisted and debarred from participating in any public procurement proceedings or entering into any public contract for such period as declared by that foreign country, International organizations or other foreign institutions.



16. The counsel of the respondent further added that while concluding their arguments, the upgradation of the equipment of 500KV Switchyard-II is a critical matter for the respondent (WAPDA) and National Grid. The exiting short circuit current rating is 40KA which needs to be upgraded to 63KA on urgent basis due to inclusion of new power projects in the National Grid. Moreover, with the inclusion of Tarbela 5th Extension project, which is scheduled to start generation by end of 2025, stress on Tarbela switchyard shall increase as the Power evacuation from T5th extension project is planned through Tarbela Switchyard. Hence, the matter is related to safety, security and reliability of National Grid as the same is dependent on the safety, security and reliability of Tarbela Power Station especially in peak water seasons. Further added that the technical and financial capabilities along with experience and performance of the petitioner (bidder) has been established and endorsed by Tender Evaluation Committee and Review Committees.

17. At the last, the counsel of the respondent concluded their arguments with the submission that the said tender project having national importance and the petitioner having the capabilities to perform the said critical tender / matter for the respondent (WAPDA) and National Grid. So that the Review Petition Committee may decide the instant review petition in accordance with law and with the consideration of its importance to the national grid.



18. At the very last, on the day of hearing i.e., 04.07.2024, the counsel of the petitioner requested the Committee to allow him to submit further written comments / submissions along-with references of the judgments of the honorable courts in order to support his case, within a period of one week. Upon this, the Committee accepted his request and directed the counsel to submit the same within a week positively. It is very relevant to mention here that as per the request of the appellant's counsel with regard to the submissions of the comments, no comments / written submissions has been received / filed till date i.e., 17.12.2024.

19. Surprisingly, on the last day of hearing i.e., 17.12.2024, the counsel of the appellant Hafiz Arfat Ahmad filed an application through his associate counsel, for return of review petition and review fee on account of lack of jurisdiction.

20. After perusal of all the available record and arguments made by both the parties, the Review Petition Committee ("the Committee") observed that the petitioner filed the instant review petition on 29.04.2024, explicitly in accordance with Rule 19(3) of the Public Procurement Rules, 2004 and the Regulations made thereunder namely, Procedure of filing and disposal of Review petition under Rule (3), 2021. Accordingly, after filing of the said review petition, the Authority issued notice for hearing on 04.07.2024. On that day of hearing, the counsel of the petitioner Hafiz Arfat Ahmad Chaudhry appeared before the Committee and argued enthusiastically to

defend his case. Upon this, the Committee is of the view that at this belated stage, the stance of the petitioner with regard to lack of jurisdiction of the Committee / the Authority, is against the spirit of the said rules and regulations, and is nothing but a way to escape. Moreover, filing of the said petition before the Authority and rendering the arguments thereof to defend his case, is evident that the petitioner accepted / assumed the Authority's jurisdiction which leads to 'admission' on the part of the petitioner. Hence, the said application dated 17.12.2024 is hereby rejected.


21. The Committee further observed that the petitioner being the lead partner of the JV i.e., Pinggao Group Company Ltd. had earlier participated in some Asian Development Bank's ("ADB") funded project in Uzbekistan. Wherein, M/s Pinggao Group Company Ltd. participated in the said project as JV member with another Chinese company whose documents had some issues which eventually became the cause for debarment of the said JV. Being a JV partner in the said procurement, debarment was also inflicted on Pinggao Group Company Ltd. along with the other partner by ADB in December, 2022. The said debarment is to remain in field from 22.12.2022 to 22.12.2026.

22. The Committee also observed that the petitioner has been blacklisted by an international / foreign organisation i.e., Asian Development Bank's ("ADB") for the period of four (04) years. It is very relevant to mention here that, as per Rule 19(4)


of the Public Procurement Rules, 2004, a bidder who has been declared blacklisted or debarred by a foreign country, international organization or other foreign institutions shall be treated as blacklisted and debarred from participating in any public procurement proceedings or entering into any public contract for such period as declared by that foreign country, international organizations or other foreign institutions.

23. Further, the Committee opined that as per Rule 2 sub-rule (1)(fa) of the Public Procurement Rules, 2004, the “cross-debarred” means a bidder debarred by any procuring agency shall be considered as debarred by all the procuring agencies, therefore, the petitioner’s firm / company falls under the category of cross debarment and their blacklisting shall remain intact till the defined period of blacklisting lapsed or the order of blacklisting stands alive.

24. For what the reasons mentioned above, the instant review petition is hereby **dismissed** and disposed of accordingly.


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


(Sheikh Afzaal Raza)
Director (M&E)
(Member)


(Hasnat Ahmed Qureshi)
Managing Director (PPRA)
(Chairman of the Committee)

Each page of the order has been signed by all members of the Review Petition Committee. The order comprises of eleven (11) pages.