



Appeal No. PPRA/AP-44/2024
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 Karsaz (Pvt.) Limited

...the "Appellant"

Vs.

Sialkot International Airport

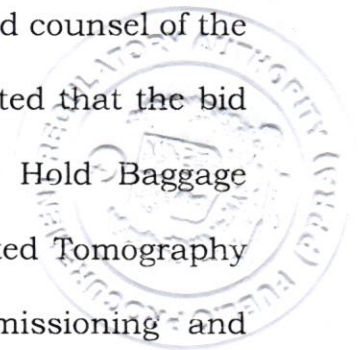
...the "Respondent"

Date of Hearing 24.10.2024 06.08.2024	Dr. Raja Muhammad Ali (Advocate), Mr. Farhan Badar, Mr. Muhammad Zamir Ahmed on behalf M/s Karzas (Pvt.) Ltd. <p style="text-align: right;">(On behalf of Appellant)</p> Mr. Mohtisim Sattar Ch (Advocate), Mr. Akmal Hafeez (HA Consulting) on behalf of Sialkot International Airport Limited. <p style="text-align: right;">(On behalf of Respondent)</p>
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APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004 [IN THE MATTER OF "PROCUREMENT OF CARGO / HOLD BAGGAGE AUTOMATIC EXPLOSIVE DETECTION SYSTEM (COMPUTED TOMOGRAPHY TECHNOLOGY) WITH INSTALLATION, TESTING, COMMISSIONING AND TRAINING"]

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

2. At the outset of the hearing, the learned counsel of the appellant i.e., M/s Karsaz (Pvt.) Limited submitted that the bid for the project of "Procurement of Cargo / Hold Baggage Automatic Explosive Detection System (Computed Tomography Technology) with Installation, Testing, Commissioning and Training", was first invited in 2022 by the respondent i.e. Sialkot



International Airport Ltd. (SIAL), which was duly contested by the appellant and was both technically and commercially approved after fulfilling all necessary procedures, resulting in awarding the contract to the Appellant, being the most advantageous bidder. However, after four months, a signed contract was abruptly cancelled by the respondent, without assigning any cogent reason.

3. The counsel of the appellant also submitted that the said tender was republished in 2023 and again the appellant emerged qualified as the most advantageous bidder, however, once again, the bid process was abruptly called off. Finally, for the third time, the tender was republished in May 2024, however, technical specification of machine, to be procured, was lowered, without any plausible justification from the respondent.

4. The counsel of the appellant further submitted that the appellant, once again emerged as qualified bidder through Technical Evaluation Report dated 06.06.2024 in the tender which was republished in May 2024, however, through same report another participant received, either same or more point, against the appellant in technical evaluation on account of previous project of similar size, nature and complexity including training to technical staff as well as the registration of bidders with pertinent international bodies etc.

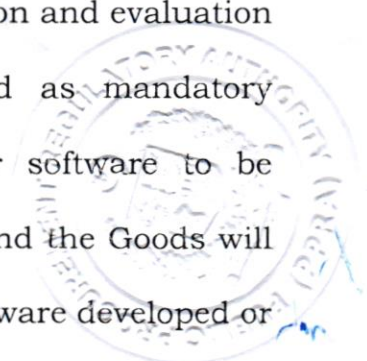
5. The counsel of the appellant also submitted that they preferred a grievance petition before Grievance Redressal Committee (GRC) of the respondent on the above stated issue,



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thereafter, a meeting was convened and the committee dismissed the appellant's grievance on 16.06.2024, on both issues. Further, the appellant expressed its inclination for challenging the same and requested the respondent not to expose appellant's financial bid, however, such request / demand was immediately turned down by the respondent and announced Financial Bid Opening on 28.06.2024 hence, being aggrieved by the said decision and act of the respondent, filed the instant appeal. It is very relevant to mention here that the respondent formed an unregistered Grievance Redressal Committee, wherein one member of respondent was also added, who persuaded the whole committee, and such committee without offering any explanation, reason, or reconciliation of respondent's actions, dismissed appellant's grievance. Such arbitrary actions of respondent are against the spirit of Rule 48(1) of the Public Procurement Rules, 2004 ("PP Rules, 2004").

6. During the course of arguments the counsel of the appellant further submitted that, it was very clearly mentioned in bidding documents regarding the qualification and evaluation criteria that the Under Taking is required as mandatory requirement that no parts, components, or software to be manufactured / developed in India or Israel and the Goods will not be accepted if any part, component, or software developed or manufactured in the above mentioned countries. Further submitted that, as per the said requirement of bidding documents the appellant provided / submitted the same



undertaking on the letterhead of the manufacturer, whereas the respondent accepted the undertaking of the other participant / bidder on the stamp paper of Rs.50, being authorized distributor only, which is the sheer violation of the law and rules.

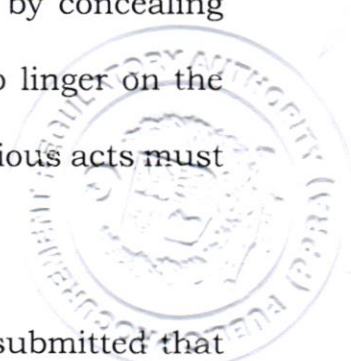
7. The counsel of the appellant further argued that the respondent in utter disregard of an international airport security, lowered the specifications / standards of the equipment procured, without given any justification. Moreover, while making technical evaluation, the respondent took refuge under broadest self-interpretation of "previous similar project of same size, nature and complexity" in favour of a participant / bidder, without calling for clarification for such similarities of size, nature, complexity and technical expertise, which can equate an ordinary X- ray scanner installation as similar experience of same size, nature and complexity in comparison to a Specialized Computed Tomography Explosive Detection assembly Scanner. In addition, the nature and complexity, even size of the above noted, is not comprehensible, as a common X-ray scanner is 3-4ft in length with an average weight of 400-500kg, whereas an Explosive Detection assembly scanner is 17-18ft in length with a weight of 7.1 ton approximately. Such practice by the respondent is directly in contradiction with the spirit of Rule 15, 17 and 31 of the PP Rules, 2004.

8. The counsel of the appellant further added that the respondent, while calling for subject tender, and in contrast to earlier two called off tenders, lowered the technical standards of

the equipment, including, but not limited to, the protection class from IP33 to IP20, for no plausible reason and the safety of the machine, even the very function of scanning a luggage for Explosive device, has been compromised, through reducing the luggage / tunnel size specification from 1000mm x 800mm to 1000mm x 600 mm. Such deviation and compromise are directly in contradiction of Rule 2(1.h), 4, 10(1), 15, and 17 of the PP Rules, 2004.

9. On the other hand, the learned counsel of the respondent i.e., Sialkot International Airport, presented their arguments at length and denied all the assertions made by the appellant side. At the first instance, the counsel of the respondent raised the preliminary objections and argued that the instant appeal is nothing but an afterthought and the appellant cannot be allowed to dodge with the due process of law by fluctuating the quoted prices of the HI-SCAN Explosive Detection System and by playing hide & seek with the procurement process. Further, that the appeal has been filed by concealing and distorting material facts with a sole object to linger on the matter and to waste the precious time. Such notorious acts must be discouraged by dismissing the instant appeal.

10. The counsel of the respondent further submitted that the appellant has not approached this forum with clean hands and badly failed to point out any illegality as well as irregularity committed by the answering respondent, and contention of the instant appeal is false and frivolous.



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11. The counsel of the respondent also submitted that Sialkot International Airport is a first privately owned international airport in Pakistan, it was built by the untiring, countless, and sincere efforts of the second largest tax payer business community of the Pakistan. This mega project in private sector came into existence by the Sialkot Chamber of Commerce & Industry and is fully helping to boost and enhance the export of Pakistan. Since its inception & operations under the supervision of competent, responsible and professional experts, Sialkot international Airport is transporting exports by air cargo and facilitating state of the art travel services to the businessman and overseas Pakistani of this region.

12. The counsel of the respondent further added that for placement of HI-Scan Explosive Detection System (EDS), under the Export Development Fund (EDF) Scheme of the Government, Rs.350 million (USD 02 million @Rs175) were approved for Sialkot International Airport Limited in the 19th meeting of Finance Committee of Board of Administrators of EDF on 18.03.2021. Further, the amount was received on 12.04.2022 which was deposited in National Bank of Pakistan as per the instructions of EDF. Moreover, Trade Development Authority of Pakistan (TDAP) was appointed as joint signatory of bank account and to oversee the procurement process.

13. The counsel of the respondent added that the tender which was invited in 2022, there was just a single financial bid

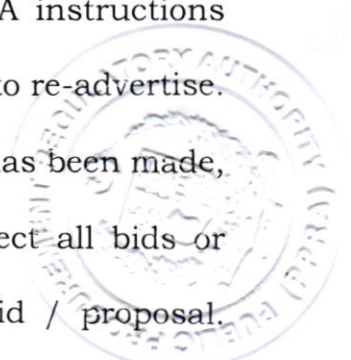


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amounting to USD 2.767 million which was much higher than the approved amount. Moreover, various objections were also raised by TDAP. Therefore, contract was cancelled by the respondent with the consent of the appellant (M/s Karsaz Pvt. Ltd). Furthermore, as per Rule 49 of the PP Rules, 2004, "After coming into force of the procurement contracts, disputes between the parties to the contract shall be settled by arbitration", therefore, this matter did not fall in the Jurisdiction of PPRA. Moreover, the said matter was closed in year 2022 and the appellant did not go for arbitration. Subsequently, the appellant has also been participating in re-tendering process undertaken by the procuring agency (respondent).

14. The counsel of the respondent further submitted that in response to tender republished in 2023, the financial bid submitted by the appellant was USD 2.576 million + PKR 45 million, which was again higher than the amount approved by EDF, Ministry of Commerce. Hence, the bid was to be analysed in the realm of value for money under the PPRA instructions being the single bidder and it was found prudent to re-advertise. Further, no such violation of the PP Rules, 2004 has been made, since the procuring agency has the right to reject all bids or proposals at any time prior to acceptance of bid / proposal. Therefore, procurement committee of the respondent and monitoring agency of TDAP recommended to cancel the tender proceedings and go for re-tendering process due to the variation of the amount.



15. The counsel of the respondent also submitted that the procuring agency (the respondent) noted that in the previous two tenders, there was a single bidder (the appellant) quoted extensively high price. Therefore, in order to meet the requirement of the procurement agency vis-a-vis funds allotted by the EDF, the technical standards of the equipment were made more general to make it a competitive bidding process wherein price should also be taken as a major pre-requisite in addition to quality, delivery and compliance with the specifications. It is worth mentioning here that the appellant again offered same equipment but reduced price to USD 1.831 + PKR 27 million which proves that in first two bids, being a single bidder, the appellant quoted very high price.

16. The counsel of the respondent further submitted that the respondent in the said advertisement has fulfilled all the requirements of international airport security standards. However, in order to meet the requirement with regard to the funds available (allotted by EDF), the required tunnel size of the desired machine was lowered to standard quarter pallet size (i.e., 1000 x 600 mm) instead of the previously advertised larger size of the tunnel. Meanwhile, the respondent was not liable to submit justification pertaining to the equipment to any potential bidder or appellant. However, TDAP Sialkot (representative of EDF) is continuously working as Third-Party observer and monitoring activity with respect to subject Procurement Process.

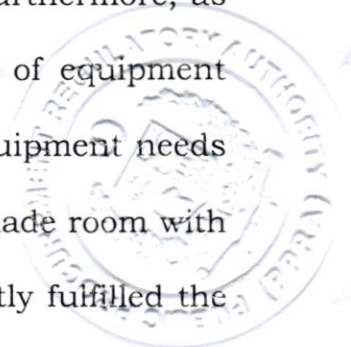


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17. The counsel of the respondent further argued that, the understanding of clause referred by the appellant in their arguments is not correct, as it was very clearly mentioned in bidding document "Appendix-H to Bid (QUALIFICATION & EVALUATION CRITERIA)" [Similar Experience(clause- 1)] that "projects of similar size, nature and complexity in Pakistan" is acceptable. However, interpretation of "projects of similar size, nature and complexity" as "Same Equipment Experience" is not correct and the appellant has used the same wording in their letter no. 634461/380A29. 1 dated 06.06.2024. Furthermore, in order to clarify any doubts / queries, two pre-bid meetings were conducted, where no such query was highlighted by any potential bidder including the appellant.

18. The counsel of the respondent also submitted that as both IP ratings (IP-20 and IP-33) fulfil the end user requirement, therefore, in order to maintain the healthy competition and to follow the Rule 10(1) of the PP Rules, 2004, IP-20 was selected as baseline reference for the required equipment. Furthermore, as per IEC-60529, IP rating means the protection of equipment against solid and liquid particles and subject equipment needs to be placed in controlled environment in glass made room with air conditioning, therefore, IP-20 equipment rightly fulfilled the requirements of procuring agency. Similarly, like IP rating, tunnel size of equipment in bidding document was specified as the standard quarter pallet size (1000 x 600 mm) which also



meets the requirement of the end user i.e., respondent / the procuring agency.

19. During the course of arguments the counsel of the respondent further submitted that, the above-mentioned both objections of the appellant were discussed before the Grievance Redressal Committee (GRC) of the respondent in presence of appellant's representative, however, the GRC concluded that the grievances of the appellant were not appropriate / admissible and cannot be acceded to. Moreover, as per the Rule 48 of the PP Rules, 2004, GRC reviewed the appellant's stance, provided ample opportunity to plead his version, however, GRC's concluded decision was against the appellant. It is worth mentioning here that the representative of the appellant participated in opening of financial bids, however, failing to win the bid and as a counter blast, appellant has filed this appeal just to sabotage the procurement process.

20. At the last, the counsel of the respondent submitted that the stance of appellant pertaining to the unregistered Grievance Redressal Committee is wrong and based on their own assumptions. It is important to mention that GRC was notified by SIAL vide letter no. SIAL/GC/CS/1274A dated 24.10.2023. However, as per PPRA rules, to ensure that GRC members are preferably not part of the procurement committee, the GRC was reconstituted vide email dated 08.06.2024 with independent members, even one member was included from TDAP Sialkot (representative of the funding agency). The respondent was

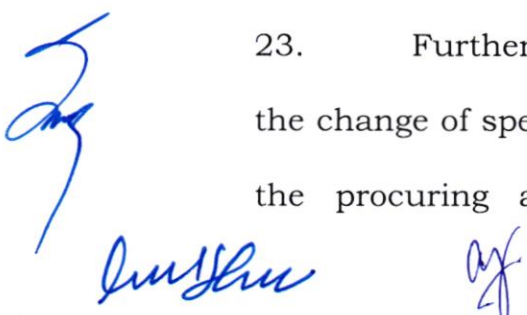


provided ample opportunity of hearing to the appellant and was heard at length and GRC decided / concluded the grievances in a transparent way, hence request for dismissal of the instant appeal.

21. After perusal of all available record and arguments made by both the parties, the Appellate Committee (“the Committee”) observed that all the procuring agencies are under obligation to carry out the procurement process through e-Pak Acquisition and Disposal System (EPADS) under Rule 7A of the PP Rules, 2004 and the Regulations made thereunder i.e. e-Pak Procurement Regulations, 2023. However, in the instant case, the respondent (SIAL) conducted the said procurement process manually, which is contrary to the abovementioned Rule & Regulation. This fact is sufficient to nullify the entire procurement process.

22. The Committee also observed that the appellant did not raise any objection regarding the evaluation criteria within the stipulated time period as provided under Rule 48 of the PP Rules, 2004. Moreover, the Committee also observed that the respondent was at liberty to generalize the technical standards of the equipment to make the bidding process competitive and more economical in addition to quality, delivery and compliance with the specifications.

23. Furthermore, the objection of the appellant counsel on the change of specifications by the respondent is not tenable as the procuring agencies have discretion to determine the




specification to meet their needs, provided that such specifications should not be brand specific.


24. In view of above, the Committee opined that as per the wordings of Rule 34 of the PP Rules, 2004, in the first facet, the procuring agency can call for re-bidding if it rejects bids under Rule 33 of the PP Rules, 2004. In the second facet, the authority vests in the procuring agency to revise evaluation criteria or any other condition for the bidder, as it may deem necessary. Hence, cancelling the bidding process is a discretion allowed to the procuring agency by the rules and, therefore, may not be challenged by the appellant.

25. In light of the above mentioned facts and in consideration of the provisions of the Public Procurements Rules, 2004 the stance of the appellant regarding acceptance of the instant appeal is baseless, therefore, the appeal in hand is hereby **dismissed** and disposed of accordingly.




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


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


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

Each page of the order has been signed by all members of the Appellate Committee. The order comprises of twelve (12) pages.