



Appeal No. PPRA/AP-47/2024
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 PAKMACO (Pvt.) Limited

...the "Appellant"

Vs.

Sui Northern Gas Pipelines Limited (SNGPL) etc.

...the "Respondent"

Date of Hearing 07.11.2024	Perzada Niaz Murtaza Qureshi (Advocate Supreme Court), Mr. Imtiaz Ahmed Ch. (Attorney), Mr. Rehan Ahmed (G.M) on behalf of PAKMACO. <p style="text-align: right;">(On behalf of Appellant)</p> Umar Sharif (Advocate / SNGPL), Mr. Nabeel Ishtiaq (Deputy Chief Officer Procurement), Mr. Mr. Zaheer Iqbal (DCE) on behalf of SNGPL <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

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

2. At the outset of hearing, the learned counsel of the appellant submitted that the respondent i.e., Sui Northern Gas Pipelines Limited (SNGPL) issued a tender enquiry / invitation to bid No.SN-4607/24 for plug valves advertised on 11.03.2024 in which the appellant and many other companies participated. It is worth mentioning here that initially the M/S ARFLU AS was declared non-compliant but subsequently, amazing to the

inflicts of the appellant and others, the non-compliant company M/S ARFLU A.S was declared the successful bidder.

3. The learned counsel of the appellant also submitted that their company participated in the said tender on behalf of M/s Flowserve GB Ltd. (SerckAudco Valves) UK. This tender was identified as critical under a Prime Minister's Directive, specifying an exceptionally tight delivery period of only 08 weeks. The Technical bids were opened on 23.04.2024, and four bids, including the appellant, were received.

4. The counsel of the appellant further submitted that the evaluation result of the tender was uploaded on the Authority's Website on 27.05.2024, according to which M/s ARFLU S.A, Spain was declared non-responsive for all items. Subsequently, the financial bid opening was scheduled for 07.06.2024. However, this was postponed until further notice. Later on, a "Revised Technical Evaluation Report" after GRC decision has been posted on the website. The appellant shocked to see that M/s ARFLU, Spain has been suddenly declared technically responsive for all items.

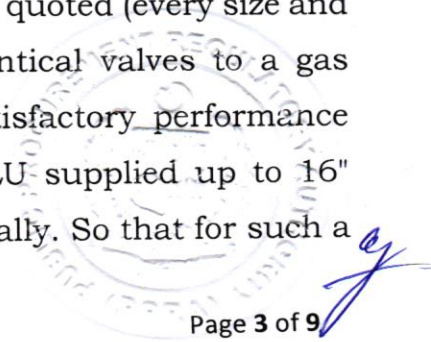
5. The counsel of the appellant further argued that M/s ARFLU Spain holds an API-6D Certificate from Spain. However, they have submitted a reference from Iran from the past five years. The reference must be within the last five years as per SNGPL tender terms. Moreover, it is relevant to mention that Iran has been under US and international sanctions since last 10 years or more, and ARFLU Spain cannot supply to Iran due to these sanctions, if they did, they would face sanctions themselves and be unable to supply SNGPL. Further submitted that M/s ARFLU Spain cannot even supply to Iran through trade houses, as this would also lead to sanctions. This implies either the reference falsified or the supply came from ARFLU's factory in China, misrepresented as a reference from ARFLU Spain. Further

added that the respondent (SNGPL) cannot engage with suppliers violating international sanctions, as it could have severe consequences for concerned.

6. The counsel of the appellant further added that, in a previous tender enquiry SN-4102/20 on 24.07.2020 the Projects Department found that M/s ARFLU had submitted fire test certificates with figure number X47W, which was also used by other bidders / manufacturers from China and thus declared their fire test certificates "ambiguous" questioning its authenticity and rejected. Similarly, in tender enquiry SN-4191/20 on 30.04.2021, the Projects Department again identified the same figure number X47W on ARFLU's fire test certificates and listed six other companies using it, confirming M/s ARFLU's association with unbranded Chinese valves, leading to their rejection once more. Moreover, as per recent Evaluation Report from the Authority's website, which shows that SSGC rejected M/s ARFLU for small size (2" & 6") Class 150 plug valves. SSGC requires new manufacturers without references to submit actual samples tested by a committee of engineers. As per our understanding, M/s ARFLU's, 2" Class 150 sample valve failed the test due to leakage. M/s ARFLU has repeatedly participated in SSGC tenders but failed to meet basic quality standards.

7. The counsel of the appellant further submitted that the Clause 12 of the Schedule of Requirements of the respondent (SNGPL) tender enquiry mandates that bidders provide references for products identical to those quoted in the tender. M/s ARFLU must prove that, for each item quoted (every size and pressure rating), they have supplied identical valves to a gas company in the past five years with satisfactory performance reports. It is implausible that M/s ARFLU supplied up to 16" Class 600 valves to any gas company globally. So that for such a



critical project under the Prime Minister's directive with a tight completion deadline, respondent (SNGPL) engaged with an unscrupulous and sub-standard supplier in the GRC process, which has been prolonged for almost two months, allowing M/s ARFLU the opportunity to fabricate references. A bidder who has been consistently failing to prove his references since 2020 to 2024 in SNGPL, failed to provide valid and authentic references during the long valuation process of this tender, now out of the blue provides shady references from Iran and is suddenly deemed acceptable. Despite these serious issues, M/s ARFLU has now been entrusted with supplying 16" Class 600 plug valves, putting lives and property at risk and jeopardizing a project of national importance.

8. The counsel of the appellant further argued and submitted that the circumstances provided an opportunity to M/S ARFLU S.A during the GRC process to provide verification of references is arbitrary and discriminatory conduct which is not allowed under the law hence declaring M/S ARFLU A.S successful bidder is not only against the Tender Inquiry No.SN-4607/24 rather is violation of national and international law. Moreover, M/s ARFLU, Spain provided verification of two (2) references from following customers during the GRC to meet clause 3.2 (b), on the non-compliance of which they were rejected earlier:-

1) Pequiven, Venezuela is a Fertilizer company and has nothing to do with Natural gas

2) Kangan Petro Refining Company, Iran is a Refining Company and again has nothing to do with Natural Gas.

9. The counsel of the appellant also submitted that, it is a basic requirement of clause 3.2 (b) that references must be for the Natural Gas service. The respondent (SNGPL) will be using these valves on high pressure natural gas service and therefore

references must also be for high pressure Natural Gas service same as that of SNGPL, in line with clause 3.2 (b), but both references have nothing to do with Natural Gas. One is a Refinery and other is a Fertilizer company. Further, the Clause 3.2 (b) requires at least 5 references from last 5 years and they have provided only 2 references. Moreover, as per the respondent (SNGPL) evaluation reports SN-4102/20 dated 24.07.2020 and SN-4191/20 dated 30.04.2021, M/s ARFLU had no figure numbering system until 2021 and their fire test certificates were showing unbranded fig no. X47W used by several other Chinese bidders. So the new figure number quoted in this tender was created and customized some time in 2022 and in this tender it has not even completed three years yet whereas clause 3.2 (c) requires the valves to be in the line of manufacturing for minimum 5 years.

10. The counsel of the appellant further submitted that during tender evaluation of SNT-2007/20, reference verification from Pequiven Venezuela had already been rejected by respondent (SNGPL) for not meeting clause 3.2(b). This is a glaring example of undue favoritism displayed towards this bidder ARFLU during this GRC, that a previously rejected reference has now been accepted against all principles of fairness and justice. In addition to the above listed deviations from clause 3.2 (b) and (c), M/s ARFLU did not meet the requirements of Clause 12 of the Schedule of Requirement regarding size, design and material of construction as offered in bid proposal. As per this clause, the said bidder was required to submit documentary evidence of supplies of exactly same size, rating and materials of Plug valves as specified in this tender. In this tender, the sizes specified were 1", 2", 4", 6", 8", 12" and 16" Class 600 Pressure balanced plug valves. However, the bidder did not provide any copies of Orders or shipping documents for these sizes and ratings of Plug Valves to meet the requirement of clause 12. This

is a blatant violation of clause 12 as all other bidders submitted copies of orders as references for each and every item of Plug Valve quoted, hence filed the instant appeal.

11. On the other hand, the learned counsel of the respondent i.e. SNGPL provided revised technical evaluation dated 24.05.2024 and 23.07.2024 of the tender called in question, along-with the decision of Grievance Redressal Committee and submitted that the technical bid of the quoted manufacturer i.e., M/s. Arflu Engineering was vetted technically responsive as the same conforms to the tendered technical specifications. Further, as per Clause-10 of Appendix-B of tender terms and conditions, there is no restriction on Imports from Iran origin. Moreover, our tender terms & condition do not restrict Iranian sales reference acceptance. Also they have successfully completed the contracts.

12. Moreover, Fire Safe Certificates for the quoted Plug Valves of M/s. Arflu are in line with Clause 15.1 of tendered technical specifications. However, with regard to objection of the Appellant concerning rejection reasons of M/s Arflu for tender SN-4102/20, it is submitted by SNGPL that previously, M/s Arflu provided irrelevant Fire safe certificates and offered plugs which were without PTFE or equivalent anti-friction coating against the tendered technical specification requirements of the same as per Clause 2.2.

13. Furthermore, with regard to rejection reasons for tender SN-4191/20, the SNGPL submitted that Fire safe certificates for plug valves furnished by the said bidder with their technical bid were issued in 2020 were not in line with Clause 15.1 of tendered technical specifications requiring a minimum service period of three years for fire-safe qualified valves enabling the bid evaluator to seek feedback and accordingly ascertain the performance of qualified valves.

14. Additionally, M/s I.A Engineering, Lahore invoked the GRC as per PPRA Rule 48. As per Rule-31 of PP Rules, 2004, GRC after due deliberation advised bidder to furnish the sale references to re-evaluate the technical evaluation.

15. During the hearing, the Committee inquired from the procuring agency about the current status of the instant procurement process. Upon this, the learned counsel of the respondent (SNGPL) apprised the Committee that the contract has been awarded to M/s I.A Engineering. The Committee pointed out that the whole of the Appellant's grievance revolves around the qualification of the said bidder (i.e., M/s I.A. Engineering, who represents M/s Arflu, Spain). Contrary to this, the Appellant did not make the necessary party / respondent to the said bidder in the instant Appeal.

16. After perusal of available record and arguments made by the all the parties, the Appellate Committee (the Committee) observed that the technical proposal was opened and announced on 23.04.2024, wherein, M/s I.A Engineering & Services (Pvt.) Ltd., Lahore was declared as "Non Responsive" against all the above quoted items by the respondent vide letter No.PUR-43(SN-4607/24) dated 27.05.2024, whereas the appellant (M/s Galli & Cassina) was declared as responsive for all the tender items. The Committee further observed that, later on, a grievance petition through email dated 05.06.2024 was filed by M/s I.A. Engineering, before the GRC (respondent No.6), against the Technical Evaluation Report dated 27.05.2024. As a result whereof, the GRC advised the procuring agency to revisit the technical evaluation based on the updated documents / sales references as per requirement of tender terms. Resultantly, M/s I.A Engineering was declared as technically compliant / responsive for all the quoted items vide revised Technical Evaluation Report dated 31.07.2024. Moreover, financial bids

were also opened on 09.08.2024 as announced by the respondent (SNGPL).

17. Further, Clause 3.2 (b) 'General Terms' of the bidding documents states that, *"the bidder offering goods of foreign origin (outside Pakistan) shall furnish references (name and address and telex / telefax number / E-mail of at least five (5) end users outside manufacturers country to whom the bidder supplied / exported goods for the last five (5) years similar to those being offered in this tender..."*.

18. Furthermore, as per Rule 30(1) of the Public Procurement Rules, 2004, all bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents.

19. The Committee observed that the instant case, at first stage, the procuring agency overlooked the technical evaluation of M/s I.A Engineering in accordance with the Rule 30(1) of the PP Rules, 2004 as well as Clause 3.2(b) of the bidding documents. Later on, by complying with the directions of the GRC of the procuring agency, the updated / detailed Sales References was reviewed by the evaluation committee and the same were found to be in line with the above-mentioned mandatory post qualification clause of the tender.

20. Moreover, the Committee is of the view that while evaluating the technical bids in the first instance, the procuring agency failed to adhere the technical evaluation of M/s I.A Engineering as per the above-mentioned clauses. Therefore, the said failure on the part of the procuring agency could not be shifted on the shoulders of M/s I.A Engineering.

21. In light of the above, the Committee is of the considered opinion that the decision of the GRC (Respondent No.6) is rightly

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justified. Hence, the Appeal in hand is hereby **dismissed** with the direction to the procuring agency (SNGPL) to make all the documents public in accordance with Rule 47 of the PP Rules, 2004, so, that the transparency may be ensured.



(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 nine (09) pages.



