



Review Petition No. PPRA/RP-51/2024
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 Rewterz Information Security

...the "Petitioner"

Vs.

Sui Southern Gas Company Limited (SSGC)

...the "Respondent"

Date of Hearing	Hafiz Muhammad Faisal Lakhani <i>(On behalf of Petitioner)</i>
10.10.2024	Barrister Sardar Taimoor Aslam Khan, Mr. M. Abdul Qayyum Baig, Mr. Ikram Mahmood <i>(On behalf of Respondent)</i>

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 ("the Committee") and furnished their arguments at length.

2. The learned representative of the petitioner submitted that the instant petition filed by their partnership firm i.e., M/s Rewterz Information Security, in the light of the directions of

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the Hon'ble High Court of Sindh, Karachi passed in a Suit No.850/2024, wherein, the Hon'ble Court directed the petitioner to avail the remedy by way of filing a Review Petition, against its blacklisting by the Respondent i.e. Sui Southern Gas Company Limited (SSGC), before the Public Procurement Regulatory Authority (PPRA) as provided under Rule 19 of the Public Procurement Rules, 2004.

3. At the outset of the hearing, learned counsel of the respondent i.e., Sui Southern Gas Company Limited (SSGC) raised preliminary objection regarding the maintainability of the instant review petition, while arguing the case, counsel of the respondent submitted that the representative of the petitioner has no authority to argue and plead the subject case on behalf of their partnership firm and no such documentary record and proof is available before the Committee regarding the authorisation of the partnership firm i.e., M/s Rewterz Information Security, hence the same is liable to be dismissed.

4. On the other hand, the representative of the petitioner also submitted that the objection regarding the maintainability of the instant review petition is totally baseless, as he has the authorisation on behalf of the partnership firm and the same will be provided to the Committee after the day of hearing.

5. In light of the above, the Committee allowed the representative of the petitioner to argue his case. Thereafter, the representative of the petitioner submitted that their firm is a Partnership Firm, specializes in Cyber Security and Cyber Incident Response. Further, the Petitioner serves Pakistan's security agencies, telecommunication companies, and other prominent corporations. He also submitted that on 02.11.2022, the Respondent No.1 (Office of the Managing Director, SSGC) advertised a tender for "Renewal of Antivirus

Software” with a closing date of 16.11.2022. The tender invited bids through Single Stage One Envelope Bidding Procedures from authorized resellers / dealers of McAfee Products in Pakistan. He further submitted that the petitioner participated in the said bidding process and submitted tender documents to respondent no. 1 & 2 on 16.11.2022, along with a bid bond of Rs. 50,000/- dated 15.11.2022.

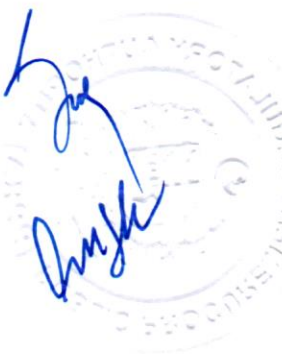
6. The representative of the petitioner further submitted that he submitted the bid, with the respondent no. 2 (Office of the General Manager, Procurement Department, SSGC) and in this regard, the respondent no. 2 issued a Letter of Intent (“LOI”) on 25.01.2023. The LOI instructed the petitioner to submit a signed and stamped second copy as acceptance within 15 days of receipt. The representative of the petitioner further argued that on 27.01.2023, the petitioner informed to respondent no. 1 & 2 through letter that they did not intend to accept the LOI at the submitted bid amount due to significant increase in the USD exchange rate and State Bank of Pakistan’s ban on import of non-essential goods. The petitioner requested to continue the project only with a revised financial quotation in USD.

7. The representative of the petitioner further submitted that respondent no. 2 sent a Final Notice (No. SSGC/12185/320) dated 17.03.2023, which the petitioner alleges misrepresented the facts. After that, a meeting was held on 22.03.2023 at respondent no. 2’s office with the petitioner's representative. The petitioner reiterated concerns about the increased USD rate and import restrictions. Moreover, on 27.03.2023 the respondent no. 02 sent an email to the petitioner at 7:57 am, which the petitioner claims misrepresented facts and requested a meeting on the same day at 11:00 am. Due to the short notice, the petitioner requested

rescheduling to 03.04.2023, and the same was accepted by the respondent No. 02. During the 3rd April meeting, the petitioner perceived that respondent no. 1 & 2 were not interested in purchasing the subject product and appeared to be creating grounds for punitive action. The petitioner requested arbitration and a meeting with senior management, but respondent no. 02 allegedly refused to arrange such a meeting.

8. The representative of the petitioner further added that on 04.05.2023, the respondent no. 01 sent a 4th reminder (Ref. No. SC/12185/958), mentioning three previous reminders (dated February 14, March 13, and April 13, 2023). It is relevant to mention that the petitioner claim's "they never received these reminders". The petitioner also noted that the respondent no. 01 & 02 failed to send these letters to him on the address provided in the Tender Documents. After some time, on 14.11.2023, respondent no. 02 issued a Final Show Cause Notice (No. SSGC/FSCN-RIS/TE-12185/23), received by the petitioner on 16.11.2023. The said notice demanded a written explanation for the petitioner's failure / default, within seven days. It warned that an unsatisfactory or absent reply could result in LOI cancellation, performance guarantee / bid bond encashment, consequential charges, and / or blacklisting / debarment under the Public Procurement Rules, 2004.

9. The representative of the petitioner further argued that they responded to the Final Show Cause Notice on 20.11.2023, explaining their position regarding the non-acceptance of the LOI. They requested initiation of an arbitration process and an opportunity for a hearing with senior management to resolve the matter amicably. After receiving the petitioner's reply dated 20.11.2023, the respondent no. 1 & 2 remained silent until March 2024. Surprisingly, on 11.03.2024, respondent issued a letter (Ref.



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No. SSGC/SC-12185/4753/697) cancelling the job against LOI No. PROC/SC/12185/4753 dated 23.01.2023. The cancellation invoked Clause 18 of the General Terms and Conditions of the Tender Documents (Default by Contractor) and forfeited the bid bond of Rs. 50,000/-. The petitioner contends that this action is illegal and contrary to the terms and conditions of Tender Documents, and argued that Clause 18 does not apply to their situation. Moreover, on the same date i.e., 11.03.2024, respondent no. 02 sent another letter (SSGC/SC-12185/696) to the petitioner regarding Blacklisting / Cross Debarment for Tender No. SSGC/SC/12185/4753/2023. Citing clauses 18 of the Tender Terms and Conditions and Rule 19(1)b of the Public Procurement Rules, 2004, they blacklisted / cross-debarred the petitioner for a period of one year, hence filed the instant review petition being aggrieved of the said blacklisting order / decision passed by the respondent i.e., SSGC.

10. On the other hand, learned counsel of the respondent submitted that the procuring Agency (SSGC) advertised local tender in local currency "The News" & "Jahan-e-Pakistan" and also uploaded on PPRA & SSGC website as per Rule 12 of Public Procurement Rules, 2004 with the opening date 16.11.2022 pertaining to Renewal of Antivirus Software. Moreover, the petitioner i.e., M/s Rewterz Information Security participated in Tendering process and submitted Bid Bond as per Rule 25 of Public Procurement Rules, 2004. The counsel of the respondent also submitted that before placement of LOI, as per Rule 35 of Public Procurement Rules, 2004, the procuring agency shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of procurement contract. Moreover, announcement was made on

SSGC and PPRA website in which the bidder / petitioner did not lodge any type of complain / grievance, after the completion of 15 days of announcement of LOI was issued. The petitioner had to fulfil the requirement mentioned in the LOI within specified period. The LOI was placed to M/s. Rewterz Information Security with valuing of Rs.2,640,000/- during the bid validity period i.e., 23.01.2023, well before the expiry of bid validity i.e., 16.03.2023.

11. The counsel of the respondent further submitted that the tender was invited locally in Pak currency, therefore, the impact of USD is not applicable. Moreover, petitioner was called upon three times dated 08th February 2023, 15th February 2023 and 22nd March 2023 in which their representative attended the meeting. Minutes were signed by all members including the representatives of petitioner except one meeting dated 03rd April 2023 i.e., 4th meeting where, the representatives of petitioner refused to sign minutes of meeting but signed the attendance sheet. Hence, this exhibit that ample opportunity of hearing were accorded to the petitioner. All the due process were adopted in accordance with Blacklisting Mechanism, which is part of tender documents and was duly signed and stamped by the petitioner.

12. The counsel of the respondent further argued that the petitioner did not accept LOI and also did not submitted Performance Guarantee and stamp papers which is essential for executing Articles of Agreement, once article of agreement is executed or signed off by the management, Arbitration / Dispute resolution clauses could have invoked. Hence, the contract has not been executed / signed between the parties therefore, the provision of arbitration is not applicable. It is relevant to mention here that regarding silent of respondent on reply of show cause, the petitioner's replied to the show cause



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notice vide letter dated 20.11.2023 was irrelevant to the show cause, the show cause was issued on 14th November, 2023 and reply was received to SSGC on 21st November, 2023 which was time barred, and in reply, the petitioner only requested to withdraw the show cause and arrange for arbitration including the increase of USD and Government of Pakistan policy to import, hence the stance of the petitioner is baseless, therefore, the instant petition is liable to be dismissed.


13. After perusal of all available record and arguments made by both the parties, the Review Petition Committee ("the Committee") observed that the appellant submitted a bid in response to an invitation by the respondent (SSGC). The appellant won the bid but, remained unable to accept the LOI without invoking force-majeure. Hence, the bidder was found guilty of not honouring his bid for which forfeiture of bid security is an appropriate penalty. Therefore, the blacklisting does not apply in this case and was wrongfully enforced by the respondent / procuring agency.

14. The Committee further observed that through letters dated 11.03.2024, the procuring agency forfeited the bid security of the bidder in addition to the blacklisting of the bidder for one (01) year. The said action taken by the procuring agency is a classic example of double jeopardy. In Pakistan, the protection against the double jeopardy is a Constitutional as well as Statutory Guarantee as defined under Article 13 of the Constitution of Islamic Republic of Pakistan, 1973.


15. Moreover, the Committee is of the considered view that, since the petitioner's company has already been penalized against non-acceptance of LOI by forfeiting his bid security. Therefore, the petitioner should not be penalized twice for the

same offence / error by imposing debarment / blacklisting for the period of one (01) year.

16. In view of the above, the blacklisting order dated 11.03.2024 passed by the respondent i.e. SSGC is hereby **set-aside.**


(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)

Note: A copy of this order is being forwarded to Director-IT, PPRA, Islamabad) for implementation of this order and to **de-list the petitioner's company i.e., M/s Rewterz Information Security** 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 of eight (08) pages.

