



No. PPRA/AP-08/2025
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
<><><>

ORDER

M/s Zari Underground Construction Services

...the "Appellant"

Vs.

Sui Northern Gas Pipeline Limited (SNGPL)

...the "Respondent"

Date of Hearing 03.06.2025 14.05.2025 09.04.2025	Mr. Jameel Hussain Qureshi (ASC), Mr. Muhammad Sajjad Ahmed (CEO) <p style="text-align: right;">(On behalf of Appellant)</p> Mr. Ahmed Ejaz Yousaf (Advocate), Mr. Rana Waleed Ali (Law Officer), Mr. Farhan Mehboob (Dy. Chief Engineer), Mr. Zeeshan Qadar (Dy. Chief Engineer), Mr. Nazakat Hussain, Mr. Asif Hayat Bhatti <p style="text-align: right;">(On behalf of Respondent)</p>
---	---

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

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

2. At the very outset, learned counsel of the appellant i.e., M/s Zari Underground Construction Services submitted that their firm is a partnership firm engaged with underground construction services including but not limited to Horizontal Directional drilling to avoid major excavation works especially across Roads, Railway lines, Rivers, Nullahs etc.

3. The counsel of the appellant also submitted that the Respondent No. 1 (i.e., SNGPL through its MD) published an



“Invitation for Bid”, for the construction of 10” Dia High Pressure Natural Gas Steel Pipeline Crossing (Kabul River) from Charsadda to Khazana through Horizontal Directional Drilling (HDD) mode in Khyber Pakhtunkhwa Province, district Peshawar, for a Bid Security of Rupees 0.5 Million with a completion period of 90 days and based on Single Stage- Two Envelope procedure. The Bid submission deadline for the Tender Enquiry No. SNGPL/NP&D/HDD/TL/01/25-01, and SNGPL/NP&D/HDD/TL/01/25-02 was 22.02.2025 and 28.02.2025, respectively. The appellant submitted its sealed bids containing technical as well as financial proposals accordingly within prescribed period. Moreover, the technical bids were opened on the same date. It is pertinent to mention here that the appellant has been providing HDD services to SNGPL for the last two decades and has successfully completed more than 90% of SNGPL HDD jobs.

4. The counsel of the appellant further submitted that, prior to the submission of bids, the appellant wrote an email to Project Director NP&D Respondent No.1 on 20.02.2025, and proposed that the project can be completed more safely with a HDD machine having 200 tons pulling capacity and the same was responded to on the same day by the respondent No.1. However, given the unsatisfactory response, the appellant through an email dated 21.02.2025, proposed the calculations for the safe pulling project which is practically feasible. In addition to that, comparison of product pipe tensile strength and pulling force of rig was provided, however, the respondent No. 1 failed to reply the same till date. Consequently, the appellant filed grievance petition before the respondent no.2 (i.e., SNGPL through its GRC) against the Evaluation Criteria specified in the bidding documents, on 26.01.2025, but the Respondent No.2 also failed to respond till date.

5. The counsel of the appellant further added that, the appellant was requested by Respondent No. 1 on 27.01.2025.

to provide the Audited Financial report for the last 3 years, in response to which the returns were submitted on 29.01.2025. After that the Respondent No. 1 declared the appellant as Non-Responsive in the technical Evaluation on the following grounds:-

- a. *In accordance to clause 9.1.9 of the subject tender, the bidder has to provide the proof of financial soundness and submit last three year audited financial statements reports but you have not met the requisite criteria.*
- b. *In accordance to clause 2.4 (ii) of the subject tender, the bidder has to prove the ownership of HDD Rig Machine having minimum of 300 tons capacity but you have not met this mandatory requirement.*

6. The counsel of the appellant also submitted that they wrote an email dated 10.02.2025 to Respondent No.1 and addressed the objections raised by Respondent No. 1, which was completely overlooked by the Respondent No.1, as is evident from their email dated 11.02.2025. Moreover, feeling aggrieved, the appellant filed grievance petition before the respondent No. 2 on 13.02.2025, wherein, the appellant contended that the grounds on which they were declared non-responsive had already been addressed. To elaborate further, in response to objection #1, the appellant has submitted the last 3 years' tax returns, and in reply to objection #2 calculation for the safe pulling process has been proposed. Subsequently, reminders were given to GRC on 17.02.2025 and 21.02.2025, but it failed to address the grievance of appellant within prescribed time period, which is a sheer violation of the Public Procurement Rules, 2004 ("PP Rules, 2004").

7. The counsel of the appellant further submitted that they requested to the respondent that the specifications and



A handwritten signature in blue ink is located in the bottom right corner of the page, overlapping the page number.

evaluation criteria outlined in the bidding documents must be altered and the bid should be re-initiated according to revised criteria and in compliance with the applicable procurement rules. Moreover, the Appellant added that the mala fide of the Respondent No. 1 is also evident from its subsequent actions wherein only one bidder was declared responsive in technical evaluation report for both bids. As a result, respondent No.1 proceeded to accept this sole bidder in the final evaluation report dated 28.02.2025.

8. The counsel of the appellant also submitted that, after a lapse of almost one month and that too upon the reminder issued by the appellant to the Respondent No.2, the Respondent No. 1 intimated the appellant through email dated 05.03.2025, that grievance committee cannot entertain the complaint of appellant on the ground of being time barred, which is factually as well as legally incorrect, and is categorically denied as the grievance was filed within the prescribed time and is not hit by any limitation. In fact the order has been passed by the grievance committee to cover up their own failure to decide the complaint/grievance of the appellant on merits.

9. At the last, the counsel of the appellant further submitted that the appellant is aggrieved and dissatisfied with the impugned order dated 05.03.2025 passed by the respondent No.2 wherein the respondent No. 2 decided that grievance cannot be entertained, being time barred without even giving any opportunity of hearing to the appellant. In fact, the impugned letter dated 04.02.2025 issued by the procuring agency / respondent No. 1 was actually received to the appellant on 06.02.2025 through email and impugned letter dated 07.02.2025 was actually received on the same day through email also, wherein the bid of the appellant was declared Non- Responsive in technical evaluation report. Therefore, the appellant prefers this appeal against the

Handwritten signature

Handwritten signature

impugned order dated 05.03.2025 passed by the respondent No.2 as well as the impugned letters 04.02.2025 and 07.02.2025 issued by respondent No. 1 as being illegal and unlawful and not maintainable in the eye of law. It is, therefore, the appellant prayed that the impugned orders dated 05.03.2025, dated 04.02.2025 and dated 07.02.2025 may kindly be set aside and this appeal may kindly be allowed.

10. On the other hand learned counsel of the respondent i.e., Sui Northern Gas Pipeline Limited (SNGPL) submitted that the grievance of the Appellant is unwarranted in as much as the Appellant knowingly that it was not qualified to participate in Tender Enquiry No. SNGPL/NP&D/ HDD/TL/01/25-01 and No.SNGPL/NP&D/HDD/TL/01/25-02 (for want of an HDD machine of 300 tons capacity) procured the tender documents from the SNGPL and submitted signed / stamped bid proposals without calling into question the eligibility parameters, evaluation criteria or any other terms and conditions prescribed in the bidding documents through the filing of a complaint / grievance petition before the opening of the technical proposal. Under Rule 30 of the PPRA Rules 2004, the bids were evaluated by the SNGPL as per the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents resultantly the Appellant was rightly declared non-responsive for the following reasons:

- i. *In accordance to Clause 9.1.9 of the subject tender, the bidder has to provide the proof of financial soundness and submit last three year audited financial statements/reports but appellant has not met the requisite criteria.*
- ii. *In accordance to Clause 2.4 (ii) of the subject tender, the bidder has to prove the ownership of HDD/ Rig Machine having minimum of 300 tons capacity but he has not met this mandatory requirement.*

11. The counsel of the respondent also submitted that SNGPL is the largest integrated natural gas public sector utility company of Pakistan and is undertaking 10 dia x 20.8 KM



A handwritten signature in blue ink is located at the bottom right corner of the page.

Charsadda - Khazana Loopline project in the province of Khyber Pakhtunkhwa. In this regard, respondent invited interested contractor companies / firms / joint ventures for pipeline laying through Horizontal Directional Drilling (HDD) from KM 7.847 to KM 8.876 having HDD machine of minimum 300 tons capacity. Further, firstly as per **Clause 2.4 i.e., Mandatory Qualification Requirements**, the Contractor / firms must fulfill the minimum technical criteria for participation and secondly the contractor / bidder must have an ownership of HDD / Rig Machine having minimum of 300 tons capacity.

12. The counsel of the respondent further submitted that the Appellant has no cause of action since a mere proposal for the use of a 200 tons pulling machine instead of a 300 tons Machine (prescribed in the bid documents) is inconsequential. Even otherwise, the said proposal was rejected by the SNGPL through an email dated 20.01.2025 (before the submission of the bids) yet, a complaint before the GRC and the instant Appeal has been preferred based on the said proposal of using an HDD 200 Ton Pulling Machine as opposed to the terms of the bidding documents. Needless to mention the bid documents submitted by the Appellant contained the requirement of a 300 tons machine to which the Appellant had committed to comply. Moreover, the complaint filed by the Appellant before the Grievance Redressal Committee was patently time-barred as the results of the technical evaluation for Enquiry No. SNGPL/NP&D/HDD/TL/01/25-01 were uploaded on the PPRA's Website on 31.01.2025 and for Enquiry No. SNGPL/NP&D/HDD/TL/01/25-02 on 06.02.2025, however, the complaint was filed on 13.02.2025 which was beyond the period of 7 days prescribed under Rule 48(3) of the PP Rules, 2004.

13. The counsel of the respondent further added that the correct dates for bid submission were 22.01.2025 and

28.01.2025. The Appellant submitted signed and stamped bids on 22.01.2025 and 28.01.2025. Moreover, through e-mail dated 20.01.2025 it was proposed on the Appellant's behalf that the job mentioned in Tender enquiry can be performed with a HDD machine of 200 tons pulling machine, however, an instant reply was made to the said e-mail by the respondent / SNGPL, wherein, it was mentioned to unequivocal terms that "Please observe / ensure the compliance of Tender documents". According to the said reply, the Appellant submitted the bid documents without pressing the issue any further.

14. The counsel of the respondent also submitted that the requirement, under Clause 9.1.9 of the tender documents, was to submit the last three years audited financial statements / reports and not tax returns, therefore, it became one of the reasons for the rejection of the Appellant's bid under Rule 30 of the PP Rules, 2004. The bids were to be evaluated as per the terms and conditions of the bidding documents. The Appellant's stance was that instead of the last three years audited financial statements (mentioned in Clause 9.1.9 of the tender documents) tax returns be accepted and instead of proving ownership of 300 tons pulling machine calculations made by the Appellants for getting the job done through a machine of 200 Tons pulling capacity be considered. Needless to mention that the Public Procurement Rules, 2004 does not permit any such deviation, hence, request for dismissal of the instant appeal.

15. During the course of hearing, the Committee inquired from the counsel of the respondent (SNGPL) about the mode of procurement, either it was conducted / processed manually or electronically. Upon this, the counsel of the respondent company apprised that it was conducted manually. Upon this, the Appellate Committee is of the view 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.

16. After perusal of all relevant record and arguments made by both the parties, the Committee observed that Clause 2.4 of the bidding documents stipulated a mandatory qualification requirement that, each participating bidder must demonstrate ownership of a Horizontal Directional Drilling (HDD) rig machine with a minimum pulling capacity of 300 tons. In the instant case, instead of complying with this express requirement, the appellant submitted an email dated 20.01.2025 proposing the execution of the work with a 200-ton rig machine. This proposal was explicitly responded to by the respondent on the same day, instructing the appellant to “please observe / ensure the compliance of tender documents.” Thereafter, the Appellant submitted the bid without pressing any further issue.

17. The Committee also observed that, the appellant submitted signed and stamped bids for Tender Enquiry No. SNGPL/NP&D/HDD/TL/01/25-01 and Tender Enquiry No. SNGPL/NP&D/HDD/TL/01/25-02 on 22.02.2025 and 28.02.2025, respectively, which constitutes an implied acceptance of all terms and specifications of the tender, including mandatory technical and financial qualifications. The appellant was at liberty to challenge any clause, specification, or condition found to be non-compliant with procurement rules by filing a pre-bid grievance under Rule 48 of the PP Rules, 2004. Having failed to do so, the appellant is now challenging the same at this belated stage, which is not tenable in the eye of law.

18. The Committee further observed that under Clause 9.1.9 of the tender documents, bidders were required to submit audited financial statements for the last three years. However,

the appellant submitted tax returns, which are not a substitute for audited accounts and constitute a material deviation from the mandatory requirement. The respondent, therefore, rightly justified by declaring the appellant's bid non-responsive on this ground.

19. Furthermore, Rule 29 "Evaluation criteria" of the PP Rules, 2004 explicitly defines that the procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated. Such evaluation criteria shall form an integral part of the bidding documents. Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement. In the light of the said rule, formulation of the evaluation criteria is the prerogative of the procuring agency.

20. The Committee further observed that as per the record, the respondent i.e., SNGPL disqualified the appellant in both the tenders having enquiry No. SNGPL/NP&D/HDD/TL/01/25-01 and No. SNGPL/NP&D/HDD/TL/01/25-02. The respondent also communicated the decision of the appellant's disqualification in both the enquiries through separate letters bearing No.NP&D/02(19625) dated 04.02.2025 and No. NP&D/02(19632) dated 07.02.2025. In this scenario, the Appellant was required to file two separate Appeals before this Authority against each of the said enquiries. However, being aggrieved, the Appellant filed a single Appeal which is contrary to the procurement legal framework and against the spirit of Rule 48 of PP Rules, 2004 and the regulations made thereunder.

21. At the very last, the Committee is of the view that the appellant submitted tax returns instead of audited financial statements and proposed the use of a 200-ton HDD rig machine supported by own technical justification. It is an



established principle of procurement law that bidding criteria must be applied uniformly and any deviation from mandatory requirements undermines the transparency and fairness of the process. The specifications were clearly mentioned in the tender, and the appellant was under an obligation to strictly comply with. However, the appellant accepted the terms without challenging the same prior to bid submission.

22. For what the observations mentioned above, the appeal in hand is hereby **dismissed being devoid of merit**, hence disposed of accordingly.


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


(Sheikh Afzal 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 Appellate Committee. The order comprises of ten (10) pages.

