



No. PPRA/AP-24/2025
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 EMCO Industries Limited

...the "Appellant"

Vs.

Peshawar Electric Supply Company (PESCO)

...the "Respondent"

| Dates of Hearing | |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 21.07.2025 15.07.2025 | Barrister Ali Mardan Khichi, Mr. Salem Rehman (CEO), Mr. Saqib Aziz (GM), Mr. Fahad Rasheed (DGM) <i>(On behalf of Appellant)</i> |
| | Mr. M. Hanzala (Advocate), Mr. Sheraz Ullah (DM Proc.), Zafar Ali (Manager Proc.) <i>(On behalf of Respondent)</i> |

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004
AGAINST THE DECISION OF THE GRIEVANCE REDRESSAL COMMITTEE

TENDER NO. CEx/PMU/STG/PSDP/DW/2024-25/20 FOR 44 SETS OF 132 KV
BUS ISOLATORS (LOT-I)

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 very outset, the learned counsel of the appellant i.e., M/s EMCO Industries Limited submitted that their firm was established in 1954, and has been involved in the manufacturing and supply of electricity distribution material since 1972. Throughout the decades, the Appellant

has been at the forefront to indigenize products for use in the power sector and has been duly recognized as a 'Local Manufacturer'. Further, the Appellant is a well-reputed and widely recognized provider of reliable, high-quality Disconnect Switches / Isolators in Pakistan.

3. The counsel of the appellant also submitted that the Respondent i.e., Peshawar Electric Supply Company (PESCO) issued an invitation to bid for Tender No. CEx/PMU/STG/PSDP/DW/2024-25/20 for 44 sets of 132 kV Bus Isolators (Lot-I) (hereinafter referred to as ("the subject Tender")). The last date of bid submission was 11.02.2025 at 10:30 AM. Accordingly, the Appellant submitted its bid on 10.02.2025. The Respondent / PESCO vide its letters Nos. C.E (Dev)/4931-36 and C.E (Dev)/ 4937-41 dated 10.04.2025 after completion of its internal technical evaluation, declared the Appellant as "Technically Responsive".

4. The counsel of the appellant further submitted that the respondent (PESCO) raised no objections upon the Appellant in its initial independent review of the Appellant's bid. Another bidder, i.e., M/s Shahzad Enterprises had also been declared "Technically Responsive" in these letters. The financial bid of the subject Tender was to be opened on 18.04.2025. Moreover, the respondent vide its letter dated 17.04.2025, informed the Appellant that M/s Shahzad Enterprises had submitted grievance against the subject tender, hence, the opening of the financial bid scheduled for 18.04.2025 had been suspended till the finalization of the said grievance by the Grievance Redressal Committee ("GRC").

5. The counsel of the appellant further added that, in light of said, the Appellant tried to inquire about the contents of the grievance from the respondent, but was denied and the respondent has never formally communicated the contents of the grievance by M/s Shahzad Enterprises. In fact, the

Appellant has till date only been verbally communicated fragments of the information in the said alleged grievance to PESCO.

6. The counsel of the appellant also submitted that, thereafter, two representatives of the Appellant visited the respondent department on 22.04.2025, and received verbal confirmation from PESCO representatives that their submissions were satisfactory. To reinforce its position, the Appellant submitted further written clarifications vide letter dated 25.04.2025. The Appellant sent another letter dated 16.05.2025 to reiterate its position.

7. The counsel of the appellant further submitted that, surprisingly, the Appellant received a letter from the respondent (the "GRC Order") dated 22.05.2025 wherein, the Appellant was informed that as per findings of GRC, the Appellant's firm i.e., M/s EMCO Industries Limited stands "non-responsive" and the grievance of M/s Shahzad Enterprises is accepted by the GRC. Subsequently, vide letter dated 23.05.2025, PESCO informed the Appellant that the financial bid would be opened on 29.05.2025, and that the Appellant had been declared 'Non-Responsive' for the Subject Tender.

8. The counsel of the appellant further added that, before approaching any forums of appeal, the Appellant wrote another letter dated 27.05.2025 to the respondent, indicating the violations of law involved and demanded an immediate cessation of the illegal tender proceedings. The respondent has till date, not replied to or acted upon this letter.

9. At the last, the counsel of the appellant also submitted that the GRC Order, consisted entirely of two short paragraphs, is non-speaking, provides no details of the proceedings, and expresses no reasons for declaring the

Appellant as "Non-Responsive". Hence, filed this instant Appeal.

10. On the other side, learned counsel of the respondent i.e., Peshawar Electric Supply Company (PESCO) submitted that the appellant (EMCO) has failed to satisfy the essential legal requirements for invoking the appellate jurisdiction of this Authority with respect to either Lot, as no specific jurisdictional error or legal infirmity has been challenged in the impugned decision of the Grievance Redressal Committee (the "GRC") which was rendered after affording full opportunity of hearing and after thorough examination of all relevant documents and technical specifications for each lot separately. Moreover, the respondent's GRC decision declaring the Appellant technically non-responsive is lawful, justified, and in strict compliance with the PP Rules, 2004.

11. The counsel of the respondent also submitted that the tender process was conducted strictly in accordance with the Single-Stage Two-Envelope procedure under PP Rules, 2004. The opening and evaluation of bids, including EMCO's, was transparent, and no procedural irregularity occurred. Moreover, the appellant was formally notified regarding the grievance submitted by M/s Shahzad Enterprises and the respondent discharged its duty of fair notice as per the grievance redressal framework.

12. The counsel of the respondent further submitted that the appellant was heard on multiple occasions i.e., 09.04.2025 and 22.04.2025, was fully informed of the grievance, and submitted a comprehensive written response dated 25.04.2025. This establishes that the firm was granted full opportunity of hearing, thereby meeting principles of natural justice.

13. The counsel of the respondent also submitted that, after detailed review of submissions and hearings, the GRC



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declared the appellant non-responsive due to its failure to furnish two performance certificates for similar contracts as mandated under ITB-45(B). This decision was reasoned, lawful, and communicated to the bidder. Moreover, appellant's allegation of a non-speaking order is incorrect, the decision explicitly states the grounds for rejection and was not arbitrary.

14. At the last, the counsel of the respondent also submitted that the appellant manufactured some components locally, it sources critical components (disconnecter and earth switches) from a Chinese firm, M/s Teiling City Century Electric Power Equipment Co. Ltd., establishing that the supply is not fully indigenous. Furthermore, the appellant applied as a manufacturer and thus had to meet ITB-44(i) and 45(B) requirements i.e., five years manufacturing experience and three years supply record with up-to-date performance certificates. The provided certificates from 2021 and 2023 do not establish recent operational proof and type tests from 2024 are insufficient to satisfy the distinct requirement of operational performance, hence, the instant appeal lacks merit and deserves dismissal.

15. After perusal of all relevant record and arguments made by both the parties, the Appellate Committee observed that, it is an admitted fact that the appellant was initially declared "Technically Responsive" by the respondent through letter dated 10.04.2025. However, prior to opening of the financial bids, a grievance was lodged by M/s Shahzad Enterprises, which led to the suspension of the financial bid opening process. Moreover, the record reflects that the appellant was not formally provided with a copy or detailed contents of the grievance filed by M/s Shahzad Enterprises, which significantly limited its ability to respond adequately.

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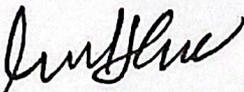
16. The Committee also observed that as per the respondent's contention, the Appellant was declared non-responsive on the ground of failing to submit two valid performance certificates for similar contracts, as required under ITB-45(B), which mandates evidence of five years of manufacturing experience and three years of supply record supported by up-to-date performance certificates. In this context, the Committee also examined NTDC's official communication vide letter No. CED/NTDC/MSG/1864-95 dated 04.02.2021, which establishes that the latest approved specification for Disconnectors and Earthing Switches is P-249:2020. This specification supersedes and replaces all previous specifications including P-128:2011, P-173:83, and the 500kV Disconnectors draft, along with all associated amendments.

17. The Committee further observed that the latest NTDC specification for Disconnectors and Earthing Switches P-249:2020 was officially notified through NTDC's letter dated 04.02.2021. Given that this specification came into effect in 2021, so that, it seems to be illogical to require the submission of two performance certificates for similar contracts based on this specification covering the past five years as of 2025. In the present case, the Appellant has submitted two performance certificates under the earlier specification P-128, as well as one certificate under the current specification P-249. Therefore, the requirement for five years of performance data under a specification introduced only four years prior appears unjustified and technically untenable.

18. At the last, the Appellate Committee noticed that the GRC's order dated 22.05.2025 is a non-speaking and devoid of any cogent reasoning. It neither outlines the procedural steps undertaken during the grievance proceedings nor specifies the grounds or deficiencies in the Appellant's technical documentation that led to the declaration of non-

responsiveness of the Appellant. This lack of clarity and justification is inconsistent with the requirements of due process and fair applicability of PP Rules, 2004.

19. For what the reasons and observations mentioned above, the appeal in hand is **allowed**, and the GRC's decision dated 22.05.2025 passed by the respondent is hereby **set aside**.


(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 Appellate Committee. The order comprises of seven (07) pages.

