

No. PPRA/AP-23/2026
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 Tariq Electric (Pvt.) Ltd.

...the "Appellant"

Vs.

Faisalabad Electric Supply Company (FESCO), & another

...the "Respondents"

<u>Date of Hearing</u> 08.07.2026	Rao M. Akram Khurram (Advocate), M. Usman (Dy. Manager Tech) <i>(On behalf of Appellant)</i> Mr. Taimoor Aslam Khan (ASC), Mr. Mudassar Abbas (AHC), Mr. Muhammad Usman (AD MM) <i>(On behalf of Respondent No.1 & 2)</i> Mr. Muhammad Hanzala (AHC) <i>(On behalf of Respondent No.3)</i>
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APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The Authority received an Appeal filed by M/s Tariq Electric (Pvt) Limited, through its authorized representative Mr. Muhammad Usman on 27.04.2026, under Rule 48(7) of the Public Procurement Rules, 2004. The Authority on receipt of the Appeal issued notices to M/s Tariq Electric (Pvt.) Ltd., through its authorized representative Mr. Muhammad Usman, (the Appellant); Faisalabad Electric Supply Company (FESCO), through its Chief Executive Officer (CEO), Faisalabad Electric

Supply Company (FESCO), through its Director (Material Management); and M/s MK Engineering Works, through its Chief Executive Officer (CEO) (the Respondents) wherein it was directed to appear in person or through their nominated representatives or Counsel before the Authority on 08.07.2026 before the Appellate Committee in the Committee Room of Public Procurement Regulatory Authority (PPRA).

2. On the said date of hearing (08.07.2026), the above-mentioned learned counsels and representatives of the parties appeared before the Committee and presented their arguments at length. The Respondents provided written arguments to the Committee.

3. The learned counsel for the appellant submitted that the present Appeal lies before this Honourable Authority under Rule 48(7) of the Public Procurement Rules, 2004, as the Appellant is aggrieved by the decision dated 25.03.2026 passed by the Grievance Redressal Committee (GRC). The Appeal is being filed within the prescribed limitation period under Rule 48(7) of the Public Procurement Rules, 2004.

4. The counsel for the appellant further submitted that the Appellant is a reputable and well-established engineering company engaged in the manufacturing and supply of electrical equipment, including switchgear, with extensive industry experience and full compliance with international standards, and is duly ISO 9001:2015 certified. The Appellant

is also an authorized channel partner of ABB Power and Automation (Pvt) Ltd., a globally recognized leader in electrification, automation, and industrial technologies, operating in over 100 countries with a legacy of more than 130 years. ABB has maintained a strong presence in Pakistan for over three decades, delivering advanced and reliable solutions across key industrial sectors, thereby further reinforcing the Appellant's technical capability, credibility, and commitment to quality and innovation.

5. The counsel for the appellant further submitted that Respondent No. 1 invited bids under Tender No. 2989/FESCO/DMM/DIST/2025-26 for procurement of Load Break Switches under Single Stage-One Envelope procedure. The Appellant, having fulfilled maximum eligibility and technical requirements, duly submitted its bid through EPADS through e-Pak Acquisition and Disposal System (EPADS), as required, within the prescribed time. Further submitted that vide Evaluation Report uploaded on EPAD on 02.03.2026, the Appellant's bid was declared technically non-responsive, without assigning any reasons or providing any evaluation basis. The said Evaluation Report is completely silent on the grounds of rejection, thereby depriving the Appellant of any meaningful opportunity to understand or challenge the decision. Being aggrieved, the Appellant filed a grievance before the Grievance Redressal Committee (GRC), supported by detailed submissions and documentary evidence

demonstrating full compliance with the bidding requirements and highlighting material deficiencies in the competing bidder's offer. The major non-conformance concerns the validity of type testing. Despite the Appellant's detailed submissions and appearance before the GRC, the grievance was rejected vide decision dated 25.03.2026, rather than furnishing a detailed, point wise response to our grievance submission, entirely new grounds relating to alleged non submission of satisfactory field performance of the firm, during last two years, as per required format as well as non-acceptance the delivery schedule provided in Section VI Clause 3 of bidding documents. The impugned actions are illegal, arbitrary, and contrary to settled PPRA principles on the following grounds:

i. The impugned actions of the Respondents are in clear violation of the core principles of public procurement as consistently upheld under the PPRA framework, namely transparency, fairness, equal opportunity, and objective evaluation. The failure to provide reasons in the Evaluation Report not only offends the sub clause 28.1 of the Clause 1B.28 but constitutes a direct violation of the Tender Document but offends the Rule 35 of the Public Procurement Rules, 2004, which mandates that evaluation must be transparent and capable of independent scrutiny. A non-speaking evaluation report, such as the one in the present case, is per se illegal and void ab initio, as it prevents any meaningful review or verification of the decision-making process.

ii. That the grounds relied upon by the Grievance Redressal Committee (GRC) were not part of the original Evaluation Report and have been introduced for the first time at the grievance stage, amounting to an impermissible post-facto justification. It is a settled principle of procurement law that an evaluation must stand or fall on the reasons recorded at the time of evaluation, and the GRC cannot supplement, modify, or reconstruct the evaluation

thereafter. The introduction of new grounds to justify the rejection of the Appellant's bid is therefore legally unsustainable and beyond jurisdiction. Moreover, the determination of technical non-responsiveness is neither factually substantiated nor consistent with the disclosed evaluation criteria, and thus constitutes an arbitrary and unlawful alteration of the basis of rejection, vitiating the entire procurement process.

iii. The conduct of the Respondents also violates the principle of a level playing field, which lies at the heart of the PPRA regime. While the Appellant's bid was rejected without reasons, the competing bidder's non-compliance with applicable technical standards was ignored. In particular, the Respondents failed to consider that the competitor's type test reports were based on outdated standards namely IEC 62271-103:2011, whereas the applicable standard, namely IEC 62271-103:2021, introduces updated and mandatory requirements. The failure to apply current technical standards and the selective evaluation of bids constitute material irregularities that vitiate the entire process.

iv. The Respondents failed to consider material evidence placed on record by the Appellant, including clarifications issued by NTDC vide letter # CED/NTDC/1798-1800, dated: 29-02-2024, regarding the validity of type testing and detailed technical documentation demonstrating compliance. The GRC's decision does not address or even acknowledge these submissions, reflecting a clear non-application of mind. Under established procurement principles, failure to consider relevant material renders a decision legally unsustainable.

v. The reliance placed in the impugned decision on alleged deficiencies relating to the experience format is wholly misconceived, arbitrary, and legally unsustainable. Such deficiency, even if assumed without conceding, does not constitute technical non-responsiveness within the meaning of the Public Procurement Rules, 2004. At best, it amounts to a minor and curable irregularity, which, under settled procurement principles, cannot form the basis for outright rejection of a bid. PPRA jurisprudence consistently recognizes that only material deviations affecting substance, quality, or performance of the bid may render a bid non-responsive, whereas procedural or formatting deficiencies are liable to

clarification and cannot be used to eliminate competition.

vi. The GRC has erred in concluding that the Appellant did not accept the prescribed delivery schedule. While a tentative period of 180 days was mentioned in the Schedule of Supply, the Appellant clearly confirmed in its forwarding letter No. TE-2312/FESCO-2K25 dated 23-12-2025 that "the delivery schedule is acceptable to us as per tender conditions." This amounts to an unequivocal acceptance of the required schedule. It is a settled principle that bidding documents must be read as a whole, and not in isolation. The Respondent's failure to consider this and reliance on a single entry reflects non-application of mind and selective evaluation. Consequently, the rejection of the bid on such a hyper-technical ground is arbitrary and contrary to the principles of fairness and level playing field under the PPRA framework, and is therefore liable to be set aside.

6. The learned counsel for the Respondent (FESCO) submitted that the Appeal is liable to dismissal on merits as the Appellant's bid was rightly declared technically non-responsive due to material deviations from mandatory bidding requirements. Respondent No. 1 invited bids under Tender No. 2989 / FESCO / DMM / DIST / 2025-26 through Single Stage-One Envelope procedure and the Appellant submitted its bid through EPADS within prescribed time. The Appellant has not fulfilled the mandatory eligibility and technical requirements. The Appellant's bid suffered from material non-compliances, inter alia, including:

i. failure to accept the mandatory delivery schedule of 90 days as prescribed under Section VI Clause 3 of the bidding documents, as the Appellant inserted deviation and mentioned tentative delivery period of 180 days; and

- ii. failure to submit satisfactory field performance/contractual experience in the prescribed format as required under Qualification Criteria Section-III of the bidding documents.

The bid was rightly declared technically non-responsive in accordance with applicable procurement rules and tender conditions.

7. The counsel for the Respondent further submitted that the Appellant's bid was declared technically non-responsive on account of objective and material deficiencies apparent from the bid documents themselves. The evaluation process was conducted strictly in accordance with the disclosed tender conditions and procurement framework. Further submitted that the Appellant was fully aware of the deficiencies in its bid and was subsequently afforded full opportunity before the Grievance Redressal Committee to contest the same. The Appellant failed to comply with mandatory provisions of the bidding documents relating to delivery schedule and prescribed experience/field performance format. The allegations regarding deficiencies in the bid of Respondent No. 3 are misconceived, irrelevant and beyond the scope of consideration once the Appellant's own bid was found technically non-responsive. Further added that Respondent No. 3 fulfilled the applicable tender requirements and was evaluated in accordance with the prescribed criteria.

8. The counsel for the Respondent contended that the grounds communicated by the Grievance Redressal Committee

were not "entirely new grounds" as falsely alleged. The deficiencies relating to non-submission of satisfactory field performance in prescribed format and non-acceptance of mandatory delivery schedule formed part of the original evaluation considerations and existed on the face of the Appellant's own bid documents from the very outset. The Grievance Redressal Committee merely reiterated and communicated the same deficiencies while deciding the grievance petition. It is specifically denied that the Appellant was prejudiced in any manner or that the grievance proceedings suffered from any illegality, arbitrariness or denial of fair hearing. The grievance was duly heard and decided strictly in accordance with law and the bidding documents.

9. Further added that the evaluation process was conducted strictly in accordance with the Public Procurement Rules, 2004, tender documents and applicable procurement principles. The Appellant's bid was declared technically non-responsive on account of objective and material deviations apparent from the bid itself, including non-acceptance of the mandatory delivery schedule of 90 days and failure to submit satisfactory field performance/contractual experience in the prescribed format under Qualification Criteria Section-III of the bidding documents. It is specifically denied that the evaluation process lacked transparency, fairness or objectivity. Mere allegation that detailed reasons were not reproduced in the uploaded Evaluation Report does not render the evaluation

illegal, void or non est in the eyes of law, particularly when the underlying deficiencies existed on the face of the bid documents and were subsequently communicated and reiterated during grievance proceedings before the Grievance Redressal Committee (GRC). The allegation that the Evaluation Report is void ab initio is emphatically denied. The determination of technical non-responsiveness was based upon mandatory tender conditions and material deviations which the Procuring Agency was legally bound to enforce uniformly in order to preserve fairness, equal treatment and integrity of the procurement process. Any relaxation of such mandatory conditions in favour of the Appellant would itself have amounted to violation of PPRA principles and discriminatory treatment against other bidders.

10. The counsel for the Respondent further submitted that the grounds considered and communicated by the Grievance Redressal Committee (GRC) were not newly invented grounds nor any post-facto justification as falsely alleged by the Appellant. The deficiencies relating to (i) non-acceptance of the mandatory delivery schedule of 90 days and (ii) non-submission of satisfactory field performance/contractual experience in the prescribed format existed on the face of the Appellant's bid documents from the very inception and formed part of the original technical evaluation process undertaken by the Evaluation Committee. Further submitted that the GRC neither supplemented nor

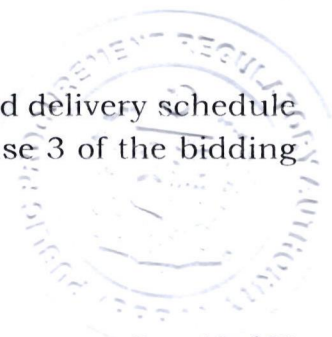
reconstructed the evaluation, but merely reiterated, clarified and communicated the very same substantive deficiencies which had rendered the Appellant's bid technically non-responsive. The Appellant is attempting to create an artificial distinction between the evaluation process and subsequent grievance proceedings, whereas in fact the material defects in the bid remained unchanged throughout. The allegation that the procurement process stands vitiated is emphatically denied. Rather, the Procuring Agency acted strictly within the framework of the bidding documents and Public Procurement Rules, 2004. Any relaxation or waiver of such material deviations in favour of the Appellant would itself have amounted to discriminatory treatment, unequal evaluation and violation of procurement principles governing fairness and transparency.

11. Further argued that the Procuring Agency conducted the evaluation process strictly in accordance with the bidding documents, prescribed qualification criteria and applicable procurement rules while ensuring equal treatment to all participating bidders. The allegation that the Appellant's bid was rejected "without reasons" has already been specifically denied. The Appellant's bid was declared technically non-responsive on account of material and objective deficiencies apparent from the bid itself, namely non-acceptance of the mandatory delivery schedule of 90 days and failure to furnish satisfactory field performance/contractual experience in the

prescribed format. The allegations regarding Respondent No. 3's type test reports and applicability of IEC 62271-103:2021 are specifically denied. Respondent No.3 fulfilled the applicable requirements of the bidding documents and was evaluated strictly in accordance with the tender / evaluation criteria. The Appellant has failed to identify any provision of the bidding documents which rendered Respondent No. 3 technically non-responsive on the alleged basis. The tender conditions did not provide any basis for automatic disqualification in the manner now being asserted by the Appellant.

12. Further submitted that the Procuring Agency and the Grievance Redressal Committee duly considered the grievance petition and material placed on record by the Appellant to the extent relevant for determination of the matter. However, the documents and clarifications now relied upon by the Appellant, including alleged NTDC correspondence regarding validity of type testing, did not and could not cure the material deficiencies contained in the Appellant's own bid which formed the basis of technical non-responsiveness. Further submitted that the Appellant's bid was rejected primarily on account of its failure to comply with mandatory tender conditions, namely:

- i. non-acceptance of the prescribed delivery schedule of 90 days under Section VI Clause 3 of the bidding documents; and



ii. failure to furnish satisfactory field performance/contractual experience in the prescribed format as required under Qualification Criteria Section-III.

13. The alleged NTDC clarification and other technical documentation relied upon by the Appellant pertain to objections sought to be raised against Respondent No. 3 and are therefore immaterial once the Appellant's own bid was found materially non-responsive. It is a settled procurement principle that a bidder whose offer suffers from material non-compliance cannot seek comparative technical scrutiny of competing bids in order to overcome defects in its own bid. The impugned evaluation and grievance decision were passed strictly in accordance with the tender conditions, procurement framework and applicable rules, and do not suffer from any legal infirmity warranting interference by this Honourable Authority. The deficiency relating to non-submission of satisfactory field performance/contractual experience in the prescribed format was neither a mere procedural lapse nor a curable irregularity as incorrectly alleged by the Appellant. Rather, the said requirement formed part of the mandatory Qualification Criteria under Section-III of the bidding documents and was directly relevant for assessing the bidder's technical capability, contractual experience and responsiveness.

14. The counsel for the Respondent contended that the bidding documents specifically required bidders to furnish field

performance/contractual experience in the prescribed format so as to enable uniform, transparent and objective evaluation of all competing bids on equal footing. The Appellant admittedly failed to provide the requisite information in the prescribed format and instead attached certain purchase orders which neither fulfilled the disclosed evaluative requirement nor provided the Procuring Agency the structured information mandated under the qualification criteria. The Procuring Agency was under legal obligation to evaluate bids strictly in accordance with the disclosed criteria and could neither reconstruct the Appellant's experience information from scattered annexures nor relax mandatory requirements selectively in favour of one bidder. Any such relaxation would have amounted to unequal treatment and violation of procurement principles governing fairness, transparency and level playing field. Further submitted that even independently of the aforesaid deficiency, the Appellant's bid was liable to rejection on account of material deviation in delivery schedule whereby the Appellant mentioned tentative delivery period of 180 days instead of the mandatory requirement of 90 days prescribed under Section VI Clause 3 of the bidding documents. Accordingly, the Appellant's bid was rightly declared technically non-responsive and the impugned decision suffers from no illegality or arbitrariness whatsoever.

15. Further submitted that the Grievance Redressal Committee rightly concluded that the Appellant failed to accept

the mandatory delivery schedule prescribed under Section VI Clause 3 of the bidding documents. The Appellant admittedly inserted a deviation in the Schedule of Supply and mentioned tentative delivery period of 180 days instead of the prescribed requirement of 90 days. Such deviation constituted a material departure from a mandatory commercial condition of the tender and rendered the bid technically non-responsive. Further argued that the operative and specific entry made by the Appellant in the Schedule of Supply cannot be overridden, diluted or neutralized by a generalized statement contained in the forwarding letter. The bidding documents are required to be interpreted harmoniously and as a whole; however, where a bidder expressly inserts a deviation against a mandatory commercial requirement in the designated schedule forming part of the bid, the Procuring Agency is legally bound to evaluate the bid on the basis of such specific declaration. Any ambiguity, inconsistency or contradiction within the bid documents is attributable solely to the bidder concerned and cannot be interpreted against the Procuring Agency. The allegation that rejection of the bid was based on a "hyper-technical" ground is specifically denied. Delivery schedule constituted a material commercial term directly affecting procurement timelines, execution planning and comparative evaluation of bids. The Procuring Agency was therefore under legal obligation to enforce the same uniformly for all bidders in order to preserve fairness, transparency and equal treatment

under the PPRA framework. Any waiver or relaxation of such material deviation in favour of the Appellant would itself have amounted to discriminatory and unlawful evaluation. Accordingly, the impugned decision is fully lawful, justified and in accordance with the bidding documents and procurement rules.

16. The counsel for the Respondent No. 3 (M/s MK Engineering Works) submitted that the Appeal impugns the Evaluation Report dated 19.01.2026 and the GRC decision dated 25.03.2026, passed in respect of Tender No. 2989/FESCO/DMM/DIST/2025-26 for procurement of 1,188 Nos. of 11KV Pole Mounted Load Break Switches for Distribution Feeder. The instant Appeal is an attempt by an unsuccessful bidder whose own bid was irreparably defective on two fatal documentary grounds to derail a lawfully concluded procurement and delay the award of a contract for the essential power distribution equipment. The Appellant filed the grievance before the GRC, and now filed this Appeal to extend the delay and thereby render the bid validity period ineffective. This conduct constitutes delay tactics that are prejudicial to the public interest in the timely supply of power distribution equipment and to the procurement integrity that PPRA is mandated to protect. The Appellant's bid was correctly declared technically non-responsive on two objective, documentary grounds both rooted in the Appellant's own

signed bid documents leaving no room for doubt, discretion, or re-evaluation.

17. The counsel for the Respondent No. 3 submitted that FESCO invited bids under Tender No. 2989/FESCO/DMM/DIST/2025-26 for 1,188 Nos. of 11KV Pole Mounted Load Break Switches for Distribution Feeder, under Single Stage One Envelope National Competitive Bidding. Bids were opened on 23.12.2025. Two firms participated: Respondent No. 3 (M/s MK Engineering Works) quoting Rs. 725,000/- per unit (total Rs. 861,300,000/-) and the Appellant (M/s Tariq Electric) quoting Rs. 745,000/- per unit (total Rs. 885,060,000/-). Respondent No. 3's bid was lower by Rs. 23,760,000/-. The Technical Evaluation Committee constituted vide office letter No. 14421 dated 31.01.2023 and comprising Chief Engineer (TS) as Convener, Director (MI) TS, Deputy Director (Project Financing) PMU, Deputy Director (S&D), Deputy Director (Audit), and Assistant Director (Design) Distribution as members evaluated both bids against the criteria in Section III of the Bidding Document. Respondent No. 3 was found commercially and technically responsive on all counts and declared the Most Advantageous Evaluated Bidder. The Appellant was declared technically non-responsive on two grounds that are directly established by its own signed bid documents.

18. The counsel for the Respondent further submitted that the Appellant, aggrieved by the evaluation report, filed GRC complaint (06.03.2026), and now this Appeal (23.04.2026) each action calculated to extend the delay and render the bid validity period a nullity. This Honourable Authority is respectfully urged to note this pattern and ensure that the delay caused by litigation is not permitted to prejudice the procurement process or benefit the Appellant. That in its GRC complaint, the Appellant raised four allegations against Respondent No. 3 under the heading Ineligibility of Competing Bidder Under Technical Deficiencies of Tender Criteria. Further argued that at the outset that all four allegations are misconceived, inapplicable to the terms of the Bidding Document, factually incorrect, or wholly irrelevant to the evaluation criteria. Significantly, not a single one of these allegations caused any adverse finding against Respondent No. 3 whose bid was declared Technically Responsive after full examination by the Evaluation Committee.

Allegation I. ABB OEM Presence/Local Service Office, Not Part of Bidding Documents

19. The Appellant alleged in its GRC complaint that it is offering ABB equipment with a local service office and OEM presence in Pakistan, and that FESCO should require OEM presence (via NTDC/NGC practice) for all new products, which is not possible for other bidders. This allegation is entirely non-maintainable for the following reasons:

i. This requirement does not form part of the Bidding Documents. Neither the Evaluation and Qualification Criteria (Section III), nor the Technical Specifications, nor the Instructions to Bidders (Section 1) contain any condition regarding OEM presence in Pakistan, local service office, or NTDC/NGC practice for new products. A bidder cannot import requirements that do not exist in the Bidding Documents to challenge a competitor. Evaluation must be carried out strictly on the basis of criteria specified in the Bidding Documents as mandated by Rule 35 of the Public Procurement Rules, 2004.

ii. For the record, Respondent No. 3 is the duly authorized sole agent/channel partner of the manufacturer, M/s Wenzhous Rockwill Eclectic Co., Ltd., China, in Pakistan, as evidenced by the Manufacturer's Authorization Letter (MAL) duly submitted with the bid. The Appellant's suggestion that Respondent No. 3 lacks OEM authorization is factually wrong.

iii. The product offered by Respondent No. 3 is not a new or untested product. The Respondent no. 3 manufacturer has recently supplied the same material to K-Electric, a major distribution company in Pakistan, as evidenced by the Purchase Order issued by K-Electric. This conclusively demonstrates that the product has an established supply record in Pakistan's power distribution sector.

iv. The Appellant's argument about OEM presence being 'really important for FESCO' is nothing more than an attempt to promote its own product offering (ABB) by importing extraneous criteria into the evaluation. This is precisely the kind of anti-competitive conduct that the PPRA framework is designed to prevent.

Allegation ii. Complete Package, Support Structure, Operating Sticks, Training

20. The Appellant alleged that it offers a 'complete package' to FESCO including support structure suitable for

poles, operating sticks, and training of FESCO team from OEM, which the Appellant suggests is required for introduction of new equipment. This allegation is equally misconceived:

i. As established above, the Respondent No. 3's product is not new in the Pakistani market. The same material has been supplied to K-Electric with satisfactory performance. The premise of this allegation that the product is a new introduction is factually incorrect.

ii. More importantly, there is no requirement in the Bidding Documents for any bidder to provide support structures for poles, operating sticks, or team training as part of this supply contract. The tender is for the supply of Load Break Switches. Accessories and training programmes that are not part of the scope of supply cannot be imported as evaluation criteria.

iii. Respondent No. 3 has in fact given a presentation to FESCO's technical team regarding its offered product, demonstrating full technical capability and product familiarity. Respondent No. 3 remains ready and willing to provide any technical assistance, demonstration, or support that FESCO may require either at the time of prototype approval or during the supply period.

iv. The Bidding Document does not disqualify a bidder for not offering ancillary items that are outside the scope of tender. The evaluation is on the basis of the criteria specified and Respondent No. 3 meets all of them.

Allegation iii. DDS-103 Clause 6.4 30-Year Life and ON/OFF Visibility Wrongly Stated and Inapplicable

21. The Appellant alleged that DDS-103 clause 6.4 requires a 30-year product life and that the ON/OFF position of the Load Break Switch must be mandatory visible during lifetime, which (the Appellant claims) is possible only with its

ABB product due to glass window and sulfur coating. This allegation is factually incorrect and legally inapplicable:

i. The Evaluation Committee comprising qualified electrical engineers including the Chief Engineer (TS) examined both bids against the applicable specification DDS-103:2013. It found Respondent No. 3's product fully compliant and technically responsive. The Appellant's attempt to reinterpret a technical specification to disqualify a competitor, after the Evaluation Committee has already found otherwise, is not a legitimate ground of appeal.

ii. Importantly, the Appellant's own product is the ABB product manufactured by Wenzhou Rockwill Electric Co. Ltd., China. The type test certificate attached to the Appeal (KEMA/DNV-GL Declaration, July 2017) shows this product was tested under IEC 62271-103 (2011). If the Appellant's own product was type-tested under IFC 2011, it cannot credibly argue that IEC 2011 type tests render a competitor non-compliant.

iii. The technical compliance of Respondent No. 3's product with DDS-103:2013 was affirmatively verified by the Evaluation Committee.

Allegation iv. NTDC/NGC Type Test Within 5 Years Not Applicable; Bidding Document Provides Its Own Mechanism

22. The Appellant alleged that NTDC/NGC requires all type tests to be conducted within 5 years from the date of tender (citing NTDC letter CED/NTDC/1798-1800 dated 29-02-2024), and that MK Engineering's product's type test was conducted in 2018 under IFC 62271-103:2011, thereby violating this requirement. This allegation is inapplicable and legally untenable for the following decisive reasons:

i. The NTDC circular CED/NTDC/1798-1800 dated 29-02-2024 is an internal administrative clarification issued by the Chief Engineer (SS Design) NTDC regarding type test validity under NTDC's own specification P-44:2018 for NTDC's own procurements. FESCO is not NTDC. **This procurement is governed by WAPDA/PEPCO Specification DDS-103:2013 and the Public Procurement Rules, 2004 not NTDC's internal circulars.** An NTDC administrative instruction has no force in a FESCO/WAPDA procurement conducted under different governing specifications.

ii. The Bidding Document itself prescribes its own complete mechanism for prototype approval in Section III Clause 2. The relevant extract is set out below. This clause, and not any NTDC circular, is the contractually binding standard:

SECTION III CLAUSE 2: PROTOTYPE APPROVAL (AS APPLICABLE)

"(a) The material shall conform to WAPDA/PPMC instructions/specification (Amended to date). (b) In case of expiry of prototype approval during the currency of purchase order/contract, you have to obtain the fresh prototype from the office of Chief Engineer (S&S) NTDC Lahore before start of mass production. Drawings and prototype sample for prototype testing shall be submitted within thirty (30) days from the expiry of prototype approval to Chief Engineer (S&S) NTDC Lahore. Chief Engineer (S&S) NTDC Lahore will accord approval of offered prototype within thirty (30) days from the date of receipt of prototype sample. All expenses including Testing Charges, Traveling, Boarding/Lodging and Daily Allowance etc. of two (2) WAPDA/PPMC Engineers shall be borne by the manufacturers. The prototype approval obtained by the firm more than three years back from the date of opening of the tender will not be accepted."

iii. Respondent No. 3, in full compliance with Section III Clause 2 of the Bidding Document, attached a formal undertaking with its bid in the following terms: 'We M/s MK Engineering Works and our

Manufacturer M/s Wenzhou Rockwill Eclectic Co., China undertake that in case of award of above subjected tender we hereby confirm to obtain prototype approval of the office of Chief Engineers (S&S) NTDC at our Expense without effecting on delivery period. This undertaking is precisely the mechanism prescribed by the Bidding Document. Respondent No. 3 has complied with the contractually prescribed prototype approval requirement.

iv. The prototype approval validity criterion in Section III Clause 2 is three (3) years from the date of opening of tender not five (5) years as the Appellant seeks to import from the NTDC circular. The Appellant is applying an inapplicable and more stringent standard to a competitor to manufacture disqualification where none exists.

v. The Evaluation Committee examined Respondent No. 3's undertaking and prototype compliance and found the bid technically responsive. The GRC confirmed no irregularity. These findings on a technical matter by qualified engineers deserves deference and should not be disturbed on the basis of an inapplicable NTDC circular.

23. The counsel for the Respondent further submitted that Section VI Clause 3 of the Bidding Document prescribes a mandatory tentative delivery schedule of 90 days from the date of issuance of the purchase order, for 100% of the tender quantity. This is a fixed, non-negotiable condition of the tender. The relevant clause extract is reproduced below for the ready reference of this Honourable Authority:

SECTION VI CLAUSE 3: DELIVERY PERIOD AND COMPLETION SCHEDULE

"The Delivery schedule will commence from the date of issue of purchase order instead of date of opening of Letter of Credit/approval of

prototype: Tentative Delivery Schedule within: 90 Days Quantity: 100% Delivery period is the essence of the contract and delivery must be completed not later than the dates specified."

The Appellant, upon receiving the Schedule of Supply form, physically struck through the prescribed figure of 90 days and wrote in its own handwriting: "deviation = 180 days from the date of PO." It then signed and stamped this form and submitted it as part of its formal bid. This is not an oversight, not an ambiguity, and not a formatting error. It is a deliberate, signed, and stamped alteration of a mandatory bid condition.

This act constitutes a violation of the Bidding Documents on multiple levels:

i. First, the Bidding Document does not permit any bidder to introduce deviations in the delivery schedule. The Schedule of Supply form is a prescribed mandatory form it sets out the fixed schedule and requires the bidder to sign and stamp it in acceptance. There is no provision in the Bidding Documents that allows a bidder to cross out the prescribed period and write a different period. The Bidding Document does not contemplate conditional acceptance or a 'deviation' column for delivery schedule. By unilaterally altering the prescribed schedule, the Appellant violated the fundamental structure of the bid.

ii. Second, the deviation introduced 180 days against 90 days is a 100% deviation on delivery period. This squarely falls within the definition of a material deviation under IB 30.2, as it affects in a substantial way the scope and performance of the goods and directly impacts the operational requirements of the procuring agency. FESCO procured these Load Break Switches for its distribution feeders a delayed supply directly affects electricity distribution operations.

iii. Third, IB 30.3 is explicit and unambiguous: a bid declared non-substantially responsive may

not subsequently be made responsive by correction or withdrawal of the non-conforming deviation. The Appellant's attempt through its covering letter and now through this Appeal to 'cure' a deviation that was deliberate, signed, and physically inscribed on a mandatory bid document must fail in law.

IB 30.2 MATERIAL DEVIATION: "A substantially responsive bid is one which (i) meets the eligibility criteria; (ii) has been properly signed; (iii) is accompanied by the required Bid Security; and (iv) conforms to all the terms, conditions and specifications of the Bidding Documents, without material deviation or reservation. A material deviation or reservation is one (i) which affects in any substantial way the scope, quality or performance of the Goods; (ii) which limits in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract..."

IB 30.3 IRREVOCABILITY OF NON-RESPONSIVE BID:

"If a bid is not substantially responsive, it will be rejected by the Purchaser, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation".

24. The Appellant now relies upon a general statement in its covering forwarding letter (Ref. TE-2312/FESCO-2K25 dated 23-12-2025) which reads: "The delivery schedule is acceptable to us as per tender conditions. This argument is untenable. The covering letter is a general boilerplate communication. The Schedule of Supply form is the specific, designated, mandatory document for recording delivery schedule. A general statement in a covering letter cannot override a specific, contrary, and deliberate entry in a

mandatory schedule form. The principle that specific terms prevail over general terms is settled. Moreover, the covering letter does not reference, retract, or qualify the 180-day entry. It does not say 'notwithstanding the deviation marked in the Schedule of Supply, we commit to 90 days'. It is simply irrelevant.

25. Further added that the bidder proposed a delivery period of 180 days, which constitutes a material deviation from the prescribed terms and reflects non-acceptance of a fundamental condition of the tender. These findings, made by qualified engineers and an independent committee on the basis of the Appellant's own signed documents, are correct and unimpeachable.

**THE BLANK FIELD PERFORMANCE FORM
(TOTAL ABSENCE OF MANDATORY QUALIFYING
EXPERIENCE)**

Section III Clause I (Contractual Experience) of the Evaluation and Qualification Criteria is a threshold eligibility requirement. Its relevant extract is reproduced below:

CONTRACTUAL EXPERIENCE

"The bidder must be registered / prequalified from WAPDA/PPMC/NTDC/DISCOS as Manufacturer/General-Order-Supplier/Stockiest. The bidder must attach Satisfactory field performance of the firm against educational/regular purchase order(s) during last two years as per given format."

[Prescribed format:

Name of DISCO | PO No. & Date Description of
Material Qty on Order Delivery Schedule Qty

Supplied to Date / Date of Supply | Balance Qty/
Material Supplied in Time | Material Supplied with
Delay | Remarks]

26. Further submitted that the Appellant submitted this mandatory qualification form completely blank not a single entry has been made in any column. No DISCO is named. No purchase order is referenced. No supply history is recorded. This means the Appellant has provided zero evidence of any field performance with any DISCO during the requisite two-year period. A blank form is legally indistinguishable from non-submission and cannot be dressed up as 'compliance with a different format.' That Contractual experience is not a preference it is a mandatory eligibility threshold that every bidder must satisfy. An empty form does not satisfy the requirement of 'attaching satisfactory field performance.' The Bidding Document is explicit on the consequences:

IB 30.1(ii) EVALUATION OF EXPERIENCE PURCHASER'S RIGHTS

*"The evaluation of various experience criteria shall be done on the basis of certificates (issued by Order Placing Authority clearly indicating the date of issue) submitted by the Bidder. **It is not obligatory on the part of the Purchaser to seek any clarification or ask for submission of any certificate towards experience in case required documents are not enclosed with the Bids.** The Purchaser will not be responsible if the Bid is considered non-responsive and rejected in the absence of such certificates."*

The Bidding Document thus explicitly removes any obligation upon the procuring agency to seek clarification or supplementary submission. The Appellant's argument that this was a minor or curable irregularity is directly contradicted

by the express terms of the Bidding Document itself. Under IB 30.3, a non-substantially responsive bid may not subsequently be made responsive.

27. In contrast, Respondent No. 3 submitted its field performance record in the complete prescribed format with full entries demonstrating its contractual experience with relevant DISCOs during the last two years. The disparity between the two bidders on this ground is absolute and documentary.

28. Further submitted through supplementary written note on the question of expired type test report that during the hearing, this Honourable Authority directed Respondent No. 3 to address the Appellant's contention under Section III Clause 2(b) of the Qualification Criteria, read with NTDC circular CED/NTDC/1798-1800 dated 29-02-2024, that the 'type test' of Respondent No. 3's manufacturer was 'expired' at bid submission, rendering its bid non-responsive. This Note answers that question. The Revised NTDC Type Test Policy (approved by the NTDC Board of Directors on 20.01.2023, notified vide No. NTDC/CS/2730-35 dated 03.02.2023).

Issue:

Whether the Appellant's argument that MK Engineering's 'type test' was expired at the time of bid submission renders its bid non-responsive under Section III Clause 2(b) of the Bidding Document?

29. That the answer is an unequivocal No, for four short reasons: (a) the Appellant has conflated a type test with

a prototype approval, which are entirely different things; (b) the Bidding Document does not require any type test at the bid stage, and Clause 2(b) is a contract-stage provision fully satisfied by MK Engineering's undertaking, exactly as FESCO itself communicated; (c) the NTDC circular relied upon by the Appellant pertains to different equipment and does not apply to this tender; and (d) without prejudice, under Clause 2.3 of the Revised NTDC Type Test Policy 2023 a type test never expires by mere lapse of time, so the type test of Respondent No. 3 is not expired in any case.

A. TYPE TEST AND PROTOTYPE APPROVAL ARE DIFFERENT THINGS

30. That the Appellant's entire case rests on using 'type test' and 'prototype approval interchangeably. They are not interchangeable:

Parameter	TYPE TEST	PROTOTYPE APPROVAL
What it is	A laboratory test of a sample design against a NGC Standard, technical standard (e.g. IEC 62271-103, DDS-103), conducted by an accredited laboratory (KEMA, CPRI, HV & SC Lab Rawat, etc.).	A physical inspection, testing and approval of a prototype unit by Chief Engineer (S&S) NTDC Lahore for a specific purchase order, before mass production for that order.
When	Once, at the manufacturing stage. under Clause 2.3 of the Revised NTDC Type Test Policy 2023, it remains valid with no time-based expiry.	After award of each purchase order, i.e., during the currency of the contract.

Bid-stage requirement	None. The Bidding Document (IB 11.1 and the list at page 80 of 80) does not list any type test report as a mandatory bid document.	None. Only an Undertaking to obtain prototype approval after award, which MK Engineering duly submitted.
Governing provision	No clause of the Bidding Document. The NTDC circular relied upon by the Appellant governs different equipment (P-44:2018) in NTDC procurement.	Section III Clause 2, titled 'Prototype Approval (where applicable), and Clause 2(b) operates only 'during the currency of purchase order/contract.'

That the Appellant relies on a circular about type test validity to allege non-compliance with a clause about prototype approval. One cannot determine the other. This conflation alone is fatal to the Appeal.

B. NO TYPE TEST WAS REQUIRED AT BID STAGE; CLAUSE 2(b) IS A CONTRACT STAGE PROVISION SATISFIED BY THE UNDERTAKING

31. That the Bidding Document nowhere lists a type test report as a mandatory bid document (IB 11.1; list of Certificates/Documents at page 80 of 80). A bidder cannot be declared non-responsive for not fulfilling a requirement the Bidding Document never prescribed (Rule 35, Public Procurement Rules, 2004). That Section III Clause 2(b) itself provides:

CLAUSE EXTRACT: SECTION III, CLAUSE 2(b)

"(b) In case of expiry of prototype approval during the currency of purchase order/contract you have to obtain the fresh prototype from the office of Chief Engineer (S&S) NTDC Lahore before start of mass production..."

32. That the clause is triggered "during the currency of purchase order/contract", not at bid submission. It is a contract-execution contingency, not a bid-stage eligibility criterion. Reading it otherwise would rewrite the clause, which is impermissible. That the bid-stage mechanism is an undertaking, and Respondent No. 3 furnished exactly that, as recorded in the Technical Evaluation Report (Section 6.1, Item v):

EXTRACT: TECHNICAL EVALUATION REPORT, SECTION 6.1 ITEM v

"We M/s MK Engineering Works and our Manufacturer M/s Wenzhou Rockwill Eclectic Co., China Undertake that in case of Award of Above Subjected tender We hereby Confirm to obtain prototype approval of The office of Chief Engineers (S&S) NTDC at our Expense without effecting on delivery period."

33. That FESCO itself clearly communicated in pre-bid discussions that prototype approval shall be conducted after award of contract; the criterion being met at bid stage by an undertaking. This is the standard practice across the power sector, and it is the express scheme of the Revised NTDC Type Test Policy itself. Clause 2.5 of the Policy requires only an unconditional Undertaking with the technical bid [Clause 2.5(i)] and prescribes that the requisite tests are performed after award of contract, before delivery [Clause 2.5(iii)]. The Evaluation Committee of senior engineers examined the undertaking and rightly found MK Engineering responsive; that finding deserves deference.

C. THE NTDC CIRCULAR PERTAINS TO DIFFERENT EQUIPMENT AND DOES NOT APPLY

34. That the circular CED/NTDC/1798-1800 dated 29-02-2024 (five-year type test validity) fails on four independent grounds:

- Wrong equipment: it expressly covers equipment under NTDC specification P-44:2018 in NTDC procurements. This tender is a FESCO procurement under WAPDA/PEPCO Specification DDS-103:2013. Attaching a clarification for other material and suggesting it governs this tender is suggestio falsi and an attempt to confuse the record.
- Wrong requirement: the circular speaks of type tests; the clause invoked speaks of prototype approval.
- The Bidding Document sets its own standard: Section III Clause 2 prescribes its own three-year prototype approval criterion; an external circular cannot substitute it.
- Displaced by the Board-approved Policy: The Revised NTDC Type Test Policy 2023 (Annex A) replaced the earlier regime (Clause 1.1), applies to all future procurement and ongoing tenders (Clause 1.2), and prevails in case of contradiction [Note (g)]. An officer level clarification cannot override the Board's Policy, which prescribes no expiry at all.

D. WITHOUT PREJUDICE: UNDER CLAUSE 2.3 OF THE POLICY, THE TYPE TEST IS NOT EXPIRED

35. That even if a type test were assumed relevant, it is not expired. Clause 2.3 of the Policy provides verbatim:

CLAUSE EXTRACT: REVISED NTDC TYPE TEST POLICY 2023, CLAUSE 2.3

"2.3 The Type Test reports shall remain valid unless and until:

- i. Voltage class has changed

- ii. Short Circuit level has changed
- iii. The applicable standards have changed.
- iv. The design/construction has changed.
- v. Manufacturing Facility has changed."

36. That validity under the Policy is therefore condition-based, not time-based. The Policy prescribes no five-year or any other expiry period. In the case of Respondent No. 3, none of the five conditions is attracted: the voltage class, short circuit level, applicable standard, design/construction, and manufacturing facility are all unchanged. The type test remains fully valid. The Appellant's 'expired type test' is an invented requirement that exists nowhere in the applicable framework.

37. Further submitted that the Appellant's argument fails at every level: it confuses type test with prototype approval; it invokes a circular for different equipment that does not govern this tender and stands displaced by the Board-approved Policy; it reads a contract-stage clause as a bid-stage bar; and, in any event, under Clause 2.3 of the Policy the type test of Respondent No. 3 is not expired. MK Engineering complied with every bid-stage requirement, including the undertaking that FESCO itself prescribed and the Policy itself sanctions [Clause 2.5]. The Appeal deserves dismissal with costs, with the litigation period directed to be excluded from the bid validity period as already prayed.

38. The Appellate Committee has heard the learned representatives of the Appellant, the Respondents at length,

and has carefully examined the Bid Evaluation Report, the grievance petition, the impugned minutes of the GRC, the bidding documents including the Instructions to Bidders (ITB), and all supporting material placed on record. The principal issue requiring determination is whether the declaration of the Appellant as non-responsive was in accordance with the evaluation criteria and qualification requirements prescribed in the bidding documents.

39. In terms of Rules 29 & 30 of the Public Procurement Rules, 2004, which is reproduced as under:

29. Evaluation criteria: -

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.

30. Evaluation of bids. -

(1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in sub-clause (iv) of clause (c) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

40. It is pertinent to mention that no deviation from the specifications, terms and conditions specified in the bidding

documents & evaluation criteria is permissible. The procuring agency shall proceed strictly in accordance with terms and conditions set forth in the bidding documents. All participants in the bidding process are bound by the terms and conditions of tender documents and cannot go beyond the purview and ambit of the tender documents.

41. **In terms of Section VI Clause 3 “Delivery Period and Completion Schedule” of the Bidding Documents:** *The Delivery Schedule will commence from the date of issuance of purchase order instead of date of opening of Letter of Credit / approval of prototype, which is as under:*

Tentative Delivery Schedule within	90 days
Quantity (Nos.)	100 %

42. **In terms of Section III QUALIFICATION CRITERIA of the bidding documents:** *The bidder must be registered /prequalified from WAPDA/PPMC/NTDC/DISCOs as manufacturer / General Order Suppliers / Stockiest. The bidder must attached satisfactory filed performance of the firm against educational / regular purchase order (s) during last two years as per given format.*

43. The Appellant, being aggrieved of the decision dated 25.03.2026 passed by the Grievance Redressal Committee (GRC), preferred the instant Appeal under Rule 48(7) of the Public Procurement Rules, 2004. Learned representatives for

the Appellant, Respondent No. 1 (FESCO), and Respondent No. 3 were heard at length, and the available record, including the bidding documents, evaluation record, GRC decision, and documents relied upon by the parties, has been carefully examined.

44. The Appellant primarily contended that its bid was unlawfully declared technically non-responsive without assigning reasons in the Evaluation Report and that the GRC introduced new grounds while deciding the grievance. It was further argued that the Procuring Agency ignored material evidence placed on record, failed to apply the applicable technical standards uniformly, and rejected the Appellant's bid on alleged deficiencies which were either non-existent or merely procedural and curable in nature.

45. The Committee observed that the contention that the GRC introduced new grounds is likewise without substance. The material placed before the Authority reflects that the deficiencies relating to the delivery schedule and prescribed experience format existed in the Appellant's bid from the inception and constituted the basis upon which the bid was declared technically non-responsive. The GRC merely elaborated and communicated the same deficiencies while deciding the grievance petition and did not substitute or reconstruct the original evaluation.

46. The Committee further observed that the Appellant's allegations concerning Respondent No. 3's compliance with IEC 62271-103:2021 standards, NTDC circulars regarding type-test validity, OEM presence and other technical objections are equally unpersuasive. The procurement is governed by the bidding documents and the applicable procurement framework, and evaluation is confined to the criteria expressly incorporated therein. Once the Appellant's own bid was found materially non-responsive on independent grounds, it cannot successfully challenge the technical evaluation of a competing bidder in order to overcome defects in its own bid. No material has been produced to establish that Respondent No. 3 failed to satisfy any mandatory requirement of the bidding documents.

47. Conversely, the Respondents submitted that the Appellant's bid suffered from material and substantive deviations from the mandatory requirements of the bidding documents, namely: (i) non-acceptance of the prescribed delivery schedule of 90 days by proposing a delivery period of 180 days in the Schedule of Supply; and (ii) failure to furnish satisfactory field performance/contractual experience in the prescribed format as required under the qualification criteria. It was argued that these deficiencies rendered the bid technically non-responsive and that the GRC merely reiterated the same deficiencies already forming part of the evaluation process. The Respondents further contended that, once the Appellant's own bid was found non-responsive, objections

regarding the evaluation of Respondent No. 3 were of no legal consequence.

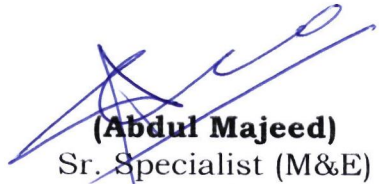
48. After careful consideration of the submissions and the record, the Appellate Committee finds that the conditions relating to the prescribed delivery schedule and submission of field performance/contractual experience in the prescribed format constituted mandatory requirements of the bidding documents. The material placed on record demonstrates that the Appellant expressly mentioned a delivery period of 180 days in the designated Schedule of Supply against the prescribed period of 90 days, thereby introducing a material deviation from an essential commercial condition of the tender. Likewise, the prescribed format relating to field performance/contractual experience was admittedly not furnished in the manner required under the bidding documents. Such deficiencies go to the substance of bid responsiveness and cannot be treated as mere procedural irregularities capable of subsequent rectification.

49. The Appellate Committee is further of the view that once the Appellant's bid was rightly found technically non-responsive on the basis of material non-compliances, the objections raised regarding the technical responsiveness of Respondent No. 3 do not confer any enforceable right upon the Appellant. No illegality, arbitrariness, mala fide, or violation of

the Public Procurement Rules, 2004, warranting interference with the impugned decision has been established.

50. Accordingly, finding no merit in the Appeal, the same is **dismissed**, and the decision dated 25.03.2026 passed by the Grievance Redressal Committee is hereby upheld.


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


(Abdul Majeed)
Sr. Specialist (M&E)
(Member)


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

Dated: 21st July, 2026

Each page of the order has been signed by all members of the Committee. The order comprises thirty-eight (38) pages.

