



F. No. PPRA/AP-55/2026
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 NJC, MMC & NCS Group | Imperial Ventures (Pvt.) Ltd. (JV)

...the "Appellant"

Vs.

Capital Development Authority & Another

...the "Respondents"

<u>Date of Hearing</u> 07.09.2026	Hafiz Arfat Ahmad Ch. (ASC) <i>(On behalf of Appellant)</i> Mr. Waseem Abid (ASC), Mr. Irfan Azim Khan (DG Envt.), Mr. Miskeen Shah Kazmi, Mr. Nasir Jamil Butt, Mr. Arshad Mehmood (DD) <i>(On behalf of Respondent i.e., CDA)</i> Barrister Asfandiyar, Wazirzada M. Owais (Advocate) Malik, Attaullah (Director SWM), Ms. Mehrunisa Jehangir (Advocate) <i>(On behalf of Respondent i.e., M/s Atlaspak)</i>
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APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The Authority received the titled Appeal on 11.08.2026, filed under Rule 48(7) of the Public Procurement Rules, 2004. The Authority on receipt of the Appeal issued notices to the parties wherein it was directed to appear in person or through their nominated representatives or Counsel before the Authority on 07.09.2026 before the Appellate Committee in the Committee Room of this Authority.

2. On the said date of hearing (07.09.2026), the above-mentioned learned counsels and representatives of the parties appeared before the Committee and presented their arguments at length. The Respondent provided written arguments to the Committee.
3. The learned counsel for the Appellant submitted that the Appellant is aggrieved by the decision dated 22.07.2026 (" the Impugned Decision") rendered by the Grievance Redressal Committee ("GRC") constituted by the Capital Development Authority ("CDA") (respondent No.1) in terms of Rule 48(1) of the Public Procurement Rules, 2004 ("the 2004 Rules") whereby the grievance/appeal preferred by the appellant against the decision dated 13.07.2026 was dismissed. Vide said decision dated 13.07.2026, the appeal preferred by respondent No. 3 had been allowed and the matter was remanded to the Technical Evaluation Committee ("the TEC") for fresh technical evaluation. Pursuant to the said remand, respondent No.3 was declared "technically qualified" not only for the package in question but also for the other connected package. Aggrieved by the said declaration of respondent No. 3 as "technically qualified", the appellant preferred a detailed grievance before the GRC setting out its objections and challenging the legality and correctness of the decision of the TEC. However, the GRC, vide the Impugned Decision dated 22.07.2026, dismissed the appellant's grievance/appeal and declined to interfere with the post-remand proceedings, thereby giving rise to the present appeal. The appeal is being filed through authorized representative namely, Muhammad Haider CEO.
4. Further submitted that the facts in brief giving rise to the filing of the present appeal are that, through advertisement dated 23.04.2026, respondent No.1 invited bids from Contractors, Firms, Consortiums, Joint Ventures, etc. under the Single

Stage-Two Envelope procedure for Hiring of Solid Waste Management Services for ICT Areas comprising two connected packages. Subsequently, a Corrigendum was published in the newspaper whereby the date for opening of bids was changed from 14.05.2026 to 18.05.2026. The technical bids were accordingly opened on 18.05.2026 and, upon completion of the original technical evaluation, the Technical Evaluation Reports, announced under Rule 35 of the 2004 Rules, declared the appellant technically qualified in both packages with 73 marks whereas respondent No. 3 was declared as "non-responsive" in both packages on account of inter alia non-fulfilment of the requirements stipulated under Clauses 9.1(a), 9.1(b), 24.1(a)(v), 24.1(b)(ii) and 24.1(c)(vi) of the Instructions to Bidders ("IB") which requirements directly concerned the completeness and responsiveness of its Technical Bid. In particular, Clause 9.1 of the IB required the bid to comprise, inter-alia, a Covering Letter and a duly filled, signed and sealed Form of Bid whereas Clause 9.1(b), in the bidding document, expressly required the Form of Bid relating to the technical and financial proposals to be submitted separately and prohibited the inclusion of financial-bid information in the Technical Form of Bid. Aggrieved by its declaration as non-responsive, respondent No.3 approached the GRC and, as recorded in the proceedings dated 13.07.2026, respondent No.3 itself admitted that the Covering Letter required under Clause 9.1(a) of the IB had not been enclosed with its Technical Bid and that the Form of Bid had been placed in the Financial Bid because it contained the quoted amount.

5. Further submitted that, notwithstanding the aforesaid admitted deficiencies and the position maintained by the Consultant that Clause 9 of the IB expressly required the Covering Letter and Form of Bid as components of the bid, the GRC, vide its decision dated 13.07.2026, observed that no

specific format had been prescribed for the Covering Letter and that the Form of Bid contained a price field and consequently held that the circumstances had "resulted into ambiguity" and remanded the matter to the TEC for reconsideration without any lawful justification. Pursuant to the said remand, the TEC, in the post-remand proceedings, declared respondent No. 3 technically responsive for all 5 zones. Aggrieved by the said post-remand technical evaluation and the consequential qualification of respondent No.3, the appellant preferred a detailed grievance before the GRC on 21-07-2026 specifically challenging the legality of overlooking the deficiencies recorded in the original evaluation, including the admitted non-submission of the Covering Letter and placement of the Form of Bid containing financial information in the Financial Bid. However, the GRC, vide the Impugned Decision dated 22.07.2026, dismissed the appellant's grievance/appeal thereby giving rise to the present appeal.

6. Further submitted that the appellant has reasons to believe that, contemporaneously with the post-remand proceedings, the Consultant (NESPAK) communicated to respondent No.1 that, even if the requirements relating to the Covering Letter were to be waived, the requirement under Clause 9.1(b) of the IB to submit the Form of Bid as part of the Technical Bid remained mandatory; that respondent No. 3 had not complied with the said requirement; and that such non-compliance had consequently formed part of the basis for its original declaration as "Non-Responsive". The said contemporaneous position of respondent No. 1's own Consultants of material significance as it demonstrates that the underlying non-compliance recorded in the original evaluation continued to subsist after the remand. Further submitted that the appellant requests this Hon'ble Authority to call for and examine the original NESPAK communication together with the connected

Consultant/TEC record maintained in respondent No.1's official procurement file.

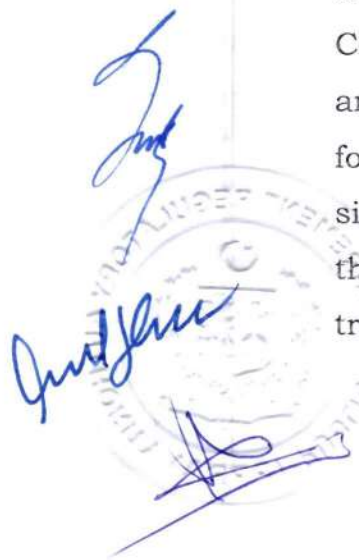
7. Further submitted that the revised qualification of respondent No. 3 did not result from any discovery that the Covering Letter or the Form of Bid required under Clause 9.1(b) of the IB had, in fact, been contained in its Technical Proposal at the time of submission. On the contrary, respondent No. 3's own position before the GRC was that the Covering Letter had not been enclosed with the Technical Bid and that the Form of Bid had been placed in the separate Financial Bid because it contained the quoted amount. Thus, the reversal of respondent No. 3's status from "Non-Responsive" to "Qualified" was not occasioned by correction, clarification or discovery of any existing document forming part of its Technical Bid but resulted from a post-opening reinterpretation and relaxation of requirements which had formed the basis of the original finding of non-responsiveness. That, thereafter, respondent No. 1 proceeded further with the procurement and opened the Financial Bids. Consequently, the procurement has now moved beyond the technical stage and the financial contents of the competing bids have been exposed. Subsequent to the opening of the Financial Bids, respondent No.1 issued Letter No. CDA/SWM/Genl/06/2026/63 dated 06.08.2026 in respect of Zones I-III and Letter No. CDA/SWM/Genl/06/2026/64 dated 06.08.2026 in respect of Zones IV-V, seeking clarification under Clause 23 of the IB on various financial/pricing matters. The appellant furnished its written response thereto on 10.08.2026 expressly preserving its originally quoted rates and clarifying that no unit rate, price or substance of either bid was being revised, substituted or altered. The appellant further stated that any arithmetical correction, if warranted, could only be undertaken within the parameters of IB 24.2, on the basis of the original rates, quantities, units, frequency and

contract period prescribed in the bidding documents. The aforesaid post-opening financial clarification process has, nonetheless, brought to light further material uncertainty and internal inconsistencies in the bidding documents.

8. Further submitted that the tender in question was floated under the Single Stage-Two Envelope method through the e-PAD/EPADS system, the Technical Proposals were opened first and evaluated by the TEC whereupon respondent No. 3 was found technically non-responsive for both packages. However, the post-remand reconsideration and qualification of respondent No. 3 materially departed from the original evaluation and, as shall be demonstrated in the grounds of appeal, were undertaken in a manner inconsistent with the mandatory requirements governing the procurement process and the fundamental principles of transparency, equal treatment, responsiveness and fair competition, thereby causing direct and substantial prejudice to the appellant. The counsel for the Appellant relied upon the following grounds:

A. THE GRC ITSELF FOUND THAT THE BIDDING / EVALUATION FRAMEWORK HAD "RESULTED INTO AMBIGUITY"; AN AMBI-GUOUS EVALUATION FRAMEWORK CANNOT LAWFULLY BE RECONSTRUCTED AFTER BID OPENING:

9. That the Impugned Decision is unsustainable in law and on facts as the GRC, vide its earlier decision dated 13.07.2026, expressly observed that the circumstances concerning the Covering Letter and the Form of Bid had "resulted into ambiguity" and, on that basis, remanded the matter to the TEC for reconsideration. The said finding is of fundamental significance because the clarity of the bidding documents and the evaluation criteria is a condition precedent to a lawful and transparent procurement process.

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10. That Rule 22(2) of the Public Procurement Rules, 2004 requires clear submission instructions, while Rule 23(1) contemplates bidding documents containing precise and unambiguous information and requirements. More importantly, Rule 29 recognizes failure to provide unambiguous evaluation criteria as constituting mis-procurement. Consequently, once respondent No. 1's own GRC found that the governing framework had resulted in ambiguity, the competitive conditions could not lawfully be reconstructed retrospectively after opening of the bids so as to accommodate a bidder whose Technical Bid had originally been found non-responsive.
11. That the impugned course of action effectively permitted the procurement authority to move from one interpretation of the published requirements at the technical evaluation stage to another interpretation after the contents of the bids had been disclosed. Such an approach defeats the essential requirements of certainty, transparency, equal treatment and predictability in public procurement and places the compliant bidder at an impermissible competitive disadvantage.

B. IF THE BIDDING DOCUMENTS WERE GENUINELY AMBIGUOUS. THE AMBIGUITY HAD TO BE CURED PROSPECTIVELY AND UNIFORMLY, NOT RETROSPECTIVELY AFTER BID OPENING

12. That the Bidding Documents themselves provided a mechanism for pre-bid clarification and/or amendment under IB 6 and IB 7, thereby providing respondent No. 1 with an express and lawful means of resolving any perceived uncertainty before the submission deadline. Likewise, Rule 23(3) requires information necessary for bidding or evaluation to be furnished in a timely manner and on an equal-opportunity basis.
13. That, in the event, GRC of respondent No. 1 genuinely considered the requirements concerning the Covering Letter,

Form of Bid or the separation of technical and financial information unclear, the lawful course was to issue a clarification, addendum or amendment before the bid-submission deadline and for the benefit of all prospective bidders alike. What was impermissible was to await opening of the bids, identify a deficiency in one bidder's submission, and thereafter reinterpret or relax the published requirements specifically in relation to that bidder.

14. That a procurement authority cannot, after opening the bids, alter the rules of competition under which the bidders submitted their proposals. To permit such a course would enable the evaluation criteria to be adjusted with knowledge of the competing bids and would destroy the level playing field which the procurement regime is designed to preserve.

C. RESPONDENT NO. 3 EXPRESSLY ADMITTED THAT A MANDATORY TECHNICAL-BID DOCUMENT HAD NOT BEEN SUBMITTED

15. That IB 9.1(a) expressly required submission of a Covering Letter as part of the bid. Respondent No. 3, before the GRC, itself admitted that the Covering Letter had not been enclosed with its Technical Bid. The said admission conclusively establishes that the document was not part of the Technical Bid as submitted at the prescribed deadline.
16. That the absence of a prescribed specimen or format for the Covering Letter may, at most, concern its form or presentation; it cannot reasonably transform an express requirement to submit the document into a requirement which did not exist. The requirement was to submit a Covering Letter, and respondent No. 3 admittedly did not do so.

17. That this position is further reinforced by the contemporaneous position attributed to respondent No. 1's own appointed technical Consultant/Transaction Adviser,

NESPAK. The appellant is informed and has reason to believe that NESPAK communicated to respondent No. 1 that, even if the requirement relating to the Covering Letter were waived, the requirement under IB 9.1(b) concerning submission of the Form of Bid as part of the Technical Bid remained mandatory; that respondent No. 3 had not complied with that requirement; and that such non-compliance had consequently formed part of the basis for its declaration as non-responsive.

18. That NESPAK thereafter referred to the GRC's finding of "ambiguity" and left any proposed waiver for respondent No. 1 to consider. Such an observation, however, could not itself confer upon respondent No. 1 a substantive legal power to alter, waive or relax a published responsiveness requirement after opening of the bids. The legal question is whether the bid, as submitted at the prescribed deadline, satisfied the published requirements.
19. That the appellant, therefore, respectfully seeks production and examination of the original NESPAK communication and the connected Consultant/TEC record from respondent No.1's official procurement file. The said record is particularly material because it would demonstrate whether respondent No.1's own Technical Adviser continued to regard the Form of Bid requirement as mandatory notwithstanding the GRC's subsequent ambiguity finding.

D. THE FINANCIAL ENVELOPE COULD NOT LAWFULLY BE USED TO CURE A DEFICIENCY IN THE TECHNICAL PROPOSAL

20. That the procurement was conducted under the Single Stage-Two Envelope procedure under which the Technical Proposal and Financial Proposal constitute distinct components subject to a prescribed sequence of opening and evaluation.

21. That respondent No. 3's own position before the GRC was that its Form of Bid had been placed in the Financial Bid because it contained the quoted amount. The Financial Proposal could not, however, operate as a repository from which a document could subsequently be retrieved and imported into the Technical Proposal in order to cure a deficiency identified at the technical evaluation stage.
22. That IB 24.3 requires responsiveness to be determined from the bid itself while the scheme of Rule 36(b) preserves the separation and sequence between technical and financial evaluation. Permitting a document contained in the Financial Proposal to cure a missing component of the Technical Proposal would defeat the very purpose of the two-envelope procedure and would under-mine the equal treatment of bidders whose Technical Proposals were evaluated on the basis of the documents actually submitted therein.

E. CLAUSES 24.4 AND 24.5 OF THE IB DID NOT AUTHORIZE CONVERSION OF A NON-RESPONSIVE BID INTO A QUALIFIED BID

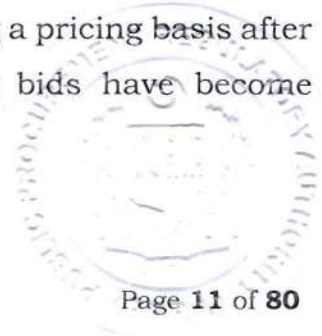
23. That the original Technical Evaluation Reports declared respondent No. 3 non-responsive on the basis of identified deficiencies concerning the responsiveness requirements of the Bidding Documents. IB 24.4 expressly provides that a substantially non-responsive bid cannot subsequently be made responsive by correction of the non-conformity.
24. That Clause 24.5 of the IB, to the extent it permits waiver of a minor irregularity, does not authorize waiver of a defect which materially affects the responsiveness of the bid or alters the competitive position of the bidder. A waiver which transforms a bidder from Non-Responsive to Qualified, awards it 92.5 marks and thereby admits it into the financial competition cannot reasonably be characterized as an immaterial

irregularity having no effect upon the relative standing of the bidders.

25. That the distinction is particularly important in the present case because respondent No. 3 was not merely subjected to a technical correction of an arithmetic or clerical nature; rather its status at the threshold stage of responsiveness was fundamentally altered after opening of the bids.

F. RULE 31 AND IB 23 PERMIT CLARIFICATION OF AN EXISTING BID; THEY DO NOT AUTHORIZE CREATION, RELOCATION OR SUBSTANTIVE ALTERATION OF A BID

26. That the power to seek or entertain clarification cannot be construed as a power to permit a bidder to cure a material omission, relocate a document from one envelope to another or otherwise alter the substance of the bid after opening.
27. That a legitimate clarification may explain or elucidate an existing entry or apparent discrepancy in a bid as submitted. It cannot supply the legal effect of a missing mandatory document, convert a document contained in the Financial Proposal into a component of the Technical Proposal or otherwise create a substantive element which was absent from the bid at the submission deadline.
28. That the same principle applies to the subsequent financial clarification exercise undertaken by respondent No. 1. Any reconciliation of the Financial Bids must remain confined to the bids as originally submitted and to the specific arithmetic mechanism expressly prescribed in the Bidding Documents. A clarification cannot become a vehicle for introducing a new rate, shifting a cost component or selecting a pricing basis after the financial contents of the competing bids have become known.

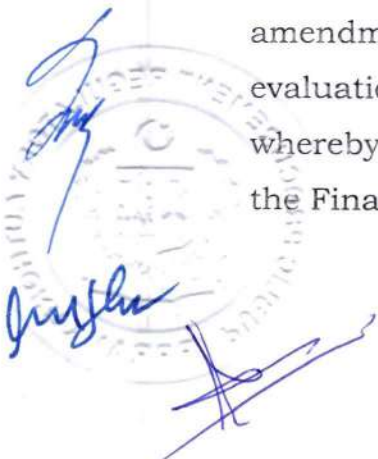


G. DETAILED TECHNICAL SCORING COULD ONLY FOLLOW A THRESHOLD FINDING OF RESPONSIVENESS AND COULD NOT CURE A FAILURE AT THAT STAGE

29. That IB 26.1 contemplates detailed technical evaluation only of bids which have first been determined to be substantially responsive in accordance with IB 24. The threshold determination of responsiveness is therefore anterior to, and distinct from, the sub-sequent exercise of awarding technical marks.
30. That the subsequent award of 92.5 marks to respondent No. 3 cannot retrospectively cure the threshold defect which had resulted in its original declaration as non-responsive. A high technical score cannot substitute for compliance with a mandatory preliminary requirement.
31. That the sequence prescribed by the Bidding Documents is a substantive procedural safeguard designed to ensure that only responsive bids proceed to detailed evaluation and, thereafter, to financial competition. It cannot be treated as a matter of administrative discretion capable of being reversed after opening of the bids.

H. THE POST-OPENING TECHNICAL QUALIFICATION OF RESPONDENT NO. 3 WAS CONTRARY TO RULE 36(b), RULES 30 AND 31. AND IB 24

32. That Rule 36(b)(v) requires the Technical Proposal to be evaluated in the manner prescribed in advance and contemplates rejection of a proposal which does not conform to the specified requirements; Rule 36(b) (vi) prohibits amendment of the Technical Proposal during technical evaluation; and Rule 36(b)(viii) pre-serves the sequence whereby only technically accepted bids proceed to opening of the Financial Proposals.

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33. That respondent No. 3 admittedly did not enclose the Covering Letter required under IB 9.1(a) with its Technical Bid and admittedly placed the Form of Bid in the separate Financial Proposal. The original TEC, therefore, found the bid non-responsive. There was thereafter no change in the contents of the bid as submitted at the deadline.
34. That the subsequent reversal of that threshold finding, after opening of the bids and without any change in respondent No.3's original Technical Proposal, amounted in substance to a post-opening alteration of the applicable responsiveness standard. Such a course is contrary to the published tender terms and the mandatory sequencing governing technical and financial evaluation.

I. THE LAWFUL CONSEQUENCE IS RESTORATION OF RESPONDENT NO. 3'S ORIGINAL NON-RESPONSIVE STATUS

35. That IB 24.3 requires responsiveness to be determined from the contents of the bid itself, while IB 24.4 expressly precludes a substantially non-responsive bid from subsequently being made responsive through correction of the non-conformity. IB 26.1, in turn, permits detailed technical evaluation only of bids which have first been found substantially responsive.
36. That the proper consequence of the unlawful post-remand qualification is, therefore, to set aside the revised qualification, restore the original determination of respondent No. 3 as non-responsive, exclude it from further consideration in the present procurement and ensure that its Financial Proposal is not considered or acted upon for purposes of award.

J. THE PPRA APPELLATE DECISION IN M/S CCTEB-FWQ-ZEERUK JV V. CDA REINFORCES THE SUBMISSION-STAGE CHARACTER OF MANDATORY PROCUREMENT REQUIREMENTS

37. That the principle that bidders are bound by the procurement documents and that compliance with mandatory requirements is tested with reference to the bid as submitted is reinforced by the decision of the PPRA Appellate Committee in M/s CCTEB-FWO-ZEERUK JV v. CDA, Appeal No. PPRA/AP-49/2025 decided on 12.01.2026 wherein the Committee emphasized adherence to the specifications, terms, conditions and evaluation criteria contained in the procurement documents and treated an admitted failure to satisfy a mandatory requirement at the submission stage as material to the bidder's eligibility/responsiveness.

38. That although the factual context of the said matter concerned pre-qualification, the underlying principle is directly relevant to the present controversy: a bidder cannot, after the submission deadline be restored to a position of compliance by relaxing or altering a mandatory requirement which was applicable when the bid was submitted.

K. THE SUBSEQUENT FINANCIAL MATERIAL IS CORROBORATIVE EVIDENCE AND DOES NOT CONSTITUTE A SEPARATE FINANCIAL APPEAL

39. That the present appeal remains directed against the Impugned Decision dated 22.07.2026 and, fundamentally, against the legality of the post-remand technical requalification of respondent No. 3 and the continuation of a procurement process whose governing framework had already been found by the GRC to have resulted in ambiguity.

40. That the subsequent opening of the Financial Bids and the clarification exercise are relied upon only as subsequent corroborative circumstances demonstrating the practical consequences of the underlying ambiguity and the necessity of the remedial relief sought by the appellant. The appellant does

not, through the present appeal, seek to introduce a new standalone challenge to any future final financial evaluation.

L. RULES 33 AND 34 READ WITH IB 32.1. PROVIDE THE LEGAL MECHANISM FOR ANNULMENT AND FRESH PROCUREMENT

41. That, so long as no bid has been accepted and no procurement contract has entered into force, Rule 33 provides the statutory mechanism for rejection of all bids, while IB 32.1 provides for annulment of the bidding process. Rule 34 further contemplates re-bidding after assessment of the reasons necessitating rejection and permits appropriate revision of the specifications, evaluation criteria and other conditions.
42. That, therefore, if this Hon'ble Authority finds that the ambiguity identified by the GRC is genuine and materially affects the fairness or uniformity of evaluation, the appropriate remedy is not to reconstruct the existing competition through post-opening interpretations but to annul the present procurement and direct fresh bidding on unambiguous, precise, transparent and uniformly applicable terms.

M. CONTINUATION OF THE IMPUGNED PROCUREMENT WOULD PRE-JUDICE FAIRNESS, TRANSPARENCY AND EQUAL TREATMENT

43. That the procurement regime is founded upon the principles of fairness, transparency, equal treatment and open competition. In the present case, the post-remand relaxation has resulted in the qualification of respondent No. 3 in both connected packages. Continuation of the procurement would expose the appellant to an unequal and uncertain competitive environment. The integrity of the procurement process is therefore best preserved either by restoring the original non-responsive determination of respondent No. 3 or, in the alternative, by annulment and fresh bidding under clear and uniformly applicable conditions.

44. Further submitted that the procuring agency/CDA's reply in the subject appeal essentially rests on two propositions: (a) GRC decision dated 13-07-2026 attained finality and (b) Altas's omission was merely a minor irregularity capable of waiver under IB 24.5. The following fundamental legal question arises for determination by this Honorable forum:

Can a procuring agency, after opening the bids, treat as immaterial a requirement which its bidding documents expressly prescribed and which its own Technical Evaluation Committee had already treated as a ground of non-responsiveness?

45. Further submitted that the real issue in the case at hand is not where the Form of Bid was placed; the issue is whether a mandatory requirement could be relaxed after bid opening? In this behalf, the guidance is provided in Rule 30(1) of the Public Procurement Authority Rules, 2004 (hereinafter "the 2004 Rules"). For the ease of reference, Rule 30(1) of the 2004 Rules is replicated below:

Rule 30(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."

46. Further submitted that CDA itself admits that IB 9.1(b) required separate Forms of Bid for the technical and financial proposals and expressly prohibited financial information in the technical bid. Once this requirement formed part of the bidding documents, CDA was bound to evaluate every bidder against it. The question is therefore not merely one of physical placement; it is whether CDA could disregard an express bidding requirement after opening.

47. Further submitted that CDA cannot convert a mandatory requirement into a minor informality after opening the bids. Rule 29 read with Rule 30 (3) of the 2004 Rules are self-explanatory and are reproduced below for the ease of reference:

Rule 29: "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."

Rule 30(3): "A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issue of notice for invitation of bids."

48. Further submitted with respect that IB 24.5 permits waiver only of a minor informality, non-conformity or irregularity. It cannot be used to dilute an express requirement which formed part of the bidding framework. CDA's stance in its written reply assumes that the defect was minor; that assumption is precisely the issue to be adjudicated. A requirement treated by the original Technical Evaluation Committee (hereinafter referred to as "TEC") as a ground of non-responsiveness cannot, merely after opening, be re-characterised as insignificant without violating the pre-disclosed evaluation framework.

49. Further submitted that CDA's own original evaluation is the strongest answer to its present stance. The same TEC originally treated the defect as sufficient to render Altas non-responsive. Quite surprisingly, CDA now takes an altogether contrary position about the same defect saying it was merely an immaterial matter of "documentary placement." It is respectfully added that CDA's changed interpretation after bid opening is post-bid relaxation and not evaluation.

50. Further submitted that the Single Stage-Two Envelope procedure (which was followed in the procurement under discussion) makes separation substantive not cosmetic. For the ease of reference, the relevant provisions from the 2004 Rules are reproduced herein below:

Rules 36(b)(i), (iii), (iv), (v), (vi) and (viii)

(i) "The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal";

(iii) initially only the envelope marked "TECHNICAL PROPOSAL shall be opened,

(iv) the envelop marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened.

(v) The procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements";

(vi) during the technical evaluation no amendments in the technical proposal shall be permitted."

(viii) after the evaluation and approval of the technical proposal the procuring agency shall, at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposals of bids found technically non-responsive shall be returned unopened to the respective bidders.

51. Further submitted with reverence that CDA, in its reply to the captioned appeal, has relied upon the words "single package" and argues that presence of the Form of Bid anywhere within that package was sufficient. This reads Rule 36(b)(i) in isolation and ignores the rest of the Rule. The same Rule deliberately requires two separate envelopes, independent technical

evaluation, rejection of non-conforming technical proposals and opening of financial proposals of technically accepted bids only. If a document required to form part of the technical proposal can instead be sourced from the financial envelope after its opening, the statutory separation between the two envelopes become meaningless.

52. Further submitted that CDA admits that the missing document was discovered only after opening the Financial Bid. CDA expressly pleads that "the cause of non-responsiveness" at first stage has been removed after opening of the Financial Bid where Form of bid has been found on record. This admission substantially supports the case of the Appellant. A technical deficiency existing at the technical-evaluation stage cannot retrospectively be cured by opening the financial envelope. The 2004 Rules require technical responsiveness to be determined before opening of financial opening.

53. Further contended that Rule 31 does not assist CDA. CDA, in its reply has stated that nothing was subsequently added or altered. The CDA has completely misunderstood the case of the Appellant. The Appellant's case here is not merely that Altas has subsequently altered its bid; it is that CDA subsequently altered the standard by which the already-submitted technical bid was judged. Rule 31 permits clarification, not conversion of a bid originally treated as non-responsive into a responsive bid by changing the governing standard.

54. Further submitted that CDA, in its reply has taken a position that the acts of procuring agency were to promote healthy competition. In this behalf it is respectfully submitted that so called justification of healthy competition cannot override the bidding documents. CDA has repeatedly tried to justify its action on the ground that admitting Altas promotes competition and competitive pricing. Competition, under the

procurement regime, is desirable but it must occur amongst responsive bidders under the same pre-disclosed rules. Rule 4 cannot be used as a licence to disregard Rule 30 or the mandatory conditions of the bidding documents. Fairness and transparency require equal application of the announced requirements.

55. Further averred that CDA's argument that "no prejudice" has been caused to the appellant is misconceived. CDA says that NJC remains technically qualified and merely it has to compete with Altas on price. It is respectfully submitted that this stance of CDA itself demonstrates prejudice. If an originally non-responsive bidder is unlawfully brought into financial competition, the relative competitive position of every responsive bidder is affected.

56. Further submitted that the CDA's argument that NJC is not an "aggrieved bidder is unfounded and is liable to be rejected. It is submitted that the Appellant NJC does fall within the definition of aggrieved bidder for the purpose of the controversy at hand. Rule 48(3) is not confined to a bidder who has itself been disqualified. Its language extends to any bidder feeling aggrieved by any act of the procuring agency. NJC is therefore aggrieved where a non-responsive competitor is brought into the next stage and permitted to compete for the same contract. Rule 48 (3) of the 2004 Rules is reproduced below for the ease of reference:

Rule 48(3): "Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances within seven days of announcement of the technical evaluation report and five days after issuance of final evaluation report."

57. Further submitted that CDA's objection concerning the decision dated 13-07-2026 does not defeat the appeal against the subsequent re-evaluation. It is submitted that the GRC

Order dated 13-07-2026 did not itself declare Altas responsive. In fact, the actionable grievance crystallized when CDA wrongly implemented the remand order by changing Altas from non-responsive to responsive. The post remand TEC activity amounts to rewriting the bidding conditions which is not permissible in law. The actual decision to invoke IB 24.5, waive the requirement and declare Altas responsive was subsequently taken by CDA/TEC. The said subsequent act of the procuring agency was independently challengeable under Rule 48(3) and the resulting GRC decision is appealable under Rule 48(7).

58. That without prejudice to the submission made in the preceding paragraph, it is submitted that even assuming the decision dated 13-07-2026 had attained finality, the TEC remained bound by the Rules and bidding documents in post remand proceedings. The legality of the post-remand action, it is submitted with respect, can therefore be examined without setting aside the remand itself.

59. That last but not the least CDA's admission that The cause of non-responsiveness at first stage has been removed after opening of Financial Bid where Form of bid has been found on record is in itself, sufficient to demonstrate the illegality of the post remand evaluation. Under Rules 35 and 36(b), technical responsiveness had to be determined before opening the financial proposal. A defect that rendered the bidder technically non-responsive could not retrospectively be cured by relying upon a document found only after the financial envelope was opened.

60. The learned counsel for the Respondent No. 1 (CDA) submitted that the Appeal preferred under Rule 48(7) of the Public Procurement Rules, 2004 against the decision of the Grievance Redressal Committee dated 22.07.2026. That the answering

respondent, being respondent No. 1 in the above-titled appeal, submits its reply and para-wise comments as under. For convenience, the Public Procurement Rules, 2004 are referred to as "the Rules"; the Instructions to Bidders forming part of the Bidding Documents as "IB"; the Grievance Redressal Committee constituted by the answering respondent under Rule 48(1) as "the GRC"; the Technical Evaluation Committee as "the TEC"; the decision of the GRC dated 13.07.2026 as "the Remand Decision"; and the decision of the GRC dated 22.07.2026, being the sole decision impugned in this appeal, as "the Impugned Decision".

61. Further submitted that the appeal is not maintainable in its present form. The Remand Decision dated 13.07.2026 has attained finality. The Remand Decision, which is the sole legal foundation of every act complained of by the Appellant has neither been impugned nor made the subject of any relief in the present Appeal. The submissions in this behalf are set out at Part II hereof.

62. Further submitted that the appellant's application dated 18.07.2026, diarized 21.07.2026, was not maintainable before the GRC in so far as it prayed for the annulment of the GRC's own Remand Decision. No power of review, revision or appeal over GRC's own decision is provided by the Rules or Regulations made under PPRA Ordinance. Therefore, the GRC Appeal was a non-starter to begin with, and hence present appeal, impugning the GRC Decision dated 22.07.2026 is also a non-starter.

63. Further submitted that the appellant is not a person aggrieved within the meaning of Rule 48(3). It was declared technically qualified in both packages in the original evaluation and remains technically qualified. The criterion of award being Least Cost Selection, the technical score operates as a

qualifying threshold and not as a comparative award factor. The appellant has been deprived of no right, but only of the certainty of an uncontested award, which is not an interest the Rules protect nor envisage.

64. Further submitted that at prayer (vi) seeks a direction to the answering respondent to exercise the discretion conferred by Rule 33, which is a discretion of the procuring agency alone and is not exercisable at the instance of a bidder, no bidder has a right to compel the annulment of a procurement.
65. Further submitted that the deposit of the prescribed fee is a condition of competence under Rule 48(7). Under the Redressal of Grievances Regulations, 2021 read with Schedule II thereto as revised, the fee for a procurement exceeding Rs. 250 million is computed ad valorem upon the procurement value, subject to the prescribed ceiling. This Honorable Authority is requested to satisfy itself as to the sufficiency of the deposit evidenced at Annexure-N to the appeal. That respondent No. 2 has been impleaded although the GRC is a committee constituted by the answering respondent under Rule 48(1) and is not a juristic person. That the appellant lacks juristic personality to maintain the present appeal. Hence the appeal is not maintainable on this score as well.

THE REMAND DECISION DATED 13.07.2026, NOT HAVING BEEN IMPUGNED, HAS ATTAINED FINALITY; AND AN APPEAL DIRECTED SOLELY AGAINST THE DECISION DATED 22.07.2026 IS, IN CONSEQUENCE, WITHOUT MERIT OR FORCE

66. The counsel for the Respondent further submitted that Rule 48 constitutes a complete and self-contained code for the redressal of procurement grievances. Its scheme is as follows. Sub-rule (1) obliges the procuring agency to constitute a committee "with necessary powers and authorizations, to address the complaints of bidders" arising prior to the entry

into force of the procurement contract. Sub-rule (2) provides for a complaint against the terms of the bidding documents, to be addressed before the submission deadline. Sub-rule (3) provides for a grievance against "any act of the procuring agency" after submission of bids, to be lodged within seven days of announcement of the technical evaluation report. Sub-rule (4) obliges the GRC to suspend the procurement proceedings where the complaint is against the technical evaluation report. Sub-rule (6) requires the GRC to investigate and decide within ten days. Sub-rule (7) provides the sole remedy against a decision so rendered:

"Any bidder or party not satisfied with the decision of the GRC, may file an appeal before the Authority within thirty days of communication of the decision subject to depositing the prescribed fee and in accordance with the procedure issued by the Authority. The decision of the Authority shall be considered as final."

67. Further submitted that three features of that scheme are of present significance. First, the tier of redressal at the level of the procuring agency is a single tier: that is the decision of GRC. Secondly, a party aggrieved of the GRC decision, may appeal to this Honorable Authority. This is the only remedy provided against a decision of a GRC, and it is hedged by a limitation of thirty days and by the condition of a prescribed deposit. Thirdly, the periods prescribed throughout Rule 48 seven days, five days, ten days, thirty days disclose a legislative intention that procurement disputes shall be raised and concluded with expedition, and shall not be permitted to remain in agitation while a procurement proceeds. Rule 48(5), which forecloses any objection to the technical evaluation once the final evaluation report has issued, is a further expression of the same intention.

68. Further submitted that where a statute or statutory instrument provides that a particular thing shall be done in a particular manner and within a particular time, that thing must be done in that manner and within that time, and all other modes of performance are necessarily forbidden. That rule, traceable to Taylor v. Taylor and applied by the Privy Council in Nazir Ahmad v. King-Emperor (AIR 1936 PC 253), has been consistently followed in this jurisdiction. Rule 48(7) prescribes both the forum and the period. Recourse to any other forum, or after the expiry of that period, is therefore not merely irregular but incompetent and without jurisdiction.

69. The counsel for the Respondent further averred that the Remand Decision was rendered upon the grievance of respondent No. 3 preferred under Rule 48(3), after a hearing at which the Procurement Committee, the TEC, the Consultant (M/s NESPAK) and the grievant participated. It contains recorded Findings and a recorded Decision. The findings are that no specific format for the Covering Letter existed in the Bidding Documents; that the Form of Bid thereof contained space for quoting the bid price; that IB 9.1(b) nevertheless required that Form to be submitted; that unambiguous evaluation criteria are required to be made; and that the non-provision of a Covering Letter format together with the submission of the same Form of Bid for both proposals "resulted into ambiguity, hence the grievances are considered as maintainable." The decision is that the GRC "remands back the Technical Evaluation for its review accordingly by the Technical Evaluation Committee." It bears the signatures of all three members of the GRC.

70. Further submitted that the Remand Decision was accordingly a decision within the meaning of Rule and appealable only under Rule 48(7). It is not a 48(6), and was appealable interlocutory or procedural direction: it conclusively

determined the maintainability of respondent No. 3's grievance, conclusively recorded the finding of ambiguity, and conclusively disposed of that grievance by remitting the evaluation. Nothing remained before the GRC thereafter, and the GRC became functus officio in respect of it. Therefore, the appeal before the GRC by the appellant was to an entity having no jurisdiction under the Rules to hear the appeal, and hence not maintainable.

71. Further submitted that that the appellant, instead of preferring an appeal to this Honorable Authority, addressed its application dated 18.07.2026 to the GRC itself. That application is expressly styled "Appeal against the unlawful decision dated 13-07-2026 of the Grievance Redressal Committee (GRC), CDA and the subsequent illegal re-evaluation by the Technical Evaluation Committee (TEC)", and its prayer (i) sought that the GRC "set aside and annul the decision dated 13-07-2026 of the Grievance Redressal Committee, CDA, being without jurisdiction and contrary to the PPRA Rules, 2004".

72. Further submitted that such an application was, to that extent, wholly incompetent. Rule 48 does not confer upon a GRC any power to review, revise, recall or annul its own decision. A tribunal or authority of limited statutory jurisdiction possesses no inherent power of review; such a power is a creature of statute and must be expressly conferred. The GRC could not sit in appeal upon itself, and it did not purport to do so, the Impugned Decision records only that the GRC "re-affirmed that GRC decision dated 13-07-2026 is lawful and in accordance with the Public Procurement Rules-2004."

73. That the filing of an incompetent application before a forum lacking jurisdiction to entertain it neither interrupts nor extends the limitation prescribed by Rule 48(7), nor gives rise

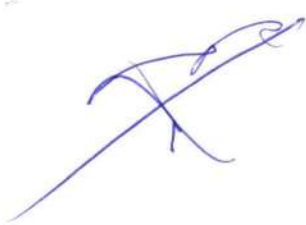
to a fresh cause of action, nor converts the order refusing such an application into an appealable order carrying with it the merits of the matter already concluded. The appellant had the Remand Decision in its possession no later than 18.07.2026 it annexed the very minutes to its own application of that date thirty days from that date expired on 17.08.2026. Thirty days from the date of the decision itself expired on 12.08.2026. On any computation, the period has long since lapsed, and hence Remand Decision has attained finality.

74. Further submitted that the appellant, moreover, has not sought to impugn the Remand Decision even in the present appeal. This appears from the four corners of the memorandum:

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- i. paragraph 1 defines "the Impugned Decision" as the decision "dated 22.07.2026" and none other;
 - ii. the Index at Serial No. 2 describes the decision of 22.07.2026 alone as the impugned decision, while the Remand Decision is listed at Serial No. 12 and annexed as Annexure-K, that is to say, as an ordinary supporting document;
 - iii. the caption of the appeal, the statement of jurisdiction and the statement as to limitation are all referable to the decision of 22.07.2026; and
 - iv. not one of prayers (i) to (viii) seeks the setting aside, annulment, modification or reversal of the Remand Decision, or of the finding of ambiguity recorded therein, or of the direction of remand contained therein.



75. Further submitted that the omission cannot be attributed to inadvertence or to want of opportunity, nor has any such ground been pleaded. The appellant, having deliberately elected to leave the Remand Decision unchallenged, is bound by that election; and the election is now beyond recall, since an



amendment of the memorandum at this stage could not relate back to a period of limitation which has since expired.

76. Further submitted that in these circumstances the Remand Decision stands today as a subsisting, valid and binding determination of the forum which the Rules constitute for the purpose. It is settled that an order of a competent forum, so long as it is not set aside in the manner provided by law, is presumed to be valid, binds all parties before whom it operates, and must be obeyed. The consequences which follow for the present appeal are these:-

(i) The Remand Decision is the foundation upon which every subsequent act complained of rests. It was in obedience to that decision that the TEC reviewed the technical evaluation; and it was upon such review, and in exercise of the power expressly conferred by IB 24.5, that the answering respondent waived the requirements as to the Covering Letter and the placement of the Form of Bid, those matters not materially varying the substance of the bid. The Impugned Decision records this chain in terms, the TEC having clarified before the GRC that "Evaluation has been reviewed in accordance with GRC decision dated 13-07-2026 and in term of IB 24.5 of the Bidding Documents". The superstructure cannot be demolished while the foundation is permitted to stand.

(ii) What the appellant in truth seeks to assail the Remand Decision obliquely through an appeal nominally directed against a subsequent and consequential order. Where a statute provides a specific remedy against an order within a specific period, that order may not be impeached collaterally in proceedings directed against something else, after the specific remedy has been allowed to lapse. To permit such a course would defeat the limitation prescribed by Rule 48(7) and render the finality contemplated by that provision illusory.

(iii) The pleadings of the appellant, are evidence of the fact that subsequent acts of re-evaluation are pursuant to the Remand Decision, which decision has not been challenged anywhere in the present appeal.

EVEN IF THE APPLICATION DATED 18.07.2026 BE TREATED AS A GRIEVANCE UNDER RULE 48(3), ITS SCOPE WAS LIMITED; AND NO ILLEGALITY WAS COMMITTED, THE WAIVER UNDER IB 24 HAVING IN NO MANNER ALTERED THE SUBSTANCE OF THE BID

77. It is submitted that if the application dated 18.07.2026 be read, as it charitably may be, as a fresh grievance under Rule 48(3) directed against the revised Technical Evaluation Reports, even then the scope of such a grievance is confined by the language of Rule 48(3) itself, which speaks of "any act of the procuring agency". A decision of the GRC is not an act of the procuring agency in its evaluative or executive capacity; it is the determination of the statutory forum before which the procuring agency itself is answerable. A grievance under Rule 48(3) therefore does not lie against a decision of the GRC, and cannot be employed as a substitute for the appeal provided by Rule 48(7).

78. That it follows that in the proceedings culminating in the Impugned Decision, the validity of the Remand Decision was not a justiciable issue but a jurisdictional premise. The GRC was bound to take that decision as it stood, and the only question properly before it was whether the TEC had correctly discharged the remand. That is likewise the only question properly before this Honorable Authority in the present appeal. The GRC answered it, holding that "no acts of the Technical Evaluation Committee apparently harmed the interests of the grievant, the firm is still responsive". That answer is, for the reasons following, unimpeachable. The statutory touchstone is the substance of the bid, and substantial - not literal - responsiveness.

79. That the Rules nowhere require meticulous or literal compliance with every stipulation of a bidding document. On the contrary, the standard which the Rules themselves adopt

is that of substantial responsiveness. By Rule 2(1)(h), the "most advantageous bid" is defined to mean a bid which, after meeting the eligibility or qualification criteria, "is found substantially responsive to the terms and conditions as set out in the bidding document". The adoption of that standard by the Rules necessarily presupposes that not every departure from a stipulation is fatal, and that a mechanism for distinguishing the material from the immaterial is inherent in the statutory scheme. Were literal compliance the test, the qualifying word "substantially" would be redundant, and the Rules would have said so.

80. That the same conception informs Rule 31(1), which provides that no bidder shall be allowed to alter or modify his bid after opening, but that the procuring agency may seek and accept clarifications "that do not change the substance of the bid". The statutory prohibition is thus directed to the substance of the bid, and not to its form, its presentation, or the envelope within a single sealed package in which a given document happens to have been placed.

81. That Rule 30(1) requires bids to be evaluated "in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents", IB 24.5, which empowers the Employer to waive a minor informality, non-conformity or irregularity in a bid which does not constitute a material deviation, is one of the "other terms and conditions set forth in the prescribed bidding documents". The exercise of that power is therefore not a departure from Rule 30(1) but the performance of it. Had the answering respondent refused to consider IB 24.5, it would have evaluated the bids otherwise than in accordance with the terms and conditions set forth in the Bidding Documents, and would thereby have contravened Rule 30(1).

82. That by Rule 36(b)(i), which governs the Single Stage Two Envelope procedure adopted for this procurement, "[t]he bid shall comprise a single package containing two separate envelopes. "The "bid", in the contemplation of the Rules, is therefore the single sealed package, of which both envelopes are constituent parts. Respondent No. 3's Form of Bid, duly filled, signed and sealed, was within that single package at the moment of the deadline. It was not supplied late, it was not created afterwards, and it was not substituted. Its presence in one constituent envelope rather than the other cannot, upon the language of Rule 36(b)(i), be said to touch the substance of the bid at all.

83. That, finally, Rule 32 forbids the introduction of any condition "which discriminates between bidders or that is considered to be met with difficulty", reference being made in that behalf to the ordinary practices of the trade concerned. Rule 10(1) obliges the procuring agency to allow the widest possible competition, and Rule 4 requires procurement to be conducted fairly and transparently and to bring value for money. A construction of IB 9.1 which would exclude a bidder for a matter of documentary placement, in circumstances where literal compliance was not open to any bidder at all, would offend each of these provisions. Upon the facts, the waiver did not alter the substance of respondent No. 3's bid in any respect

84. That IB 9.1(b), as reproduced in the Remand Decision, provides:

"Form of Bid duly filled, signed and sealed, in accordance with Clause IB.17. Form of Bid for technical and financial will be submitted in sealed envelope separately. No information about financial bid will be included in the form of technical bid"

85. That the TEC found the bid as non-responsive upon literal construction of the IB requirement. However, subsequent to the Remand Decision, in the interest of competition a purpose of the procurement law, the CDA waived the requirement as the such waiver did not have the effect of altering or amending the substance of the bid in any manner.

86. That the true character of the two matters waived must next be examined against the test of materiality contained in IB 24.3, namely whether the deviation affects in any substantial way the scope, quality or performance of the services, or limits in any substantial way the Employer's rights or the bidder's obligations under the contract, or whether its rectification would unfairly affect the competitive position of other bidders. Applying that test:

(i) the scope, quality and performance of the services offered by respondent No. 3 were in no manner affected. Those matters are defined by its technical proposal, which was lodged in the technical envelope, was evaluated, and was scored:

(ii) the Employer's rights and the bidder's obligations were in no manner affected. The very declarations upon whose supposed absence the original finding rested as to the validity of the bid under IB 24.1(a)(v) and IB 24.1(b)(ii), and as to unconditional acceptance of the terms, conditions, specifications and the Employer's rights under IB 24.1(c)(vi) were contained in the signed and sealed Form of Bid which respondent No. 3 did lodge within the single sealed package before the deadline. The declarations were made; only their location was in question;

(iii) no price, no rate, no quantity, no methodology, no personnel, no plant and no undertaking of respondent No. 3 was added, deleted, substituted or varied at any stage; and

(iv) no rectification of any kind took place, so that the question whether a rectification would unfairly affect the

competitive position of another bidder simply does not arise.

87. Further submitted that the appellant's own pleading places this beyond controversy. At paragraph 5 of the appeal, it is expressly averred that the revised qualification "did not result from any discovery that the Covering Letter or the Form of Bid... had, in fact, been contained in its Technical Proposal at the time of submission". That averment is admitted. It establishes that nothing entered respondent No. 3's bid after the deadline. Therefore, substance of the bid never changed, modified or altered.

88. That what was waived, in the result, was a requirement as to the manner of presentation of documents already within the sealed bid. Such a waiver leaves the offer identical in every particular which the contract will govern. It does not change the substance of the bid within the meaning of Rule 31(1); it does not amend the technical proposal within the meaning of Rule 36(b)(vi); and it does not convert a bid which was not substantially responsive into one which is, but recognises that the bid was substantially responsive throughout.

89. That IB 24.5 confers upon the Employer, in express terms, the power to waive a minor informality, non-conformity or irregularity in a bid which does not constitute a material deviation, provided the bid is otherwise substantially responsive. That power formed part of the published Bidding Documents from the outset; it was known to every bidder, including the appellant, before bids were submitted; and it was available in respect of every bidder alike. Its exercise was therefore neither an act of grace nor a relaxation introduced after the event, but the application of a term of the competition upon which all bidders had contracted to compete.

90. That the CDA expressly invoked IB 24.5, as the Impugned Decision records. The answering respondent respectfully submits that in so doing it acted intra vires the Bidding Documents and in conformity with Rules and that no illegality, irregularity or excess of jurisdiction was committed.
91. That the appellant's reliance upon IB 24.4 is misconceived. That clause precludes a bid which is substantially non-responsive from being made responsive by correction of the non-conformity. It presupposes an anterior finding of substantial non-responsiveness, which is the very matter in issue; it cannot be pressed into service to establish the premise upon which it depends. Nor was any "correction" made: there was nothing to correct.
92. Further submitted that the appellant has suffered no prejudice whatsoever. Its technical qualification is intact; its score of 73 marks is unaltered before and after the remand, which is itself conclusive proof that no evaluation criterion was rewritten; its financial proposal has been opened and is under evaluation. The only consequence of the waiver is that the appellant must meet a competitor upon price. That is not prejudice; it is competition, which Rules 4 and 10(1) exist to secure.
93. Further submitted that even where a defect is found in the decision-making process, relief in procurement matters remains discretionary and is to be granted with caution and in furtherance of public interest, and not merely because a legal point has been made out: *Air India Ltd. v. Cochin International Airport Ltd.* (2000) 2 SCC 617. In *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCC 489-the very authority upon which the appellant relies the Supreme Court, having found a departure from a stated norm, nevertheless declined in its discretion to unsettle the resulting arrangement.

A circular official stamp is visible on the left side of the page, partially overlapping the text of paragraph 93. Inside the stamp, there is a handwritten signature in blue ink. Above the signature, there are some handwritten marks that look like '2' and '4'.

94. Further submitted that the characterization of the Impugned Decision as unlawful is denied. The averment that the Remand Decision was rendered "without any lawful justification" is not open to the appellant, no relief being claimed against it and is in any event denied for reasons already submitted above in detail.

95. Further submitted that the GRC went through the RFP document and found out the separate form of bid was not expressively required in Package for Zone-I, II and III. Furthermore, it was also observed that two separate formats of Form of Bid were not provided in the bidding document and the Form of Bid had space for specifying bid price which led to this confusion and the appellant filed the Form of Bid with Financial Bid. The same fact was found to prove true and Respondent No. 3's bid was available with Financial Bid. The GRC therefore decided and directed the TEC to review its decision. The TEC reviewed the evaluation and declared the bid responsive with 93 marks. It is further added that this decision did not render the current appellant disadvantageous at any stage in-fact it promoted a healthy competition.

96. Further submitted that no illegality and irregularity has been committed in the procurement process so as to render it as a mis-procurement. The Remand Decision, is the foundation of re-evaluation, which decision has not been challenged by the appellant in the present appeal. Furthermore, the waiver was granted in terms of IB 24.5 which states as follows:

"...Any minor informality or non-conformity or irregularity in a Bid which does not constitute a material deviation may be waived by procuring agency provided such waiver does not prejudice or affect the relative ranking of any bidder..."

97. Further submitted that the clarifications were sought because the appellant's own quoted sub-head totals did not reconcile

with its own quoted unit rates, because it had quoted a combined human-resource rate where a disaggregated rate was called for and because it had entered no rate against Mechanical Washing. Each letter recorded in terms that the appellant was not permitted to revise, amend or alter its quoted rates, prices or the substance of its bid. That is Rule 31(1) applied, and not departed from. The allegations of departure from mandatory requirements, of breach of transparency and equal treatment, and of prejudice, are denied.

98. It is reiterated herein that the Placing of Form of bid in the wrong envelop does not render the entire process ambiguous as it has now come to record. The cause of non-responsiveness at first stage has been removed after opening of Financial Bid where Form of bid has been found on record. The decision of the GRC ensured healthy competition and will help the procuring agency get a competitive rate. The appellant is agitating these grounds for the first time, after having participated in the bid. At no stage prior to submission of the bid did the appellant agitate that bidding documents were ambiguous, nor did it seek any clarity.

99. Further submitted that at no stage was any bidder allowed to alter, modify or change the substance of the bid. The waiver granted by the CDA in terms of IB 24.5 was pursuant to GRC Remand Decision dated 13.07.2026, which decision has not been challenged in this appeal.

100. Reliance is placed upon PLD 2018 Islamabad 150, titled Messrs. S.I.S. Corporation (Pvt) Ltd. versus Federation of Pakistan and others, wherein it is held that:

43. The "tender" submitted by the Bidders comprised of a technical bid and a financial bid. As mentioned above, the technical bid of all the bidders was unsealed in the presence

all the bidders. Hence, this is not a case of premature opening of a sealed bid. The mere fact that the outer envelope was open did not expose the contents of respondent no. 9's sealed technical and financial bids. The learned counsel for the petitioners could not come up with any convincing arguments as to how respondent no. 9's unsealed outer envelope had prejudiced the petitioners. In the case of *Poddar Steel Corporation v. Ganesh Engineering Works* (AIR 1991 SC 1579), it has been held as follows:

"6. As a matter of general proposition, it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other case it must be open to the authority to deviate from and not to insist the strict literal compliance of the condition in appropriate cases."

44. Clause 7.1.7 of the tender documents provided that respondent No.2 may waive any minor informality or non-conformity or deviation. Since no prejudice was caused to the petitioners by the fact that the outer envelope, containing respondent No. 9's sealed financial and technical bids, was unsealed, I am of the view that respondent No. 2 committed no illegality by not disqualifying respondent No. 9 for such a minor deviation.

101. Reliance is placed upon 2006 CLC 1438, titled Mian Muhammad Shafi and another Versus Additional District Judge, Mian Channu, District Khanewal and 14 others, wherein it is held that:

8. Now it is a matter of record that the plea was specifically raised by the deceased defendant in his written statement. An issue was framed and he was called upon to lead evidence to establish his plea that the suit land is urban immoveable property and is located within the municipal limits of Mian Channu. He was given sufficient opportunities on the repeated requests made by his learned counsel but he failed to lead any evidence and the learned trial Court closed his evidence. There being no evidence in support of the said plea, the issue was answered against him. To my mind the said finding became res judicata between the parties to the said suits and could not have been challenged and then set aside in collateral proceedings, i.e., under section 12 (2), C.P. C. In my humble opinion if this course is allowed to be followed then there will be no end of any proceedings. All that would be required is that a defendant would be raising plea attacking the jurisdiction of the Court by making some factual allegations, he will leave the matter unattended and thereafter file an application under section 12 (2), C.P.C. Even if such application is rejected even the same order can be challenged on and on under the said provision. Section 11, C.P.C. completely debars the Court from trying any suit or "issue" which has been heard and finally decided by a Court in an earlier inter parties' suit. There is no matter of doubt in my mind that the issues could be finally decided by a Court of competent jurisdiction. Needless to state that the Court which decided the suit was fully competent to decide the question as to whether or not it had the jurisdiction which was dependent upon existence

and the proof of the facts pleaded by the deceased defendant in his written statement. The said judgement being relied upon by the learned counsel pertain to judgement and decrees passed ex-parte and are not at all attracted to the admitted facts and circumstances of the present case. In the case of Muhammad Khan v. Massanand 13 others 1999 SCMR 2464. Bench comprising three Honorable Judges of the Supreme Court of Pakistan proceeded to set aside the judgement of this Court when an ex parte pre-emption decree passed after cut out date i.e., 31-07-1986 was sought to be set aside under Section 12 (2), C.P.C. The learned trial Court dismissed the application. A learned Additional District Judge allowed the revision and set aside the decree. This Court dismissed the Writ Petition. The Civil Appeal was allowed by their Lordships holding that lateral proceedings under Section 12 (2), C.P.C. cannot be allowed to be restored and bypass the period of limitation. In the present case it is matter of record that the decree passed in the presence of learned counsel for the defendant, no appeal was filed and as such resort to Section 12 (2), C.P.C. could not have been allowed.

102. The learned counsel for the Respondent No. 3 (M/s ATLASPAK WASTE MANAGEMENT COMPANY (PRIVATE) LIMITED) submitted that the answering respondent is Respondent No. 3 in the above-titled appeal and files its own reply and para wise comments, independently of Respondent No. 1. For convenience, the Public Procurement Rules, 2004 are referred to as "the Rules"; the Instructions to Bidders forming part of the respective Bidding Documents as "IB"; the Grievance Redressal Committee constituted by Respondent No. 1 under Rule 48(1) as "the GRC"; the Technical Evaluation Committee as "the TEC"; the Consultant / Transaction Adviser, National Engineering Services Pakistan (Pvt.) Limited, as "the

Consultant"; the package for Zones I, II and III (PPRA Ref. No. EPADS-F-26051867292) as "the First Procurement"; the package for Zones IV and V (PPRA Ref. No. EPADS-F-26051867294) as "the Second Procurement"; the decision of the GRC dated 13.07.2026 as "the Remand Decision"; and the decision of the GRC dated 22.07.2026, being the sole decision impugned in this appeal, as "the Impugned Decision".

103. Further submitted that the answering respondent is impleaded in the memorandum of appeal in the alternative as "M/s Altaspak / Atlas Waste Management Company (Pvt.) Ltd." There is no entity bearing the latter name party to either procurement. The correct description is that given in the cause title above, being the name borne by the certificate of incorporation of the answering respondent, and the cause title is liable to be amended accordingly.

104. Further submitted that the appeal is incompetent: two procurements have been assailed by one appeal upon one deposit. That the memorandum, though cast as a single appeal, assails the procurement of two distinct packages, namely the First Procurement and the Second Procurement. These are two procurements and not one. They were conducted under two separate sets of Bidding Documents which differ materially in their Instructions to Bidders; they were allotted two distinct reference numbers upon the electronic procurement system maintained by this Honorable Authority itself; they were evaluated by two separate Technical Evaluation Reports announced on 07.07.2026; they were made the subject of two separate grievances by the answering respondent; Respondent No. 1 addressed two separate letters of clarification to the appellant, being letters Nos, CDA/SWM/Genl/06/2026/63 and /64, both dated 06.08.2026, one referable to each package; and they will issue in two separate contracts, at two separate values, secured by

two separate performance guarantees. That a single notice was published for both packages does not fuse them into one procurement; the unit of procurement is the package which issues in a contract.

105. Further submitted that the appellant itself so treats them. At paragraph 1 of the memorandum, it pleads that the answering respondent was declared technically qualified "not only for the package in question but also for the other connected package"; at paragraph 6 it refers to "both packages"; and at prayer (iv) it seeks relief in respect of "either of the two connected packages". The appellant thus knows that there are two packages, and has nevertheless elected to assail both by one memorandum upon one deposit.

106. Further submitted that Rule 48(7) permits an appeal "subject to depositing the prescribed fee". The deposit is upon that language a condition of competence and not a matter of mere procedure. Two appeals therefore lay, and two deposits were payable, each computed upon the value of the procurement to which it relates in accordance with Regulation 7 of the Redressal of Grievances Regulations, 2021 read with Schedule II thereto as revised. The appellant has deposited a single fee, evidenced at Annexure-N to the appeal at page 245, being a pay order of Meezan Bank Limited, Jinnah Avenue Blue Area Branch, Islamabad, No. PO.0301.2933414 dated 10.08.2026 in the sum of Rs. 2500000/- drawn in favour of the Public Procurement Regulatory Authority.

107. Further submitted that the appeal is in consequence competent, if at all, in respect of one procurement only, and the appellant is liable to be put to its election. In the alternative, and without prejudice, if a single appeal be held to lie against two procurements, the prescribed fee falls to be computed upon the aggregate value of both procurements, which upon

the bids as opened exceed Rs. 17.6 billion in the aggregate, and the deposit made is upon that footing also deficient.

108. Further submitted that the answering respondent does not consent to the appeal proceeding upon a deficient deposit, and expressly reserves this objection. The deficiency is moreover incapable of cure at this stage. Limitation under Rule 48(7) in respect of the Impugned Decision expired on 21.08.2026, the memorandum having been verified and subscribed on 11.08.2026 and instituted on or about that date, and a deposit made now could not relate back so as to institute, within time, an appeal against a procurement which has hitherto not been validly assailed at all. The appeal is vague, ambiguous and bad for duplicity.

109. Further submitted that the memorandum nowhere distinguishes between the two procurements. The grounds are pleaded in the composite, the prayers are pleaded in the composite, around which the entire appeal revolves, and an appeal which fails to identify the document it is construing does not disclose an intelligible cause of action. That the defect is not one of drafting only; it is a defect of proof. The paginated Index at page 2 of the memorandum discloses a single Annexure-E, described as "Copy of the Instructions to Bidders (IB)", at pages 29 to 225. One composite set of Instructions to Bidders has thus been placed before this Honorable Authority in support of a challenge to two procurements governed by two differently worded documents, and the Bidding Documents of the other procurement are not on the record at all. The appellant's composite construction of IB 9.1(b) is the direct product of its composite annexure.

110. Further submitted that the record is deficient in a further and more fundamental respect. The paginated Index lists, at Serial No. 7, the "Original Technical Evaluation Report for Zone 1, 2

and 3" (Annexure-F, page 226) and, at Serial No. 8, a "Copy of Original Technical Evaluation Report for Zone 1, 2 and 3" (Annexure-G, page 227). The original Technical Evaluation Report for Zones IV and V being the very instrument by which the answering respondent was declared non-responsive in the Second Procurement, and the foundation of the whole of the appellant's case as to that package is nowhere listed and is not on the record. The appellant has duplicated the report for one package and omitted the report for the other.

111. Further submitted that the memorandum is in this respect internally inconsistent. It contains two mutually irreconcilable schedules of annexures: the paginated Index at page 2, listing sixteen items with annexures A to N and running to page 246; and a further unpaginated schedule at page 23, listing annexures A to U with every page reference left blank and with Annexure-U framed as being filed "if relied upon at hearing". The two schedules do not describe the same documents under the same letters: Annexure-G in the paginated Index is a duplicate of the original report for Zones I-III, whereas Annexure-G in the schedule at page 23 is the revised report for Zones I, II and III. It is not possible to ascertain from the memorandum itself what has been filed.

112. Further submitted that the answering respondent is in consequence embarrassed in meeting the appeal, and this Honorable Authority is placed in the position of being asked to pronounce upon two different sets of Bidding Documents by a single composite order. The appeal is liable to be dismissed upon this ground alone; in the alternative, the appellant ought to be directed to elect and to particularize its case package by package before the answering respondent is called upon to answer it further. No cause of action whatever is disclosed in respect of the First Procurement (Zones I-II). That the whole of the appeal proceeds upon the premise that the answering

respondent was obliged to lodge its Form of Bid within the envelope marked "TECHNICAL PROPOSAL", and failed to do so. That premise is pleaded at paragraph 2 of the memorandum in these words: "Clause 9.1(b), in the bidding document, expressly required the Form of Bid relating to the technical and financial proposals to be submitted separately and prohibited the inclusion of financial-bid information in the Technical Form of Bid." The reference is to "the bidding document" in the singular, and the proposition is thereafter applied to both packages without distinction. In respect of the First Procurement that premise is false in fact. IB 9.1 of the Bidding Documents for Zones I, II and III provides, in its entirety, as follows:

"9.1 The bid prepared by the Bidder shall comprise the following components: (a) Covering Letter. (b) Form of Bid duly filled, signed and sealed, in accordance with Clause IB.17. (c) Appendices (A to G) to Bid duly filled and signed..."

113. That the clause stops there. It requires the Form of Bid to be duly filled, signed and sealed in accordance with IB 17. It says nothing whatever as to the envelope in which that Form is to be placed. The sentences upon which the entire appeal depends "Form of Bid for technical and financial will be submitted in sealed envelope separately. No information about financial bid will be included in the form of technical bid." appear only in IB 9.1(b) of the Bidding Documents for the Second Procurement. They do not appear in the Bidding Documents for the First Procurement at all.

114. Further submitted that the appellant has itself conceded the divergence, and has done so in its own schedule of annexures at page 23 of the memorandum. Annexure-B is there described as "Bidding Documents Zones I, II & III (relevant IB 5, 6, 7, 9, 10, 11, 18, 23, 24, 26, 32 and financial schedule/special provisions)". Annexure-C is described as "Bidding Documents

Zones IV & V (same relevant provisions, including express separate technical / financial Form of Bid language)". The qualifying words appear against the Second Procurement, and against the Second Procurement alone. The appellant thus knew, when it settled its pleadings, that the "express separate technical / financial Form of Bid language" was a feature of one Bidding Document and not of the other, and it has nevertheless pleaded its entire case upon the footing that both were the same. That it follows that in respect of the First Procurement there was no requirement to breach. The answering respondent's Form of Bid was duly filled, signed and sealed in accordance with IB 17, and was lodged within the single sealed package before the deadline. That is the whole of what IB 9.1(b) required of it. The declaration of non-responsiveness in the First Procurement rested upon a stipulation which does not exist in that Bidding Document, the TEC having applied to the First Procurement a sentence found only in the Bidding Documents of the Second. The GRC recorded that very finding, namely that "the separate form of bid was not expressly required in Package for Zone-I, II and III".

115. Further submitted that this is not a point constructed for the purposes of this appeal. The answering respondent took it at the earliest opportunity available to it, in its grievance dated 09.07.2026 preferred under Rule 48(3), in these words: "The Bidding Documents for Zones I to III do not expressly or unambiguously require that the Form of Bid be enclosed with the Technical Bid, whereas in the Bidding Documents for Zones IV and V, it is clearly mentioned that no information about the Financial Bid will be included in the Technical Bid." It was upon that submission, among others, that the GRC recorded its finding.

116. Further submitted that this objection is complete and self-contained as regards the First Procurement. It does not depend upon the validity of the Remand Decision; it does not depend upon the exercise of any power of waiver under IB 24.5; and it does not depend upon any question of materiality or of substantial responsiveness. Whatever this Honorable Authority may hold upon those questions, no ground of appeal touching the First Procurement can survive the plain language of IB 9.1 of that Bidding Document. The appeal, in so far as it relates to the First Procurement, is liable to be dismissed in limine.

117. Further submitted that the Remand Decision has attained finality and is not impugned. That the Remand Decision dated 13.07.2026 is the legal foundation of every act of which the appellant complains, and has neither been impugned nor made the subject of any relief in the present appeal. It was a decision within the meaning of Rule 48(6) and was appealable and appealable only under Rule 48(7), within thirty days. The appellant did not prefer such an appeal.

118. Further submitted that the appellant's technical score is unaltered at 73 marks in both packages, before and after the review of which it complains; its bid was at all times treated as technically qualified; and its position upon price is second in both procurements. It has suffered no alteration of its rights and no prejudice capable of being remedied by this appeal.

119. Further submitted that the Impugned Decision is dated 22.07.2026. The financial bids were opened, the appellant participating and taking no objection. The appellant thereafter engaged with Respondent No. 1 in the clarification exercise under IB 23, receiving letters Nos. CDA/SWM/Genl/06/2026/63 and/64 dated 06.08.2026 and responding on 10.08.2026. Only after all of this, on

11.08.2026, did it verify the present appeal. A party which takes the benefit of a process, participates in it through the opening of the financial proposals, and engages with it to the conclusion of the clarification exercise, cannot thereafter impugn the step by which its competitor was admitted to that very process. It approbates and reprobates.

120. Further submitted that prayer (vi) seeks a direction to Respondent No. 1 to reject all bids and annul the procurement, that is, to exercise the discretion conferred by Rule 33. That is a discretion of the procuring agency alone. No bidder has a right to compel the annulment of a procurement, still less a bidder which has participated in it, taken its chance upon the evaluation, and moved only upon finding that it must meet a competitor upon price. The prayer is moreover expressly pleaded "in the alternative and without prejudice to prayers (ii) to (v)", which is itself an acknowledgement that the appellant's complaint is not that the procurement was unlawfully conducted but that it has not won it. Prayer (vii) must be refused: an interim restraint would decide the appeal by effluxion of time. That prayer (vii) seeks, pending final disposal of the appeal, to restrain Respondent No. 1 "from finalizing the procurement, accepting any bid, issuing any Letter of Acceptance, demanding performance security, making any award, executing any contract or taking any consequential step".

121. Further submitted that IB 16.1 provides that bids shall remain valid for 150 days after the date of bid opening. Bids in both procurements were opened on 18.05.2026. The period of validity accordingly expires on 15.10.2026. IB 33.1 requires that the Letter of Acceptance be issued prior to expiration of the period of bid validity. An order in the terms of prayer (vii), if it were to remain in force for so short a period as six weeks, would not hold the position pending disposal; it would

determine the appeal in the appellant's favour by the mere passage of time, and would deliver to the appellant under prayer (vii) the very annulment which it seeks in the alternative under prayer (vi) and which it may well fail to establish upon the merits. That there is in any event no foundation for interim relief. The appellant's technical score is unaltered, and it can suffer no prejudice from the procurement proceeding to its lawful conclusion. The answering respondent accordingly prays that no order under Rule 48(4) or otherwise be made restraining Respondent No. 1 from proceeding to award; that any such order as may subsist be vacated; and that the appeal be heard and decided at the earliest date convenient to this Honorable Authority.

122. Further submitted that the present procurement is the third round of tendering for the same services. Two earlier rounds were cancelled. In one of those earlier rounds two joint ventures participated, of which one was the appellant joint venture, or a joint venture comprising the same constituent members; and that joint venture was excluded from the competition upon its foreign constituent member being found to have submitted documents that were not genuine. Proceedings arising out of that round are presently pending before this Honorable Authority in Appeal No. PPRA/AP-44/2026.

123. Further submitted that not a word of this history appears in the memorandum of appeal. On the contrary, the appellant has declared under the heading "Matter not pending before other authority, etc." that "the matter regarding which this appeal has been made is not pending before any court of law or any other Authority or any other Tribunal", and has verified on solemn affirmation on 11.08.2026 that "the foregoing constitutes full, true and plain disclosure of all material facts and nothing has been concealed". The appellant has instead

presented itself as a blameless participant whose expectations have been disturbed. A party invoking the appellate jurisdiction of this Honorable Authority, and asking it to annul a public procurement in the exercise of a discretionary power, is under a duty to disclose the whole of the material history of that procurement and of its own participation in it. The suppression is deliberate and is by itself a sufficient reason to decline the discretionary relief sought.

124. Further submitted that the history is material and not merely embarrassing. IB 2.1(h) renders ineligible a bidder declared ineligible or blacklisted; Appendix B to the Instructions to Bidders requires every bidder to furnish an affidavit upon stamp paper of non-blacklisting from PPRA and SECP, and IB 44 requires the execution of the Integrity Pact at Appendix-G to Bid for every federal procurement contract exceeding Rupees ten million, failing which the bid is non-responsive. By that Integrity Pact each bidder accepts "full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts". A bidder which insists upon the literal exclusion of a competitor for the placement of a document within a sealed package, while itself having been excluded in an earlier round of the self-same procurement upon a finding touching the genuineness of its documents, is not well placed to invoke either the letter or the equity of the Bidding Documents.

125. Further submitted that Respondent No. 2 has been impleaded although the GRC is a committee constituted by Respondent No. 1 under Rule 48(1) and is not a juristic person capable of suing or being sued.

126. Further submitted that the services presently under procurement are the collection, transportation and disposal of municipal solid waste in the Islamabad Capital Territory. They

are not a discretionary convenience. They are an essential public health service for the federal capital, and every month by which their procurement is delayed is a month in which the service is provided, if at all, upon interim and less economical arrangements at the cost of the public exchequer. That the present procurement is the third attempt to procure these services. The first round was cancelled for the reason that no bidder was able to meet the technical qualification criteria. The second round was cancelled in the circumstances; the appellant joint venture having been excluded upon a finding touching the genuineness of the documents submitted by its foreign constituent member.

127. Further submitted that the answering respondent draws this history to the attention of this Honorable Authority for a specific and limited purpose. The relief which the appellant seeks the setting aside of the evaluation and, at prayer (vi), the annulment of the procurement under Rule 33 would produce a third failed procurement of an essential public service in the federal capital, and would do so at the instance of the only bidder which stands to benefit from the elimination of competition. That the answering respondent is, upon the record as it presently stands, the only other technically responsive bidder. Should its bid be set aside, the appellant would stand alone. Should the procurement instead be annulled, the prices of both bidders having already been opened and read out in public, any fresh tender would be conducted with the appellant in possession of its competitor's rates. Neither outcome serves the public interest; each serves the appellant. The financial bids in both procurements were open, and the appellant admits at paragraph 6 of the memorandum that "the procurement has now moved beyond the technical stage and the financial contents of the competing bids have been exposed".

128. Further submitted that the declaration of non-responsiveness in the First Procurement was founded upon IB 9.1(a) and IB 9.1(b), read with IB 24.1(a)(v), IB 24.1(b)(ii) and IB 24.1(c)(vi), as the appellant pleads at paragraph 2 of the memorandum. Each limb fails upon the language of the Bidding Documents for that procurement. That as to IB 9.1(b), the clause in the First Procurement contains no direction whatever as to the envelope in which the Form of Bid is to be placed. The answering respondent's Form of Bid was duly filled, signed and sealed in accordance with IB 17 and was lodged within the single sealed package before the deadline. Compliance was therefore complete. That as to IB 9.1(a), no format for a Covering Letter was prescribed anywhere in the Bidding Documents for either procurement a finding recorded by the GRC in the Remand Decision and admitted by the appellant at paragraph 3 of the memorandum, where it is pleaded that the GRC "observed that no specific format had been prescribed for the Covering Letter". A requirement which the procuring agency has not defined cannot be the measure of a bidder's default, and a bidder cannot be excluded for failing to furnish a document of which no form, content or purpose was ever specified. In any event every declaration which such a letter could have carried was contained in the signed and sealed Form of Bid lodged within the package.



129. Further submitted that as to IB 24.1(a)(v), which requires the bid to contain a declaration that it shall remain valid for the period specified in the Bidding Documents, that declaration was made: it appears in the duly signed and sealed Form of Bid lodged within the single sealed package before the deadline. The declaration was accordingly present in the bid at the moment of submission, and only its location within the package was in question and in the First Procurement not even that. That as to IB 24.1(c)(vi), which concerns a bid materially



and substantially different from the conditions and specifications of the Bidding Documents, no such difference has been identified, and none exists. The answering respondent's technical proposal was lodged in the envelope marked "TECHNICAL PROPOSAL", was evaluated, and was scored at 92.5 marks upon review. No condition, reservation or qualification was attached to its offer.

130. Further submitted that IB 9.1(b) of the Second Procurement required the Form of Bid to be submitted, directed that Forms of Bid "for technical and financial will be submitted in sealed envelope separately", and directed that "no information about financial bid will be included in the form of technical bid". Respondent No. 1 nevertheless furnished one Form of Bid only, and that Form contains a space for the quoting of the bid price. No unpriced Form of Bid, and no separate technical Form of Bid, was ever issued. That a bidder was therefore required to do two things which could not both be done. To place the Form of Bid as issued in the technical envelope was to include information about the financial bid in the technical proposal, contrary to the express prohibition in the same sub-clause. To strip the price from that Form so as to create an unpriced technical version was to alter a standard form of the Bidding Documents, which IB 10.1 forbids in terms: "Standard Forms of bidding documents must not be allowed to change and any change in the standard forms may lead to the disqualification of the bidder." IB 17.3 is to the same effect, providing that "No alteration is to be made in the Form of Bid nor in the Appendices thereto except in filling up the blanks as directed. If any alteration be made or if these instructions be not fully complied with, the bid may be rejected." Literal compliance was not merely difficult. It was impossible, and impossible for every bidder alike. That the ambiguity so created was of Respondent No. 1's own making and falls to be construed against it and not

against a bidder who did the only thing that could sensibly be done, namely to place the priced Form of Bid with the financial proposal so as to honour the prohibition upon financial information entering the technical envelope. This construction is reinforced by Rule 32, which forbids the introduction of any condition "which discriminates between bidders or that is considered to be met with difficulty", and by Rule 10(1), which obliges the procuring agency to allow the widest possible competition. It was upon precisely this reasoning that the GRC found the Bidding Documents ambiguous and remitted the evaluation.

131. Further submitted that the Rules nowhere require meticulous or literal compliance with every stipulation of a bidding document. By Rule 2(1)(h), the "most advantageous bid" is a bid found "substantially responsive" to the terms and conditions set out in the bidding document. The adoption of that standard presupposes that not every departure is fatal. Rule 31(1) is to the same effect, prohibiting alteration of a bid after opening while permitting clarifications "that do not change the substance of the bid". That the test of materiality is supplied by IB 24.3, and upon it the answering respondent's bid was substantially responsive from the moment of submission:



(i) the scope, quality and performance of the services offered were in no manner affected, those matters being defined by the technical proposal, which was lodged in the technical envelope, was evaluated and was scored;



(ii) the Employer's rights and the bidder's obligations were in no manner affected, the very declarations upon whose supposed absence the original finding rested being contained in the signed and sealed Form of Bid lodged within the single sealed package before the deadline;

(iii) no price, rate, quantity, methodology, personnel, plant or undertaking of the answering respondent was added, deleted, substituted or varied at any stage; and

(iv) no rectification of any kind took place, so that the question whether a rectification would unfairly affect the competitive position of another bidder does not arise.

132. Further submitted that by Rule 36(b)(i) the bid is "a single package containing two separate envelopes", and IB 18.1 required the sealed envelopes containing the technical and financial bids to be "put in one sealed envelope". The answering respondent's Form of Bid was within that single sealed package at the moment of the deadline. It was not supplied late, it was not created afterwards, and it was not substituted. Its presence in one constituent envelope rather than the other cannot, upon that language, be said to touch the substance of the bid at all. That the position is placed beyond controversy by the custody of the document. Under Rule 36(b)(iv) and IB 22.3 the envelope marked "FINANCIAL PROPOSAL" was retained in the custody of Respondent No. 1, unopened, from the deadline of 18.05.2026 until the opening of financial. The Form of Bid was throughout that period in the procuring agency's own custody, sealed. It was physically impossible for anything to be inserted into it, and nothing was.

133. Further submitted the appellant's own pleading admits as much. At Ground H.2 of the memorandum the appellant pleads: "Respondent No.3 admittedly did not enclose the Covering Letter required under IB 9.1(a) with its Technical Bid and admittedly placed the Form of Bid in the separate Financial Proposal. The original TEC, therefore, found the bid non-responsive. There was thereafter no change in the contents of the bid as submitted at the deadline. The same admission is repeated at Ground H.3 ("without any change in respondent No.3's original Technical Proposal") and at

paragraph 5, where it is averred that the revised qualification "did not result from any discovery that the Covering Letter or the Form of Bid required under Clause 9.1(b) of the IB had, in fact, been contained in its Technical Proposal at the time of submission". Those averments are admitted and are relied upon. They establish that nothing entered the answering respondent's bid after the deadline, which is the only matter with which Rule 31(1) is concerned.

134. Further submitted that Rule 48 constitutes a complete and self-contained code for the redressal of procurement grievances. Sub-rule (1) obliges the procuring agency to constitute a committee to address the complaints of bidders. Sub-rule (3) provides for a grievance against any act of the procuring agency after submission of bids. Sub-rule (6) requires the GRC to investigate and decide within ten days. Sub-rule (7) provides the sole remedy against a decision so rendered, namely an appeal to this Honorable Authority within thirty days of communication, subject to the prescribed deposit, the decision of the Authority being final. That the periods prescribed throughout Rule 48 - seven days, five days, ten days, thirty days disclose a legislative intention that procurement disputes shall be raised and concluded with expedition, and shall not remain in agitation while a procurement proceeds. Where a statutory instrument provides that a thing shall be done in a particular manner and within a particular time, that thing must be done in that manner and within that time, and all other modes are forbidden: Nazir Ahmad v. King-Emperor, AIR 1936 PC 253. That the Remand Decision was a decision within the meaning of Rule 48(6). It was rendered upon the grievance of the answering respondent preferred under Rule 48(3), after a hearing at which the Procurement Committee, the TEC, the Consultant and the grievant participated. It contains recorded findings and a

recorded decision, it conclusively determined the maintainability of that grievance, it conclusively recorded the finding of ambiguity, and it conclusively disposed of the grievance by remitting the evaluation. It bears the signatures of all three members of the GRC. It was appealable, and appealable only, under Rule 48(7).

135. Further submitted that the appellant, instead of preferring such an appeal, addressed its application dated 18.07.2026 to the GRC itself. That application is expressly styled "Appeal against the unlawful decision dated 13-07-2026 of the Grievance Redressal Committee (GRC), CDA and the subsequent illegal re-evaluation by the Technical Evaluation Committee (TEC)", and its prayer sought that the GRC set aside and annul its own decision of 13.07.2026. The appellant thus treated the Remand Decision as adverse to it, and did so within five days of its rendition; it cannot now be heard to say that it was not aggrieved by it. That the appellant had the Remand Decision in its possession no later than 18.07.2026, having annexed the minutes to its own application of that date. Thirty days from the date of the decision expired on 12.08.2026, and thirty days from 18.07.2026 expired on 17.08.2026. Upon any computation the period has lapsed. Nor has the Remand Decision been impugned even in the present appeal: paragraph 1 of the memorandum defines the impugned decision as that of 22.07.2026 and none other, the Index at page 2 of the memorandum describes the decision of 22.07.2026 alone as "the Impugned Decision" (Serial No. 2. Annexure-A, at page 25) while listing the Remand Decision as an ordinary supporting document (Serial No. 12, Annexure-K, at pages 237-238); and not one of the prayers seeks its setting aside, annulment or reversal. That the election was moreover a deliberate one, made with the remedy still open. Prayer (ii) of the memorandum seeks to set aside "the post-remand technical

evaluation/proceedings undertaken pursuant to the GRC's decision dated 13.07.2026" that is, the consequences of the Remand Decision, while leaving the Remand Decision itself standing. The memorandum was verified and subscribed on 11.08.2026, and the thirty-day period reckoned from the Remand Decision did not expire until 12.08.2026. The appellant therefore had the remedy under Rule 48(7) available to it on the very day it settled its pleadings, and chose not to invoke it. This is not a case of a limitation inadvertently missed, in which indulgence might be sought; it is a case of a deliberate election. It is not open to a party to leave a remand order standing, unchallenged and final, and to seek in the same breath the setting aside of everything done in obedience to it.

136. Further submitted that the answering respondent's primary case is that its bid was substantially responsive from the moment of submission, for the reasons set out at Parts III and IV above, and that no waiver was required in order to make it so. The submissions in this Part arise only if that primary case be not accepted. That IB 24.5 confers upon the procuring agency, in express terms, the power to waive any minor informality, non-conformity or irregularity in a bid which does not constitute a material deviation. That power formed part of the published Bidding Documents from 23.04.2026; it was known to every bidder, the appellant included, before bids were submitted; and it was available in respect of every bidder alike. Its exercise was therefore neither an act of grace nor a relaxation introduced after the event, but the application of a term of the competition upon which all bidders contracted to compete. Rule 30(1) requires bids to be evaluated in accordance with the evaluation criteria "and other terms and conditions set forth in the prescribed bidding documents", and IB 24.5 is one of those other terms; to have disregarded it would itself have contravened Rule 30(1).

137. Further submitted that the power conferred by IB 24.5 is the power of the procuring agency, and its exercise required no direction from the GRC or from anyone else. It is therefore sustainable independently of the Remand Decision, and would remain sustainable even upon the appellant's own case that the remand was without jurisdiction. That as to the proviso to IB 24.5, namely that such waiver must not prejudice or affect the relative ranking of any bidder, the answering respondent submits that the relative ranking of bidders in this procurement is determined by the evaluated bid price. IB 30.1 requires the contract to be awarded to the bidder whose bid is substantially responsive and who has offered the lowest evaluated bid price. The technical evaluation is a threshold: a bidder must secure 65% collectively with a minimum of 40% in each of the seven categories, and either crosses that threshold or does not. There is no technical ranking to disturb. The appellant's position upon price is precisely what it always was, and its technical score of 73 marks is identical before and after the review which is itself conclusive proof that no evaluation criterion was rewritten, for had the criteria altered, the appellant's own score would have moved.

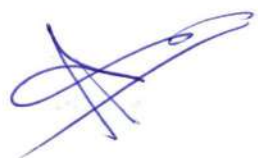
138. Further submitted that upon the appellant's construction, by which "relative ranking" is affected whenever a further bidder is admitted to the competition, no waiver could ever be exercised in favour of any bidder in any procurement, and IB 24.5 would be a dead letter. That construction is to be rejected, what changed upon the review was not the appellant's ranking but the size of the field, and the admission of a further competitor is the object which Rules 4 and 10(1) exist to secure, not a prejudice against which they guard. That the appellant's reliance upon IB 24.4 is misconceived. That clause precludes a bid which is substantially non-responsive from being made responsive by correction of the non-conformity. It presupposes

an anterior finding of substantial non-responsiveness, which is the very matter in issue, and cannot be pressed into service to establish the premise upon which it depends. Nor was any correction made: there was nothing to correct.

139. Further submitted that this Honorable Authority is not a forum for the vindication of a disappointed bidder's commercial expectations. It is the guardian of the integrity of public procurement, and its function under Rule 48(7) is to see that public money is spent transparently, competitively and to advantage. Rule 4 requires procurement to be conducted in a fair and transparent manner, to ensure that the object of procurement brings value for money to the procuring agency, and to be free of corrupt practices. Rule 10(1) obliges the procuring agency to allow the widest possible competition. That the decisions under challenge advanced each of those objects. Before the review, a single bidder stood technically qualified in each procurement. After it, two bidders stand qualified, and the financial competition between them will be decided upon price under IB 30.1. The result of the acts complained of has been to convert a procurement with one qualified bidder into a procurement with two. It is difficult to conceive of an outcome more squarely within the purpose of Rules 4 and 10(1), or of a submission more paradoxical than that such an outcome constitutes mis-procurement.



140. Further submitted that it may be noted, in this connection, that the appellant has cited the wrong rule. At Ground A.2 of the memorandum, it is pleaded that "Rule 29 recognizes failure to provide unambiguous evaluation criteria as constituting mis-procurement". Mis-procurement is defined by Rule 50 of the Rules "Any unauthorized breach of these rules shall amount to mis-procurement" and not by Rule 29, which is concerned with evaluation criteria. Nothing turns upon the misdescription save that the appellant's case upon mis-



procurement is nowhere pleaded by reference to the provision which creates it. That the relief sought would produce the opposite result upon every measure by which this Honorable Authority is required to judge a procurement:

- (i) competition would be reduced from two qualified bidders to one, or extinguished altogether by annulment;
- (ii) value for money would be lost, the procuring agency being left to contract with a sole bidder at a price no competitor had tested, or to re-tender in a market in which one bidder now knows the other's rates;
- (iii) transparency would be disserved, the prices having already been opened and read out in public;
- (iv) an essential public health service for the federal capital would be delayed for a third time; and
- (v) the public exchequer would bear the cost of continued interim arrangements throughout that delay.

141. Further submitted that the power of annulment under Rule 33 is a power of last resort, entrusted to the procuring agency and to be exercised in the public interest. It is not a remedy to be granted at the instance of a bidder which has participated in the procurement, taken its chance upon the evaluation, and moved only upon discovering that it must meet a competitor upon price. The answering respondent respectfully submits that this Honorable Authority ought to restrain, and not to direct, the annulment or re-advertisement of this procurement, and ought equally to decline to unsettle evaluations lawfully arrived at.

142. Further submitted that even where a defect in a decision-making process is established, relief in procurement matters remains discretionary, and is to be granted with caution and in furtherance of the public interest rather than merely because a legal point has been made out. That the history

recited above is directly material to the exercise of that discretion. Two rounds of this procurement have already failed. The appellant now seeks a third failure. A party which asks this Honorable Authority to undo a competitive process must satisfy it that the public interest, and not merely its own, will be served thereby. The appellant cannot do so.

143. Further submitted that the appellant, which invites this Honorable Authority to apply the Instructions to Bidders with unbending literalism to the answering respondent, has not itself satisfied them. By its letters Nos. CDA/SWM/Genl/06/2026/63 and /64 dated 06.08.2026, Respondent No. 1 was constrained to seek clarification from the appellant under IB 23 because the appellant's quoted sub-head totals did not reconcile with its own quoted unit rates; because it had quoted a combined human-resource rate where a disaggregated rate was called for; and because it had entered no rate whatever against the item of Mechanical Washing. That the omission of a rate against a scheduled item is not a matter of the placement of a document. IB 1.1 provides that bidders "must quote for the complete scope of works/Services" and that "[a]ny bid covering partial scope of work/services will be rejected as non-responsive". IB 24.1(b)(iii) provides that a bid is likely not to be considered if "it is submitted for incomplete scope of work". The answering respondent respectfully submits that the appellant's own financial bid falls to be scrutinized against those provisions, and craves leave to address this Honorable Authority further upon the point once the clarification correspondence is placed on record. That the appellant is in no position to complain of the seeking of clarifications, having itself been the beneficiary of them. Each of the letters of 06.08.2026 recorded in terms that the appellant was not permitted to revise, amend or alter its quoted rates, prices or the substance of its bid. That is Rule 31(1)

applied, and not departed from and it is the identical principle upon which the answering respondent relies.

144. Further submitted that the GRC examined the Bidding Documents and found that a separate Form of Bid was not expressly required in the package for Zones I, II and III; that no specific format had been prescribed for the Covering Letter; that two separate formats of Form of Bid had not been provided; and that the single Form of Bid furnished contained a space for specifying the bid price, which gave rise to the ambiguity complained of. Those findings are correct and are borne out by the Bidding Documents themselves. The GRC accordingly directed the TEC to review its decision; the TEC did so; and the answering respondent's bid was declared responsive at 92.5 marks in each package. The averment that the appellant's grievance to the GRC was preferred on 21.07.2026 is noted; the appellant's own schedule of annexures at page 23 gives the date of that application as 18.07.2026. It is submitted, however, that the opinion of a consultant as to the meaning of a clause is not the construction of that clause, and that no opinion, however expressed, can supply a requirement which the Bidding Documents for the First Procurement do not contain.

145. Further submitted that the admission that "the procurement has now moved beyond the technical stage and the financial contents of the competing bids have been exposed" is noted and relied upon. The allegations of departure from mandatory requirements, of breach of transparency and equal treatment, and of prejudice, are denied. The appellant's technical score is unaltered at 73 marks and its position upon price is unaltered; no prejudice, direct, substantial or at all, has been or can be identified.

146. Further submitted that the appellant agitates the alleged ambiguity of the Bidding Documents for the first time in this appeal, having participated in the bidding without demur. It sought no clarification under IB 6.1, which was available to it until fourteen days before the deadline, and it lodged no complaint under Rule 48(2), which was available to it until the deadline itself. Having taken its chance upon the documents as issued, it is precluded from impugning them after the event and after an adverse turn in the evaluation. It is further denied that the waiver was other than uniform: IB 24.5 was a published term of the competition from 23.04.2026, available upon identical terms to every bidder including the appellant. No document was retrieved from the Financial Proposal and imported into the Technical Proposal. Under Rule 36(b)(i) the bid is a single package containing two envelopes, and under Rule 36(b)(iv) and IB 22.3 the envelope marked "FINANCIAL PROPOSAL" remained in the unopened custody of Respondent No. 1 from 18.05.2026 until 23.07.2026. As to the proviso to IB 24.5, relative ranking under IB 30.1 is determined by evaluated bid price and not by technical score, and the appellant's position upon price is in no way altered by the waiver. The award of 92.5 marks did not admit the answering respondent to a competition from which it was otherwise excluded; it recorded the quality of a technical proposal which had been lodged in the technical envelope and evaluated from the outset. IB 26.1 is satisfied: the bid of the answering respondent was substantially responsive within Rule 2(1)(h), Rule 31(1) and IB 24.3, and the award of 92.5 marks followed upon, and did not substitute for, that threshold determination.

147. The instant Appeal has been preferred by the Appellant under Rule 48(7) of the Public Procurement Rules, 2004, assailing the decision dated 22.07.2026 ("Impugned Decision") passed by the Grievance Redressal Committee ("GRC") constituted by

Respondent No.1, Capital Development Authority ("CDA"), in relation to the procurement for "Solid Waste Management Services for Islamabad Capital Territory".

148. The Appellate Committee has heard the learned counsels and representatives of the Appellant, Respondent No. 1 (CDA), and Respondent No. 2, Respondent No. 3 (M/s Atlaspak Waste Management Company (Private) Limited, and has carefully examined and considered the Memorandum of Appeal, written replies/submissions, documents and material placed on record, the decisions of the GRC dated 13.07.2026 and 22.07.2026, the Technical Evaluation Report(s), the relevant provisions of the bidding documents, and the applicable provisions of the Public Procurement Rules, 2004.

149. 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.

150. 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.

151. In terms of Rule 2 (1) (h) of the Public Procurement Rules, 2004 “most advantageous bid” means, -

(i) a bid or proposal for goods, works or services that after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding or request for proposals document; and

(ii) evaluated as the highest ranked bid or proposal on the basis of cost or quality or qualification or any combination thereof, as specified in the bidding documents or request for proposal documents which shall be in conformity with the selection techniques to be issued by the Authority.

152. In terms of Rule 31 “Clarification of bids” of the Public Procurement Rules, 2004, which states:



(1) No bidder shall be allowed to alter or modify his bid after the bids have been opened. However, the procuring agency may seek and accept clarifications to the bid that do not change the substance of the bid.



(2) Any request for clarification in the bid, made by the procuring agency shall invariably be in writing. The response to such request shall also be in writing.

153. In terms of Rule 32 "Discriminatory and difficult conditions" of the Public Procurement Rules, 2004, which states:

Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

154. In terms of Rule 48 (3) of the Public Procurement Rules, 2004, which states:

Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances within seven days of announcement of the technical evaluation report and five days after issuance of final evaluation report.

155. In terms of 48 (7) of the Public Procurement Rules, 2004, which states:

Any bidder or party not satisfied with the decision of the GRC, may file an appeal before the Authority within thirty days of communication of the decision subject to depositing the prescribed fee and in accordance with the procedure issued by the Authority. The decision of the Authority shall be considered as final.

156. In accordance with Clause 9.1 (Instruction to Bidders), which states:

The bid prepared by the Bidder shall comprise the following components:

- a. *(Covering Letter)*
- b. *Form of Bid duly filled, signed and sealed, in accordance with Clause IB. 17.*

157. In accordance with Clause 17.1 and 17.2 (Instruction to Bidders), which states:

Bidders are particularly directed that the amount entered on the form of Bid shall be for performing the Contract strictly in accordance with the Bidding Documents.

All appendices to Bid are to be properly completed and signed.

158. In accordance with Clause 24.1 (a) (v), (b) (ii), (c) (vi) (Instruction to Bidders), which states:

Prior to detailed evaluation of bids, pursuant to Clause IB. 26:

(a) The Procuring Agency will examine the bids to determine whether;
(v) the Bid is valid till required time period.

(b) A bid is likely not to be considered, if;
(ii) its validity is less than specified.

(c) A bid will not be considered, if;
(vi) it is materially and substantially different from the Conditions / Specifications of the Bidding Documents.

159. In terms of Clause 24.3 (Instruction to Bidders), which states:

Prior to the detailed evaluation pursuant to Clause IB. 26, the Procuring Agency will determine the substantial responsiveness of each bid to the Bidding Documents. For purpose of these clauses, a substantially responsive is one which conforms to all the terms and conditions of the Bidding Documents without material deviations.

A material deviation or reservation is one

- i. Which affects in any substantial way the scope, quality or performance of the works/services.
- ii. Which limits in any substantial way, inconsistent with the Bidding Documents, the Procuring Agency's rights or the Bidder's obligations under the Contract; or
- iii. Whose rectification/adoption would effect unfairly the competitive position of other Bidders presenting substantially responsive bids.

160. In terms of Clause 24.5 (Instruction to Bidders), which provides:

Any minor informality or non-conformity or irregularity in a Bid which does not constitute a material deviation may be waived by Procuring Agency, provided such waiver does not prejudice or affect the relative ranking of any Bidder.

161. The findings and decision rendered by the Grievance Redressal Committee (GRC) vide its decision dated 13-07-2026 are reproduced hereinbelow:

GRC observed that no specific format existed in the bidding document regarding Covering Letter and Form of Bid: Page 43 of the Bidding Document contained space for quoting bid price and this form was required to be submitted in accordance with IB-Clause 9.1 (b) which is reproduced as under:

Form of Bid duly filled, signed and sealed, in accordance with Clause IB. 17. Form of Bid for technical and financial will be submitted in sealed envelope separately. No information about financial bid will be included in the form of technical bid".

The unambiguous evaluation criteria in the bidding document is required to be made. Non provision of Covering Letter format and submission of same Form of Bids for both technical and financial proposal resulted into ambiguity, hence the grievance is considered as maintainable.

Decision:

GRC remands back the Technical Evaluation for its review accordingly by the Technical Evaluation Committee.

162. The Appellate Committee observed with concern that the foremost question is the legal effect of the GRC decision dated 13.07.2026. The record demonstrates that Respondent No. 3 had earlier challenged its declaration of non-responsiveness before the GRC. The GRC, after considering the matter, rendered its decision on 13.07.2026 and remanded the matter to the Technical Evaluation Committee for reconsideration, by addressing that the grounds of rejections of bid of Respondent No. 3 are minor deviations as prescribed in the Bidding Document.

163. The Appellate Committee noted that the Appellant was admittedly aware of the said decision. Instead of invoking the statutory appellate remedy provided under Rule 48(7) of the Public Procurement Rules, 2004, before the Authority (PPRA), the Appellant approached the GRC against the decision dated 13-07-2026 and raised objection and requested to revisit the decision rendered by that very Committee.

164. The statutory scheme, however, is explicit. Once a GRC has rendered its decision, a party dissatisfied with that decision is required to invoke the remedy under Rule 48(7) of the Public Procurement Rules, 2004 before the Authority, within the prescribed period and subject to the prescribed fee. The Rule does not provide a mechanism whereby a party may bypass the statutory appellate forum and invite the same GRC to reconsider or review its own concluded decision. The Appellant did not challenge the GRC decision dated 13.07.2026 before the Authority in accordance with Rule 48(7). Consequently, the said decision attained finality and remained operative and

binding upon the parties and the procuring agency. The Appellant cannot now circumvent the statutory limitation and appellate mechanism by characterizing the subsequent proceedings undertaken pursuant to the said decision as a fresh and independent cause of action so as to indirectly reopen the findings which had already attained finality.

165. The Appellate Committee emphasized that the principle that a concluded determination cannot be indirectly assailed through collateral proceedings is attracted with full force in the circumstances of the present case. The statutory appellate mechanism under Rule 48(7) of the Public Procurement Rules, 2004 was available to the Appellant, but the same was not invoked against the decision dated 13.07.2026 before the competent forum.

166. The subsequent decision dated 22.07.2026 was rendered in consequence of, and pursuant to, the subsisting remand direction. The present Appeal, insofar as it seeks to challenge the very basis upon which the remand was ordered, therefore amounts to an indirect challenge to the earlier GRC decision. Such a course cannot be permitted.

167. The Appellate Committee observed that the GRC, in its decision dated 13.07.2026, had already considered the controversy relating to the Covering Letter and the Form of Bid and had recorded the circumstances which, in its view, resulted in ambiguity in the bidding requirements. That decision was not challenged before the Authority (PPRA) under Rule 48(7) of the Public Procurement Rules, 2004. Therefore, the finding and direction contained therein constituted the operative framework within which the TEC was required to undertake reconsideration.

168. The TEC accordingly reconsidered the technical evaluation pursuant to the remand. There is nothing on record sufficient to establish that the TEC, while undertaking the reconsideration, introduced a new evaluation criterion or materially amended the bidding documents. The Appellant's attempt to reopen the underlying question of ambiguity, which was already considered by the GRC on 13.07.2026, cannot succeed in these proceedings.

169. Even otherwise, the Appeal has been examined on merits to determine whether the post-remand treatment of Respondent No. 3's bid was legally sustainable. The record indicates that the Form of Bid relied upon by Respondent No. 3 was not a document created or submitted after the bid-submission deadline. Rather, it was already contained in the sealed bid package submitted within the prescribed time. The controversy principally concerns its placement in the Financial Proposal rather than the Technical Proposal, coupled with the issue relating to the Covering Letter. The distinction between a material deviation and a minor documentary irregularity is material.

170. Clause IB 24.3 itself provides that a deviation is material where it affects, in a substantial way, the scope, quality or performance of the services; limits the Procuring Agency's rights or the bidder's obligations; or, upon rectification/adoption, affects unfairly the competitive position of other bidders. None of these consequences has been established before the Appellate Committee. There is no finding on record that Respondent No.3, after the submission deadline:

- a) introduced a new price or rate;
- b) changed any quoted quantity;
- c) altered its technical methodology;
- d) substituted personnel, equipment or resources;
- e) changed the scope or quality of the proposed services;

- f) introduced a new contractual undertaking;
- g) substituted or replaced its Form of Bid; or
- h) otherwise modified the substance of the bid.

171. The Form of Bid was already present within the sealed bid package at the time of submission of bids. Its placement within the financial portion of the package, although procedurally irregular in the circumstances alleged by the Appellant, did not by itself establish that the substantive offer of Respondent No. 3 had been changed after opening.

172. The Appellate Committee therefore finds that the alleged misplacement, in the circumstances of the present case, constituted a minor informality / non-conformity or documentary irregularity, rather than a material deviation affecting the substance of the bid.

173. The Appellate Committee further observed that Clause IB 24.5 forms an integral part of the Bidding Documents and expressly empowers the Procuring Agency to waive a minor informality, non-conformity or irregularity where the same does not constitute a material deviation and the waiver does not prejudice or affect the relative ranking of any bidder. The exercise of this power, in the present circumstances, cannot be characterized as an ex post facto amendment of the Bidding Documents. The waiver provision existed in the Bidding Documents from the outset and was therefore itself a pre-disclosed term governing the procurement.

174. The material question is consequently not whether an irregularity existed, but whether that irregularity was material within the meaning of Clause IB 24.3 and whether its waiver prejudiced or altered the relative competitive position of the other bidders. The Appellant has failed to establish either proposition.

175. The Appellate Committee noted deeply that the technical score of the Appellant remained unaffected. There is also no material on record establishing that Respondent No. 3 acquired an unfair advantage through the placement of the Form of Bid or that the waiver altered the substance of its offer. Accordingly, the exercise of the power under Clause IB 24.5 cannot be held to be unlawful merely because the Appellant would have preferred a stricter or literal application of the documentary requirement.

176. The aforesaid principle has also been considered and affirmed by the superior Courts in a number of authorities. Reliance has, inter alia, been placed upon the judgment reported as PLD 2018 Islamabad 150, titled Messrs S.I.S. Corporation (Pvt.) Ltd. v. Federation of Pakistan and others, particularly paragraphs 43 and 44 thereof, wherein it is held that:

43. The "tender" submitted by the Bidders comprised of a technical bid and a financial bid. As mentioned above, the technical bid of all the bidders was unsealed in the presence all the bidders. Hence, this is not a case of premature opening of a sealed bid. The mere fact that the outer envelope was open did not expose the contents of respondent no. 9's sealed technical and financial bids. The learned counsel for the petitioners could not come up with any convincing arguments as to how respondent no. 9's unsealed outer envelope had prejudiced the petitioners. In the case of Poddar Steel Corporation v. Ganesh Engineering Works (AIR 1991 SC 1579), it has been held as follows:

"6. As a matter of general proposition, it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other case it must be open

to the authority to deviate from and not to insist the strict literal compliance of the condition in appropriate cases."

44. Clause 7.1.7 of the tender documents provided that respondent No.2 may waive any minor informality or non-conformity or deviation. Since no prejudice was caused to the petitioners by the fact that the outer envelope, containing respondent No. 9's sealed financial and technical bids, was unsealed, I am of the view that respondent No. 2 committed no illegality by not disqualifying respondent No. 9 for such a minor deviation.

177. Likewise, in 2006 CLC 1438, titled Mian Muhammad Shafi and another Versus Additional District Judge, Mian Channu, District Khanewal and 14 others, wherein it is held that:

8. Now it is a matter of record that the plea was specifically raised by the deceased defendant in his written statement. An issue was framed and he was called upon to lead evidence to establish his plea that the suit land is urban immoveable property and is located within the municipal limits of Mian Channu. He was given sufficient opportunities on the repeated requests made by his learned counsel but he failed to lead any evidence and the learned trial Court closed his evidence. There being no evidence in support of the said plea, the issue was answered against him. To my mind the said finding became *res judicata* between the parties to the said suits and could not have been challenged and then set aside in collateral proceedings, i.e., under section 12 (2), C.P. C. In my humble opinion if this course is allowed to be followed then there will be no end of any proceedings. All that would be required is that a defendant would be raising plea attacking the jurisdiction of the Court by making some factual allegations, he will leave the matter unattended and thereafter file an application under section 12 (2), C.P.C. Even if such application is rejected even the same order can be challenged on and on under the said provision. Section 11, C.P.C. completely debars the Court from trying any suit or "issue" which has been heard and finally decided by a Court in an earlier inter parties' suit. There is no matter of doubt in my mind that the issues could be finally decided by a Court of competent jurisdiction. Needless to state that the Court which decided the suit was

fully competent to decide the question as to whether or not it had the jurisdiction which was dependent upon existence and the proof of the facts pleaded by the deceased defendant in his written statement. The said judgement being relied upon by the learned counsel pertain to judgement and decrees passed ex-parte and are not at all attracted to the admitted facts and circumstances of the present case. In the case of Muhammad Khan v. Massanand 13 others 1999 SCMR 2464. Bench comprising three Honorable Judges of the Supreme Court of Pakistan proceeded to set aside the judgement of this Court when an ex parte pre-emption decree passed after cut out date i.e., 31-07-1986 was sought to be set aside under Section 12 (2), C.P.C. The learned trial Court dismissed the application. A learned Additional District Judge allowed the revision and set aside the decree. This Court dismissed the Writ Petition. The Civil Appeal was allowed by their Lordships holding that lateral proceedings under Section 12 (2), C.P.C. cannot be allowed to be restored and bypass the period of limitation. In the present case it is matter of record that the decree passed in the presence of learned counsel for the defendant, no appeal was filed and as such resort to Section 12 (2), C.P.C. could not have been allowed.

178. Rule 31 of the Public Procurement Rules, 2004, prohibits a bidder from altering or modifying its bid after opening. It nevertheless permits clarification where such clarification does not change the substance of the bid. The present record does not establish that Respondent No. 3 submitted a new Form of Bid after opening, substituted its original Form, introduced a new price or altered the substance of its offer. The decisive fact is that the document relied upon by the Respondents was already within the sealed bid package before the submission deadline.

179. The Appellate Committee observed that the case is distinguishable from one where a bidder, after opening of bids, is permitted to introduce a missing substantive document, change its price, replace a defective instrument or otherwise improve its bid. The post-remand exercise was, in substance,

a reconsideration of the existing bid in light of the GRC's binding remand decision and the waiver provision contained in IB 24.5. It did not amount to the creation of a new bid.

180. The procurement regulatory framework recognizes the concept of a substantially responsive bid. Rule 2(1)(h) defines the "most advantageous bid" with reference to a bid which, after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions of the bidding documents.

181. The object of the responsiveness test is not to elevate every documentary formality to the status of an essential eligibility condition irrespective of its effect upon the procurement. At the same time, mandatory and material requirements cannot be waived merely to accommodate a bidder. The proper test, therefore, is whether the alleged deviation falls within the category of a material deviation or whether it is a minor irregularity having no substantive impact upon the procurement.

182. In the facts before the Appellate Committee, the Appellant has not demonstrated that the disputed placement of the Form of Bid affected the scope, quality or performance of the services, diminished the contractual rights of the Procuring Agency, altered Respondent No. 3 (M/s Atlaspak Waste Management Company (Private) Limited) obligations, changed its price or otherwise impaired the fair competitive position of the Appellant. The Technical Evaluation Committee (TEC's) post-remand conclusion that Respondent No. 3 was technically responsive therefore does not warrant interference.

183. The Appellate Committee observed that Rules 29 and 30 of the Public Procurement Rules, 2004 require the evaluation of bids to be undertaken strictly in accordance with the criteria and

requirements expressly stipulated in the bidding documents, and that no procuring agency may subsequently introduce or apply an undisclosed evaluation criterion after the opening of bids.

184. However, the issue concerning the alleged ambiguity in the evaluation criteria had already been expressly considered and determined by the GRC in its decision dated 13.07.2026. The said decision was not assailed before the competent Authority in terms of Rule 48(7) of the Public Procurement Rules, 2004 and, having remained unchallenged, attained finality. Consequently, the issue of ambiguity stood conclusively determined and could not lawfully be re-agitated so as to reopen a matter already concluded pursuant to the remand proceedings.

185. The Appellate Committee further observed that the post-remand evaluation did not entail the introduction of any new or undisclosed criterion. Rather, the evaluation was undertaken in compliance with the earlier decision of the GRC and in accordance with the existing requirement contained in IB 24.5. Accordingly, no departure from the disclosed bidding framework or the applicable procurement rules is established.

186. The Appellate Committee observed that mere participation of another technically qualified bidder, however, does not establish legal prejudice where that bidder has been found substantially responsive in accordance with the applicable procurement framework. The Appellant has remained technically qualified and has not demonstrated that its own technical score, quoted price, contractual rights or eligibility position was altered by the waiver granted to Respondent No. 3 (M/s Atlaspak Waste Management Company Private Limited). The relevant test under IB 24.5 is whether the waiver

prejudiced or affected the relative ranking of a bidder. No such prejudice has been established before the Appellate Committee.

187. The procurement framework seeks to ensure fairness, transparency, competition and value for money. Those objectives do not, however, require exclusion of a substantially responsive bidder merely because of a minor documentary irregularity where the applicable Bidding Documents themselves authorize waiver of such irregularity and no unfair advantage or material prejudice is established. Annulment or re-advertisement is an exceptional consequence and cannot be directed merely because one bidder disagrees with the procuring agency's assessment of a minor irregularity. In the circumstances of the present case, interference with the procurement process at this stage, particularly after technical reconsideration and opening of financial proposals, would not be justified in the absence of a demonstrated material illegality.

188. For the foregoing reasons, this Appellate Committee records the following findings:

- I. The GRC decision dated 13.07.2026 was a decision falling within the statutory scheme of Rule 48 and was appealable before the competent Authority under Rule 48(7) of the Public Procurement Rules, 2004.
- II. The Appellant, despite having knowledge of the said decision, did not challenge the same before the competent Authority in accordance with Rule 48(7) of the Public Procurement Rules, 2004. The said decision has, therefore, attained finality.
- III. The Appellant could not lawfully bypass the statutory appellate remedy by approaching the same GRC for reconsideration / reversal of its decision and thereafter seek to reopen the concluded findings through an appeal against the consequential decision dated 22.07.2026.
- IV. The post-remand proceedings were undertaken pursuant to the subsisting GRC decision dated 13.07.2026 and do not, on the material before us,

constitute an independent unlawful alteration of the Bidding Documents.

- V. The Form of Bid relied upon by Respondent No. 3, i.e., M/s Atlaspak Waste Management Company (Private) Limited, was already contained within the sealed bid package submitted before the prescribed deadline. No subsequent creation, substitution or introduction of a new substantive document has been established.
- VI. The alleged misplacement of the Form of Bid, in the peculiar facts and circumstances of the case, constituted a minor informality / non-conformity or documentary irregularity, rather than a material deviation within the meaning of IB 24.3.
- VII. Clause IB 24.5 (Instruction to Bidders) of Bidding Document expressly empowered the Procuring Agency to waive such minor irregularity, provided that the waiver did not prejudice or affect the relative ranking of any bidder.
- VIII. The Appellant has failed to establish that the waiver altered the substance of Respondent No. 3, i.e., M/s Atlaspak Waste Management Company (Private) Limited bid, changed its price or technical offer, or prejudiced the relative competitive position of the Appellant.
- IX. No violation of Rule 31 of the Public Procurement Rules, 2004, in the nature of a post-opening alteration or modification of Respondent No. 3, i.e., M/s Atlaspak Waste Management Company (Private) Limited bid, has been established.
- X. No sufficient ground of mis-procurement, material irregularity, unlawful relaxation of a material requirement or other illegality warranting interference by the Appellate Committee has been made out.



189. In view of the above findings, the instant Appeal is found to be devoid of merit and is accordingly **dismissed**. The GRC decision dated 13.07.2026, having not been challenged before the competent Authority under Rule 48(7) of the Public Procurement Rules, 2004, stands final / attained finality and could not be collaterally reopened through the present proceedings. The consequential decision of the GRC dated 22.07.2026 and the post-remand technical evaluation



undertaken do not warrant interference. The waiver of the minor informality / non-conformity relating to the placement of Form of Bid of Respondent No. 3, i.e., M/s Atlaspak Waste Management Company (Private) Limited, in the circumstances established on record, is held to fall within the scope of Clause IB 24.5 of the Bidding Documents, there being no demonstrated material deviation, alteration of the substance of the bid or prejudice to the relative ranking of the Appellant.

190. Consequently, the prayers seeking restoration of original non-responsive status of Respondent No. 3, i.e., M/s Atlaspak Waste Management Company (Private) Limited, exclusion of its Financial Proposal and annulment / re-advertisement of the procurement process are declined.

191. The Procuring Agency may proceed further with the procurement process in accordance with the Public Procurement Rules, 2004 and the applicable Bidding Documents, subject to compliance with all statutory and contractual requirements.


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


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


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

Dated: 10th September, 2026

Each page of the order has been signed by all members of the Committee. The order comprises eighty (80) pages.