

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C.P No. D-3216 of 2021**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

Petitioner : Badar Expo Solutions, through Anjum Hameed, Javed Akhtar Rind & Ali Ahmed, Advocates.

Respondent No.1 : Federation of Pakistan, through Khaleeque Ahmed DAG.

Respondents Nos. 2 to 5 : The Secretary, Trade & Development Authority & 3 others through Syed Abrar Ahmed Bukhari, Advocate.

Respondents Nos. 6 to 8 & 13 : Nemo

Respondent No.9 : Public Procurement Regulatory Authority, Pakistan.

Respondent No.12 : Pegasus Consultancy, through Maria Ahmed, Advocate.

Date of Hearing & Short Order : 16.09.2021 and 20.09.2021

**ORDER**

**YOUSUF ALI SAYEED, J** – The Petitioner has invoked the writ jurisdiction of this Court under Article 199 of the Constitution impugning the procurement process undertaken by the Trade Development Authority of Pakistan (the “**TDAP**”) in terms of Tender No. TDAP-AD-02(23-19)/Asia-2014, bearing the caption “Services of Event Management Company for Programming/Side Events for Pakistan’s Participation in Expo-2020” (the “**RFP**”), whereby bids were invited in respect of certain event management services to be rendered during the course of that event.

2. For information of the uninitiated, the World Expos, officially known as International Registered Exhibitions, are a global gathering of nations, taking place periodically under the auspices of the *Bureau International des Expositions*, which was created as an intergovernmental organisation at an international convention held in Paris in 1928 for overseeing and regulating all international exhibitions of a long running and non-commercial nature and presently comprises of 170 Member States, including Pakistan. Since the first Expo – the Great Exhibition held in London in 1851, the event has become one of the biggest on the global stage, with over 192 countries and international organisations said to be participating at the forthcoming Expo scheduled to be held in the Emirate of Dubai between 01.10.2021 and 31.03.2022 (the “**Expo**”), with each country having its own pavilion to exhibit and showcase its ability and potential.
  
3. Reverting to the dispute at hand, the backdrop to the matter is that the TDAP, being the designated national authority responsible for Pakistan’s pavilion at the Expo (the “**Pakistan Pavilion**”), had issued the RFP through the Trade & Investment Counsellor at the Consulate General of Pakistan in the United Arab Emirates (the “**UAE**”), inviting bids for certain event management services to be procured for the Pakistan Pavilion.
  
4. To appreciate the nature and substance of the procurement, it merits consideration that the “Scope of Work”, as delineated in Section II of the RFP, reads as follows:

**“SCOPE OF WORK**

To leverage this opportunity and to promote Pakistan amongst the expected 25 million visitors, businesses and trade in UAE, the Trade Development Authority of Pakistan intends to organize several trade and investment related forums/seminars/workshops and cultural events/festivals in the Conference room (multipurpose room with seating capacity of 50 persons and equipped with Audio Visual systems) inside the Pavilion, other venues at the Expo-2020 and venues in the City

during the 6 months of the Expo. Pakistan also intends to fully participate in the common events organized by the Expo Authorities during several theme weeks. The overall plan of the programming/side activities will be finalized keeping in view the overall Expo-2020 Programming Theme Weeks and related activities and inputs from stakeholders i.e. relevant Federal Ministries, Provincial Governments and other private sector stakeholders specially the Sponsors/donors.

In this regard, services of a well reputed Event Management Company (EMC) in UAE with an affiliate/partner Event Management Company in Pakistan are required to provide end to end solution for planning and organization of programming/side events during the Expo. [Underlining added for emphasis]

The Scope of Services also includes, but is not limited to:

- Assign an experienced team both in Dubai and Pakistan for planning and executing the final calendar of events.
- Deploy a team of ushers/pavilion ambassadors of Pakistani Origin, who are multilingual and can speak English, Arabic, German, French and Spanish languages. The EMC shall provide uniforms to ushers specific to Pakistani culture, as per design approved by the Creative Review Committee and Principal Curator of the Pavilion and also train them on the inner journey of the Pavilion and various aspects about Pakistan and programming events as per the brief provided/approved by the Principal Curator. The ushers are expected to be Ambassadors of Pakistan in the Pavilion therefore high standards for conduct and finesse are expected. The entire team of ushers recommended by the EMC will be screened and approved by the Creative Review Committee/Principal Curator and TDAP. The shift management and logistics of the Ushers will be the responsibility of EMC.
- Planning, managing and executing each of the approved events with end to end solution and coordinate these activities with the various Expo Agencies, other Government Offices and Private entities both in Pakistan and UAE.
- Making all necessary logistical arrangements (venue, technical equipment where required, transportation, travel and accommodation for resources persons/ performing artists catering etc. where not already available) plus manpower and all other necessary arrangements for each of the approved events.
- Coordinate all marketing and promotional requirements for the aforesaid events with the appointed Branding/ Marketing Communications Agency.”

5. Additionally, the Scope of Services also provided for rendition of certain other works, described under the following heads:

- Venue Set-ups for Conferences, seminars and cultural events.
- Event Programme.
- Hotel Arrangement.
- Transportation Service.

- Catering services
- Hospitality and VIP Services.
- Manpower Requirements.
- Marketing and Media Communications.
- Invitation and Registration Management.
- Photography/Video Production and Documentation Services.

6. As is discernible from the Scope of Work, bids were elicited as per the RFP specifically from Event Management Companies in the UAE, subject to the requirement that they maintain an affiliate/partnership with a like concern in Pakistan. As such, the very first criterion laid down for eligibility to bid was that the “*bidder must possess valid registration/ trade licenses with concerned authorities in UAE*”, with the further criteria including the requirement that “*The bidder and their affiliate in Pakistan should have relevant experience of providing Event Management Services in UAE and Pakistan respectively. Reference/details to be provided in the technical proposal.*”  
[Underlining added for emphasis]

7. Furthermore, as to the bidding process, Section III of the RFP provided that Bidding would be held by way of a Single Stage – Two Envelope Procedure, as per Rule 36 (b) of the Public Procurement Rules 2004 (the “**PPRA Rules**”), with bids to be submitted by 04.03.2021 to the Consulate General of Pakistan in Dubai. Furthermore, a technical proposal would be considered substantially responsive if it scored at least 70% in the technical evaluation against the evaluation criteria given in Section IV (Technical Evaluation Criteria) of the RFP, and subject to meeting that threshold, the financial proposals of the substantially responsive bidders would then be opened and the procurement contract would be awarded to the most advantageous bid, with the relevant terms of the RFP stating as follows:

- a. The contract shall be awarded to the **Most Advantageous Bid in terms of highest rank in “Quality & Cost based Selection” – 60% weightage of technical proposal and 40% weightage of financial proposal** in terms of Public Procurement Rules 2004 as amended in 2020 of Pakistan.
- b. As explained in S. No. IX above, an eligible bidder shall be required to score 70% in Technical proposal to become substantially Responsive and for opening of Financial proposal.
- c. A combined evaluation of the Technical and Proposal will be done to ascertain the highest ranked bid as per following formula:
  - i. Weightage of Technical Proposal Score: 60%
  - ii. Weightage of Financial Proposal Score: 40%

The substantially responsive bid which has the lowest financial quote will get full marks for the Financial Proposal and the next higher will accordingly get lower score for the same and so on.

Formula for calculating Financial Proposal Score:

$$\frac{(\text{Lowest bid amount divided by bid amount of bidder})}{x 30} = \text{Score of Financial Proposal (lowest will get full 30 score).}$$

Highest Ranked bid = (Technical evaluation score) X0.7 + Financial Proposal score.

8. As it transpires, 11 UAE based bidders responded to the RFP and tendered their bids/proposals. As per the evaluation report published by TDAP under Rule 35 of the PPRA Rules (the “**Evaluation Report**”), from amongst them, only two bidders scored over 70% in the evaluation of their technical proposals, being DWTC and Entourage Marketing & Events LLC (“**Entourage**”), scoring 87.80% and 72.40% respectively, with the Respondent No. 13 (JS Events) being the Pakistani affiliate of the former and the Respondent No.12 (Pegasus Consultants) serving in that capacity in relation to the latter.

9. As such, those two bidders (DWTC and Entourage) were solely considered as being substantially responsive under the terms of bidding prescribed in the RFP, hence only their financial bids were opened and evaluated. Since the financial bid submitted by Entourage was lower than that of DWTC, it scored higher in the overall points evaluation and accordingly qualified as the most advantageous bid under the terms of the RFP, with the procurement contract for services to be provided for the Pakistan Pavilion then being awarded to it accordingly on 01.06.2021, with the Respondent No.12 as its Pakistan affiliate.
10. It is pertinent to observe that the Petitioner was itself not a 'bidder', but was merely the "*affiliate in Pakistan*" of BSL Middle East F.Z. L.L.C ("**BSL**"), apparently a limited liability company registered under a Commercial License in the Emirate of Abu Dhabi, whose Technical Score had aggregated to 57.70%, thus falling short of the prescribed 70% threshold.
11. For its part, BSL had addressed a letter dated 28.03.2021 to the Director General/Chairman of the Grievance Redressal Committee (the "**GRC**") of TDAP on the subject of the rejection of its proposal/tender, whereby it was alleged that the reasons for rejection had not been communicated and, whilst highlighting certain past accomplishments in organizing various events, it was sought that the matter be placed before the GRC for reconsideration. In that letter, it was stated *inter alia* that:

"We were informed through an email received on 15 March 2021 from Mr. Waqas Ali Tunio, Project Manager Pakistan Expo 2020, Dubai, merely, stating that "your technical proposal could not qualify for further process". Following the email, in spite of our requests, the reason for rejecting our proposal has not been communicated to us.

In this regard we would like to submit our contention and serious concern on the following grounds that according to the instructions in the first paragraph, page 3 of the RFP that, UAE based companies having, affiliates/partnership with event management companies/firms in Pakistan for a framework agreement to provide end to end solutions for planning and organization of programming/side events in Pakistan Pavilion, at the Expo 2020. We have the partnership with M/s. Badar Expo Solutions, a well reputed and experienced event management company/firm in Pakistan having extensive experience and a reputation as the best event organizers in Pakistan.

As far as rejecting our proposal on technical grounds is concerned, we kindly would like to understand why as we as joint partners have arranged and organized a wealth of events of repute in Dubai, the UAE, Pakistan, Europe and worldwide. The list is long but here I would like to focus on the Pakistan related events as feel these are the most relevant to the bid:

.....  
.....

If you kindly go through the achievements of our company as listed above and view the strength of our technical and well qualified-staff based both in the UAE and Pakistan, it will appear that our Company is far ahead of other companies and firms, who have participated in this tender. It has also been proved in a powerful presentation. The rejection of our Company on technical grounds, without mentioning valid reasons is the matter of surprise and doubt for our Company.

Therefore, we reserve our right to highlight this doubtful action on the part of Tender Committee/Tendering Authority, before the higher authorities in Pakistan and on various forums as apparently the rejection of our Company seems to be an unjust action, with malafide intension without a forthcoming explanation. It is therefore requested that our case be placed before the grievance committee for reconsideration of our proposal/tender.”

12. Thereafter, a zoom meeting (i.e. a video conference using the Zoom cloud-based platform) was conducted by the GRC on 09.04.2021, in which BSL participated, and vide a letter dated 11.04.2021 addressed to the Chief Executive, TDAP, then raised certain observations regarding the composition of the GRC and the proceedings that had ensued, alleging that the constituent members of the GRC had been changed without notice and that the GRC participants were not cooperative during the interaction. The relevant excerpt reads as follows:

“On our complaint, we were informed through email dated Thursday 8 April 2021 which was received in our office at 15:34 UAE time, copy enclosed, that we were advised to appear in a zoom meeting of Grievance Committee to be held on Friday 9 April 2021 at 10:30 UAE time, hence leaving no room for us to prepare our case strongly especially, as Friday in the UAE is the weekend. However, we did participate to avail the opportunity, so that, we should not be defaulters.

The Grievance Committee which was notified and uploaded on the website of PPRA consists the following officers as Chairmen and its Members: Mr. Abdul Karim Memon Chairman, Mr. Akbar Zaman (Member) Mr. Shafqatullah (Member). To our utter surprise, the Grievance Committee was suddenly changed without notifying it and uploading the same on the website of PPRA under the rule 48 PPRA.

The meeting started and the Grievance Committee appeared to be unprepared without the detailed evaluation report ready to discuss and when it was discussed the evaluation scores where BSL Middle East and Badar Expo Solutions scored low marks could not be explained. It was also noticed that when questions were asked about the current highest rank bidder the Grievance Committee did not wish to entertain them. The Grievance Committee were in an obvious hurry to conclude the meeting, which had already started late. As a result, we have no other way, except to approach your good self and submit our observation before your kind honor to take cognizance of what appears to be the mis-procurement in the process of tendering, so that an unwanted, biased and one-sided decision may not be made, which may create a poor reputation for your esteemed organisation and the wrongful use of the Public Exchequer.

### **Finding/Observation**

1) The Grievance Committee has been abruptly changed after our complaint without notifying the same on PPRA as per Rule 48 PPRA.

2) As per PPRA rule the Committee must be in odd number, whereas the new committee formed, consist of 4 members including Chairman, they are namely: Mr. Riaz Ahmed Sheikh (Chairman), Mr. Abdul Karim Memon (Member), Mr. A. Basit Rauf (Member) and Mr. Atif Aziz (Member).

3) The formation of Committee is in total contradiction of PPRA rules and is against the Rule 48 of PPRA.

4) The abrupt change in the Committee reconfirms our opinion that entire process of tendering is unjustified, biased and with malafide intention and falls under the category of mis-procurement as per Para 29 of PPRA Rules.



5) According to the Rules of PPRA, the evaluation report must be signed by all members of the tendering committee. In the instant case the report has been signed only by the Chairman of the Tender Committee, that too without date. The entire evaluation proforma does not indicate any date, so that it may be ascertained, when the report was prepared and signed, which creates doubt in the entire procedure.”

13. That letter was responded to vide letter dated 13.04.2021 bearing Reference No. TDAP-AD-02(23)/Grievance Committee, dispelling the notion of the GRC had not been properly formed and affirming that its constitution was as per the PPRA Rules. A copy of the Notification dated 29.03.2021 constituting the 3 member GRC (the “**GRC Notification**”) was also shared. Furthermore, it was stated that the GRC had heard BSL’s concerns and given time for submission of the same in writing.
14. BSL then yet again engaged TDAP through its further letter dated 16.04.2021, reiterating its stance as to Rule 48 vis-à-vis the composition of the GRC and its grievance that the GRC had not properly explained its evaluation or disclosed the technical evaluation of competitors.
15. Thereafter, vide a letter dated 03.05.2021, bearing Reference No. TDAP-AD-02(23)/Grievance Committee (the “**GRC Decision**”) addressed to BSL with reference to its letter dated 28.03.2021, it was communicated to BSL that the objections raised had been found to be unsubstantiated and its request stood regretted.

16. Whilst the entire body of such correspondence evidently consists of letters addressed by BSL to the GRC/TDAP or vice versa, BSL itself never came forward during the course of the Petition. Instead, albeit the Petitioner apparently not even being privy to the aforementioned correspondence in any capacity, having neither been addressed as a recipient or even cc'd in the chain of circulation, it alone has nonetheless come forward through the instant Petition, and even in the face of a preliminary objection that the Petition was not maintainable in the absence of BSL and other bidders, no effort was made to implead them as a co-petitioner or respondents, and it is only the affiliates in Pakistan of the two responsive bidders (i.e. Entourage and DWTC) that were arrayed as the Respondents Nos. 12 and 13. The latter also did not enter appearance at any stage of the proceedings, with the procurement process remaining unchallenged by it or the bidder in the UAE with which it was affiliated, namely DWTC. As such, the relevant parties having a direct nexus and interest in the RFP remained aloof from the proceedings. More crucially, it is unknown whether BSL even remains interested in rendering the services that are the subject of procurement. Indeed, there is nothing on record to demonstrate or suggest that any interest on its part continues to subsist.

17. Be that as it may, in terms of the Petition it has been prayed *inter alia* that the GRC Decision be declared unlawful, void ab-inito and set aside; that the proceedings of the Evaluation Committee to the extent of Technical Evaluation be declared unlawful, non-transparent and against the spirit of law; that the procurement envisaged in respect of the Expo in terms of the RFP be retendered in a transparent manner in accordance with law; that the award of a contract for Expo under the RFP be stayed pending final determination of the Petition; and that the National Accountability Bureau be ordered to conduct an inquiry and investigate the matter.

18. However, the only material placed on record by the Petitioner for purpose of advancing its case were copies of the aforementioned letters and GRC Decision, along with a copy of the Memorandum of Understanding executed between BSL and the Petitioner on 03.02.2021 (the “**MOU**”), the Petitioner’s Taxpayer Registration Certificate issued by the Federal Board of Revenue, the Deed of Partnership executed by the Petitioner’s constituents, the Evaluation Report, the GRC Notification, and a printout of an email relating to the zoom meeting of the GRC. Furthermore, despite having sought details as to the technical evaluation of competitors, the bid submitted by BSL was not placed on record. Even the RFP was not filed, and was only brought on record later as an annexure to the counter-affidavit of the Respondent No.12.
  
19. Proceeding with his submissions in this backdrop, learned counsel for the Petitioner nonetheless argued that the Evaluation Committee had violated Rules 29 and 48 of the PPRA and the GRC Decision was arbitrary, bereft of reasons, and violative of Section 24A of the General Clauses Act, 1897 as well as Article 25, of the Constitution. He further contended that the GRC had been constituted unlawfully so as to comprise 4 members, instead of an odd number of constituents, as envisaged under the PPRA Rules, and its formation should have taken place prior to the RFP and the representation made by BSL.
  
20. Conversely, learned counsel for TDAP submitted that the procurement process under the RFP had taken place in a fair and transparent manner, without any violation of the PPRA Rules. It was argued that the contentions of the Petitioner were baseless and misconceived and no cogent ground of challenge had been raised before the GRC or demonstrated through the Petition. It was submitted that while the Petitioner had alleged a violation of Rule 29, it had not even been pleaded that the evaluation criteria in the RFP was ambiguous or inappropriately formulated.

21. While adopting such arguments, learned counsel for the Respondent No.12 also raised certain preliminary objections as to maintainability, pointing out that the entire proceedings under the RFP had ensued in the UAE, that all the parties categorizable as 'bidders' were based in that jurisdiction, and that such parties, be it BSL, Entourage or even DWTC, had not been party to the Petition. With reference to the terms of the RFP, it was submitted that the services subject to procurement were those of a "*well reputed Event Management Company (EMC) in UAE*", which was merely required to be affiliated with an Event Management Company in Pakistan. As such, any grievance in respect of the evaluation of a bid for the Pakistan Pavilion could only properly arise on the part of a bidder, and under the terms of the RFP that could only mean the Event Management Company in the UAE. Therefore, in the absence of BSL, a case for misprocurement could not be sustained, whereas no document had been placed on record whereby the Petitioner claimed to have been authorised to institute such proceedings on behalf of BSL, nor had it even been averred that it had any such authority. As such, the Petition was incompetent and liable to be dismissed.
22. Having considered the arguments advanced and examined the material on record, it merits consideration that in determining the status of the Petitioner from the standpoint of its relationship with BSL, the relevant provisions of the MOU, being the constitutive document in that regard, read as follows:

**2. Background.**

BSL Middle East and Badar Expo Solutions have agreed to partner as event management agencies based in the UAE and Pakistan respectively, to deliver an end to end solution for event planning and organisation of programming/side events during Expo 2020.

As such, this MoU has been drafted to outline a working relationship.

### **3. Purpose and Scope**

The purpose of this MoU is to provide a framework for a non-exclusive partnership and to outline the manner in which both Parties shall work together for mutual benefit.

### **4. Roles and Responsibilities**

#### **4.1 Roles and Responsibilities of BSL 2020.**

BSL shall lead the contract and be indirect contact with the Trade Development Authority of Pakistan to finalize the SOW, plan and deliver the event programing/side events for Pakistan's participation in Expo 2020.

BSL will review all final requirements of the SOW and contact BES to provide all Pakistani event solutions which are not readily available in the UAE.

### **13. Non-exclusive Partnership**

This MoU is not intended by the Parties to constitute or create a joint venture, exclusive partnership, or formal business organisation of any kind. The Parties shall be independent MoUors working with each other for mutual benefit but shall not create or attempt to create liabilities for the other.

23. Those provisions of the MOU, particularly Clauses 4.1 and 13, make it abundantly clear that, the Petitioner at best had a peripheral/supporting role to BSL, with the latter being the party instrumental in the bid. Whilst the continued interest of BSL remains shrouded in mystery in view of its absence from the proceedings, even if that aspect and the apparent abandonment by BSL of its right of appeal to the PPRA under Rule 48(7) were to be overlooked and it is assumed that the Petitioner is competent to independently espouse the cause, it falls to be considered that the grievance raised by BSL, as too the case advanced through the Petition, centres around the PPRA Rules and turns on allegations of misprocurement in terms of Rule 29 and that the GRC was not constituted in consonance with Rule 48. Those particular Rules stipulate as follows:

## **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.

## **48. Redressal of grievances by the procuring agency.-**

(1) The procuring agency shall constitute a committee comprising of odd number of persons, with necessary powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.

(2) Any party may file its written complaint against the eligibility parameters, evaluation criteria or any other terms and conditions prescribed in the bidding documents if found contrary to the provisions of the procurement regulatory framework, and the same shall be addressed by the grievance redressal committee (GRC) well before the proposal submission deadline.

(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.

(4) In case, the complaint is filed against the technical evaluation report, the GRC shall suspend the procurement proceedings.

(5) In case, the complaint is filed after the issuance of the final evaluation report, the complainant cannot raise any objection on technical evaluation of the report:

Provided that the complainant may raise the objection on any part of the final evaluation report in case where single stage single envelope bidding procedure is adopted.]

(6) The GRC shall investigate and decide upon the complaint within ten days of its receipt.

(7) 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.

24. In the matter at hand, it is evident that no substantial case on merits as to ambiguity in the evaluation criteria laid down in the RFP had been advanced by BSL for purposes of demonstrating a transgression of Rule 29, and its averment as to mis-procurement turned on the bare assertion that in its opinion the entire process of tendering was unjustified, biased and suffered from *mala fide* intent. As can be gathered, that opinion was apparently formed by BSL on the basis that in its own estimation it was the most deserving candidate in view of its past achievements, as were repeatedly extolled through the letters addressed to the GRC and TDAP, coupled with the belief that abrupt changes had been made in the composition of the GRC, which also appears to be a misconception in the wake of the GRC Notification whereby 3 persons were notified as comprising the GRC, in fulfilment of Rule 48(1) as to its composition.
25. Indeed, for better understanding the process, it would be apt to reproduce the Report of the GRC, which reads thus:

“Government of Pakistan  
Trade Development Authority of Pakistan

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Subject: **Report of Grievance committee for Expo 2020 related procurements to be done in UAE on Tender for Event Management for Programming/side events during Pakistan’s participation in Expo 2020 Dubai.**

A grievance committee was constituted for all the Expo 2020 related procurements to be done in UAE-Pakistan Pavilion by Secretary TDAP conveyed vide notification no.TDAP-AD-02(23)/Grievance Committee dated 29<sup>th</sup> March 2021 on the grievance submitted by M/s BSL and its affiliate M/s Badar Expo Solutions on the Tender titled “Event Management for Programming / side events during Pakistan’s participation in Expo 2020” It was advertised in newspaper of Pakistan and UAE under inquiry no.TDAP-AD-02(23-19)/Asia 2014.

2. The process of tendering and its evaluation is done by a Procurement committee in Abudhabi UAE consisting of following members:

<b>S#</b>	<b>Name of the Officer</b>	<b>Designation</b>
01	Mr. Afzaal Mahmood, Pak Ambassador in UAE	Chairman
02	Mr. Imtiaz Feroz Gondal, DHM, Pak Embassy	Member
03	Mr. Adeem Khan, TIO CG Dubai	Member
04	Mr. Riwan Tariq, DG Expo 2020	Member
05	Mr. Waqas Ali Tunio, Proj. Manager	Member

3. The grievance committee consisted of following members:

<b>S#</b>	<b>Name of the Officer</b>	<b>Designation</b>
01	Mr. Riaz Ahmed Shaikh, Director General, TFD	Chairman
02	Mr. Abdul Karim Memon, Director General, AFD	Member
03	Mr. Basit Rauf, Director General, MS	Member

4. The Committee called the record through telephonic conversation from the Pakistan embassy in UAE where the tender was processed. The due record was received on 5<sup>th</sup> April 2021. This include the letter addressed to TIO Dubai dated 25<sup>th</sup> March 2021 and also marked to all procurement committee members.

5. The first meeting of the grievance committee was held on 6<sup>th</sup> April 2021. In the meeting, the committee went through the technical proposal and relevant documentation submitted by the aggrieved bidder, BSL Middle East along with its affiliate M/S Badar Expo Solutions. The aggrieved bidder contended in the referred letter that they were not given reasons for rejection on technical grounds despite the fact their affiliate has huge credentials on organizing events. They cited some events and also mentioned that their case be placed before the grievance committee. They also sent copies of same letter to a grievance committee notified on TDAP website at that time but later on new grievance committee was constituted for this specific purpose as mentioned in para 1 above.

6. The grievance committee invited the aggrieved bidder and its affiliate in Pakistan for a zoom meeting on 9<sup>th</sup> April, 2021 and listened their grievances which were related to scoring on particularly item 1 (iv), item 2 and item 3. They also raised objections on shortlisting of qualified bidder no.2 i.e. M/s. Entourage and Pegasus. They, however, could not give the justifications to satisfy the grievance committee on these points at that time. They were asked to submit their grievances in writing substantiated by the documents to the committee by 12<sup>th</sup> April, 2021 till close of office hours.

7. The aggrieved bidder sent a letter on 11<sup>th</sup> April, 2021 to CE TDAP and copy to all members of grievance committee citing objections on constitution of grievance committee and its biased approach for not listening to their objections. The reply to the said email was sent by the concerned section after the approval of CE/ Secretary TDAP.

8. The grievance committee held a meeting on 14<sup>th</sup> April 2021 and noted that no written objections were received from the aggrieved bidder by the deadline. The committee however, comprehensively evaluated the technical proposal submitted by the aggrieved bidder, examined the technical evaluation reports of aggrieved bidder viz a viz qualified bidders and also saw

hard copies of presentation provided by the concerned section particularly with reference to marks assigned to them. [Sic]

9. The committee also got the views of procurement committee in Abu Dhabi on the objections raised by the aggrieved bidder via zoom on 21<sup>st</sup> April, 2021. The procurement committee categorically mentioned that they assessed the quality and performance of the bidder while examining their documents and evaluated them during their presentations accordingly. The aggrieved bidder could not justify/explain the activities, having no creative plans and their implementation viz a viz Pakistan pavilion and they did not have experience of VVIP events handling. Other bidders were much better than the aggrieved bidder but they also could not qualify technically despite securing more marks than the aggrieved bidder.

10. After examining the available record provided to the grievance committee and listening to the aggrieved bidder and the procurement committee, the grievance committee is of the view that the objections raised by the aggrieved bidder M/s BSL and its affiliate M/s Badar Expo are not substantiated. The assessment of procurement committee is therefore justified.”



26. The scope of judicial review in matters of public procurement has been expounded in a number of cases, with it being well settled that Courts do not sit in appeal over the decisions of executive authorities or instrumentalities. A constitutional Court is essentially concerned with only the lawfulness of a decision and not its soundness. As such, while allegations of illegality, irrationality and/or procedural impropriety would constitute grounds for a Court to assume jurisdiction, it would only be the decision making process that would come under inquiry and that does not ordinarily mean that the aggrieved person can by-pass the adjudicatory process prescribed under statute.

27. As noted in *Maa Binda Express Carrier v. North East Frontier Railway* (2014) 3 SCC 760:

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

28. Furthermore, it ought to be borne in mind that private and public interests can at times clash, hence an element of 'public interest' ought to be demonstrated in addition to those aforementioned grounds for purpose of resort to the writ jurisdiction. An observation in that regard was by the Supreme Court of India in the case reported as Jagdish Mandal v. State of Orissa (2007) 14 SCC 517, as follows:

“Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.”

29. Furthermore, in the case of Raunaq International Ltd. v. IVR Construction Ltd. (1999) 1 SCC 492 it was observed that:

“When a writ petition is filed in the High court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.”

30. Under the given circumstances, there is in fact no cogent material from which it can be gathered or ascertained that the procurement proceedings were marred by any procedural lapses on the part of TDAP or the GRC and no substantial case on merit as to arbitrariness or a contravention of the PPRA Rules stands made out so as to require remedy by way of judicial review. The bare allegation that BSL was not afforded a proper right of audience in the matter by the GRC is also not a factor that can be agitated by the Petitioner for seeking a writ to set aside the procurement process. The element of public interest is also lacking from the challenge mounted by the Petitioner. On the contrary, keeping in view the scope of the RFP and the time sensitive nature of the works to be procured, any undue interference would hamper if not cripple national participation in the Expo.

31. It is for those reasons that the Petition was dismissed vide a short Order made in Court upon culmination of the hearing on 20.09.2021.

JUDGE

Karachi  
Dated \_\_\_\_\_

CHIEF JUSTICE