# ORDER SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD
# JUDICIAL DEPARTMENT

**W.P. No.4020 of 2022**
**Badshah Sons Services (Private) Limited**
**Versus**
**National Highway Authority**

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | **26.10.2022** | **Syed Ahmad Hassan Shah and Mr. Badar Iqbal Ch., Advocates for the petitioners.** |

**Through this order, I propose to decide writ petitions No.4020 and 4021 /2022 since they entail common questions of law and fact.**

**2. The National Highway Authority (“N.H.A.”) had invited sealed bids from prospective bidders who prove their eligibility and qualification as mentioned in the bidding documents for the operation and management of Police Fine Collection Units on National Highways and Motorways. The Invitation for Bids (“I.F.B.”) issued by the N.H.A. required the bidders to submit their technical and financial bids by 17.05.2022. These bids were to be opened on the same day i.e., 17.05.2022 in the presence of all the bidders or their representatives. The financial bids of only those bidders were to be opened who could be technically qualified.**

**3. Clause 3.1 of the I.F.B. required the bids to be valid for a period of 120 days from the date of the bid opening, whereas clause 4.1 required each bidder to furnish bid security in the amount of Rs.5,00,000/- for each package.**

**4. The petitioners were one of the bidders who submitted their bids for the operation and management of four fine collection units i.e., for Package No.PFC(NH)-01/2022-25 (Peshawar-Attock), Package No.PFC(NH)-02/2022-25**

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(Attock-Rawalpindi), Package No.PFC(MW)-14/2022-25 (Azampur Service Area-Muhammad Pur Rest Area (M-5)), and Package No.PFC(MW-15)/2022-25 (Ghotki Rest Area-U-turn (M-5)). The petitioners' bids were accompanied by bid security in the amount as mentioned in clause 4.1 of the I.F.B.

5. Vide letters dated 01.07.2022, the N.H.A. informed the petitioners that they had been qualified for the procurement in question. Furthermore, the petitioners were informed that the financial bid opening ceremony was scheduled to be held on 07.07.2022.

6. Apparently, some of the bidders had raised their grievances pertaining to the bidding process before the Grievance Redressal Committee (**"G.R.C."**) constituted by the N.H.A. This caused a delay in the conclusion of the bidding process.

7. Vide letters dated 28.09.2022, the N.H.A. called upon the petitioners to extend the bid validity period for an additional thirty days from 15.09.2022 failing which the bid security furnished by the petitioners would be forfeited. Through letters dated 29.09.2022, the petitioners informed the N.H.A. as to their agreement to extend the bid validity period for an additional thirty days from 15.09.2022. Furthermore, the petitioners requested the N.H.A. to issue letters of acceptance for the packages for which they had submitted the lowest bids. Consequently, vide letters dated 12.10.2022, the N.H.A. informed the petitioners as to the approval for the award of the contract for the abovementioned four packages to the petitioners. Furthermore, the petitioners were required to furnish performance securities with a validity period upto 30.09.2025 for an

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amount of Rs.5 million for each of the packages. Till date, the petitioners have not furnished the performance securities.

8. Through the writ petitions under disposal, the petitioners have sought a declaration that the tender bidding process conducted by the N.H.A. and the N.H.A.'s requirement for an extension in the bid validity period is in violation of the petitioners' fundamental rights enshrined in the Constitution. The petitioners want an injunction to restrain the N.H.A. from encashing their bid security.

9. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petitions, submitted that the procuring agency / N.H.A. should have completed the bidding process within the bid validity period i.e., upto 15.09.2022; that the petitioners could not be penalized for the delay caused by the N.H.A. in completing the bidding process; that the petitioners were coerced into extending the bid validity period for thirty days from 15.09.2022 since the N.H.A. had threatened to forfeit the bid bond furnished by the petitioners; that N.H.A. should not have issued the letters of acceptance to the petitioners for the four packages after the expiry of the bid validity period; and that N.H.A.'s demand for an extension in the bid validity period is in violation of Rule 26 of the Public Procurement Rules, 2004 (**"P.P.R."**). Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

10. I have heard the contentions of the learned counsel for the petitioners and have perused the record with his able assistance.

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11. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

12. Indeed, the validity of the bid submitted by the petitioners on 17.05.2022 was due to expire on 15.09.2022. Clause 3.1 of the I.F.B. requires the bid validity to be for a period of 120 days. Since the N.H.A. could not complete the bidding process within the bid validity period, the bidders, including the petitioners, were required to extend the validity of the bids for a period of thirty days from 15.09.2022. This was done through N.H.A.'s letters dated 28.09.2022.

13. The petitioners would have been well within their rights not to extend the validity of their bids beyond 120 days from 17.05.2022. This is because the petitioners' bids could not have been held to be valid beyond the bid validity period. However, in the case at hand, the petitioners acceded to the N.H.A.'s request to extend the bid validity by thirty days from 15.09.2022. Additionally, through letters dated 29.09.2022, the petitioners required the N.H.A. to issue letters of acceptance with respect to the four packages for which the petitioners had submitted the most responsive bids. It was during the extended bid validity period that four letters of acceptance dated 04.10.2022 and 12.10.2022 were issued by the N.H.A. to the petitioners with respect to the four packages for which the petitioners had submitted the most responsive bids. Admittedly, the petitioners have not furnished a performance security demanded by the N.H.A. in paragraph 2(a) of the letters of acceptance dated 04.10.2022 and 12.10.2022. Now, that the petitioners' bids

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have been accepted, the petitioners want to turn the clock back, and renege from the extension in the bid validity period. This inequitable conduct of the petitioners disentitle them from discretionary relief from this Court.

14. Rule 26(3) of the P.P.R. requires the procuring agency to ordinarily process and evaluate the bids within the stipulated bid validity period, but under exceptional circumstances and for reasons to be recorded in writing, the bidders can be asked to extend the bid validity period of their bids. Rule 26(4)(c) provides that bidders who do not agree to an extension of the bid validity period shall be allowed to withdraw their bids without forfeiture of their bid bonds or securities. The petitioners, being a prudent person of business, chose not to exercise the option under Rule 26(4)(c) of the P.P.R. but on the contrary agreed to an extension in the bid validity period. Now that their bids for the four packages have been accepted and a demand has been made for the furnishing of performance security, the petitioners have no reason to cry foul. Since I do not find any violation of the petitioners' fundamental rights by the N.H.A.'s acceptance of the bids, the instant petitions are dismissed in *limine*.

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

*Ahtesham**

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