

Appeal No. 1890-04/2022

Khawaja Nadeem Ahmed

Vs

National Transmission and Dispatch Company Ltd.

Fawad Malik: Information Commissioner

**A. APPEAL**

1. Mr. Khawaja Nadeem Ahmed filed a request under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Islamic Republic of Pakistan, 1973 and under section 46 of the Public Procurement Rules, 2004. Through the request addressed to the Chief Engineer (MP&M) NTDC, he has sought the list of bidders who participated in ABD-300A tender along with Techno-Commercial bids submitted in his office. He has further requested the complete evaluation report, getting documents of all the bidders along with their certification, experience, and certified etc.
2. The Chief Engineer (MP&M) NTDC vide letter No. CE/MP&M/MC/DM-1/ADB-300A-2019/23516-22 dated 18-03-2022 denied the access to requested information. The response is reproduced as under:
  - a. *“This is with reference to your above referred complaint/appeal to provide the information. Also it is informed that the subject procurement is being carried out under ABD Procurement Rules. The Appellant (Your good self) has neither purchased the Bidding Documents nor participated in the tendering process and is not direct stakeholder of the process. In instant case, you have requested for list of bidders, techno commercial bids submitted by bidders and detailed bid evaluation reports under right of access to information act.*
  - b. *It may be noted that the requested documents are classified documents like Bid Evaluation Report, bidding documents of bidders etc. In this regard, Appendix – 7 (Bidding-Related Complaints), clause 22 (d) of (ADB’s0 Procurement Regulations provides that:-*
    1. *“The responsibilities of the borrower for addressing all complaints include but not limited to preserving the confidentiality of the procurement and any related complaint process, including any proprietary commercial*

*or financial information and/or trade secrets so identified in the bidding or proposal documentation.”*

- c. In view of the aforesaid clause, the borrower (NTDC) is bound to preserve the confidentiality of the procurement process and its associated information.*
- d. It may be noted that as per Rule 5 of the PPRPA Rule, 2004, if there is any conflict with an obligation of the Federal Government arising out of an agreement with any international financial institutions, such international agreement shall prevail. The said rule is reproduced below:
  - 1. Whenever these rules are in conflict with an obligation or commitment of the Federal Government arising out of an international treaty or an agreement with a State or States, or any international financial institution the provisions of such international treaty as agreement shall prevail to the extent of such conflict.**
- e. In the subject matter, the procurement is admittedly through a loan given by an international financial institution i.e. ABD, therefore Rule 5 of the PPRA Rules, 2004 would be relevant and applicable, rendering ADB Procurements Guidelines prevalent.*
- f. In view of aforementioned, the instant request for details evaluation reports and bids of other bidders cannot be accepted.”*

The appellant feeling dissatisfied with the response of the public body has filed the appeal before the Pakistan Commission on Access to information, Islamabad.

### **C. COMMISSION’S VIEW**

4. The appellant has requested the complete evaluation report, documents of all the bidders along with their certification, experience etc. and the list of bidders who participated in ABD-300A tender along with Techno-Commercial bids submitted in the office. The organization has denied the access to the requested information and record on the stance that the appellant has neither purchased the bidding documents nor participated in the tendering process and is not direct stakeholder of the process, that the requested documents are classified documents, that the borrower (NTDC) is bound to preserve the confidentiality of the procurement process and its associated information, that the subject matter, the procurement is admittedly through a loan given by an international financial institution i.e. ABD, therefore Rule 5 of the PPRA Rules, 2004 would be relevant and

applicable, rendering ADB Procurements Guidelines prevalent and that the subject procurement is being carried out under ABD Procurement Rules.

5. The Commission keeping in view the Right of Access to Information Act, 2017, Article 19A of the Constitution of Islamic of Pakistan, 1973 and the Public Procurement Rules, 2004 is of the considered view that the evaluation report, documents of all the bidders along with their certification, experience etc. and the list of bidders who participated in ABD-300A tender along with Techno-Commercial bids are public record and the appellant reserves his right to have access of the said information and record for the following reasons:

a. Rule 41 of the PPRA Rules, 2004 requires the procuring agency to keep all information regarding the technical or final evaluation confidential until the time of the announcement of the respective evaluation report whereas Rule 47 of the Rules *ibid* mandates all documents related to the evaluation of the bid and award of contract to be made public, as soon as a contract has been awarded. Texts of the Rules 41 & 47 of PPRA Rules, 2004 are reproduced hereunder for appraisal:

*41. Confidentiality.- \*\*\*The procuring agency shall keep all information regarding the technical or final evaluation confidential, as the case may be, until the time of the announcement of the respective evaluation reports in accordance with the requirements of rule 35.*

*47. Public access and transparency.- As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public: Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring agency is convinced that such disclosure shall be against the public interest, it can withhold only such information from public disclosure subject to the prior approval of the Authority.*

b. Section 6 of the Act encompasses all the agreements and contracts in the category of “public record”.

c. Section 5 of the Act, 2017 envisages all the evaluation reports that have been finalized to be proactively publish including uploading over the internet to ensure its accessibility to the citizens exempting the information touching the private privacy of any individual.

d. Transparency in the working of the government departments is the essence for the enactment of the Act of 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable

- to the people. This practise would improve the participation of the people in the public affairs aimed at reducing corruption, nepotism, discrimination, misuse of authority and inefficiency in the governance.
- e. The disclosure of the requested information is matter of public importance and its disclosure is in the interest of the citizens.
  - f. The applicant while invoking the RTI Act of 2017 is not required to provide the reasons or purpose of his/her request therefore it is immaterial to object that the appellant has neither purchased the bidding documents nor participated in the tendering process and is not direct stakeholder of the process.

#### **D. ORDER**

The appeal is allowed. The Chief Engineer (MP&M) NTDC, is directed to furnish the appellant all the requested information, after severing the record touching the private privacy of any individual i.e. Bank Account Number, Phone/cell No., CNIC No., Passport No., Address or any other information pertaining to the family members, forthwith but in any case not later than ten days of the receipt of this order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on 19.07.2022

Certified that this order consists of 04 pages, each page has been read and signed