



ALAC
Pakistan

24th December, 2009

Chairman,
Civil Aviation Authority,
HQ, Civil Aviation Authority,
Terminal No. 1,
Jinnah International Airport,
Karachi

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**Sub: Complaints on the Violation of Public Procurement Rules 2004 by CAA
Procurement of Package 6, Hydrant Refueling System BBIAP, Islamabad**

Dear Sir,

Transparency International Pakistan has received a copy of the complaint made by a M/s Marathon Construction Company, MD of JV with CNMPIEC, dated 18th December 2009, made to the Secretary Defence, GoP, Islamabad regarding violations in procurement process of the tender referred above.

The complaint has to be dealt by CAA according to rule No 48, and responded within 15 days, i.e. by 3rd January 2009.

The following allegations are of very serious nature, and need to be clarified by CAA as they involve alleged acceptance of second lowest bid costing Rs 100 million extra.

Our bid for the said project was the lowest as opened on 5th August, 2009 and following were the results:

- 1. M/s CNPMIEC-MCC JV Rs. 1,290,509,127/- (inclusive of Duties & Taxes)*
- 2. M/s Al- Tariq Constructors (Pvt) Ltd. Rs. 1,398,784,629/- (Incl of Duties & Taxes)
Rs. 1,192,394,006/- (Without Duties & Taxes)*

Thus our bid was Rs. 108,275,502 less than our competitor and was the lowest.

Subsequently CAA vide letter ref. HQCAA/5056/41/P&D-1175 dated 3rd December, 2009 advised us that we had been declared commercially non-responsive as we bid our prices including the customs duty and taxes. We complied in fact WITH CAA's own instructions to bidder-

Addendum No. 2 Clause 12.3 Bid Prices

"12.3 All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as on the date 28 day prior to the deadline for submission of bids shall be included in the rates and prices and the total Bid Price submitted by a bidder"

Addendum No.2 Clause 73.1(b) Payment of Local Tax



the prices bid by the contractor shall include all customs duties, import duties, sales tax, octroi and other taxes that may be levied in accordance with the laws and regulations in force on the date 28 days prior to the latest date for submission of bids in Pakistan on the contractor's equipment, plant, material and supplies (permanent, temporary, and consumables) acquired for the purpose of the contract and on the services performed under the contract. Nothing in the contract shall relieve the contractor from his responsibility to pay any tax that may be levied in Pakistan in relation to execution of the contract.

Kindly note that CAA has quoted from Addendum No II few Clauses viz. 73.2, and omitted the relevant clauses which confirms that the Tender Prices are to be inclusive of duty and taxes.

This is to point out that if any violation of Public Procurement Rules 2004 occurs and proved, the procurement may be declared as mis procurement under Rule No 50, and may be liable for action under Rule No 2 (f). "corrupt and fraudulent practices" which includes misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition. Kindly also note that CAA has to sign the " Integrity Pact" with the Contractor under Rule No 7 Procurements exceeding the prescribed limit shall be subject to an integrity pact, as specified by regulation with approval of the Federal Government, between the procuring agency and the suppliers or contractors. And under the IP, if corruption is deducted at any stage, the Contractor is committed to pay 10 times the amount of loss to CAA due to corrupt act, and also face legal action under the law of the land.

In this case if Rs 100 million allegation is proved, the amount of recovery from contractor may amount to Rs 1 Billion.

With Regards,


Syed Adil Afiani
Chairman,
Transparency International Pakistan
Email: gifanadil@gmail.com
Fax: 021-5390410

Copy forwarded for the information and necessary actions to

1. Chairman, PAC, Islamabad
2. Ch. Ahmad Mukhtar , Federal Minister for Defence, Ministry of Defence, Rawalpindi.
3. Mr. Tanwir Ali Agha, Auditor General Pakistan, Islamabad
4. Secretary, Defence Division, Pak Secretariat – II, Rawalpindi
5. Managing Director, PPRA, Islamabad.



The Secretary Defence
Islamic Republic of Pakistan
ISLAMABAD

December 18, 2009

PETITION FOR INTERCESSION
Package # 6: Hydrant Refueling System
New Benazir Bhutto International Airport, Islamabad

Dear Sir,

We China National Precision Machinery Import and Export Corporation (CNMIEC) in JV with Marathon Construction Company (Pvt) Limited (MCC) have participated in captioned subject tender.

Our bid for the said project was the lowest as opened on 5th August, 2009 and following were the results:

1. M/s CNMIEC-MCC JV Rs. 1,290,509,127/- (inclusive of Duties & Taxes)
2. M/s Al-Tariq Constructors (Pvt) Ltd. Rs. 1,398,784,629/- (Inclusive of Duties & Taxes)
Rs. 1,192,394,006/- (without Duties & Taxes)

THUS OUR BID WAS Rs. 108,275,502 less than OUR COMPETITOR AND WAS THE LOWEST.

Subsequently CAA vide letter ref. HQCAA/5056/41/P&D-1175 dated 3rd December, 2009 advised us that we had been declared commercially non-responsive as we bid our prices including the customs duty and taxes. We complied IN FACT WITH CAA'S OWN INSTRUCTIONS TO BIDDER-

a) Addendum No.2 Clause 12.3 Bid Prices

"12.3 All duties, taxes and other levies payable by the Contractor under the Contract, Or for any other cause, as on the date 28 days prior to the deadline for submission of bids shall be included in the rates and prices and the total Bid Price submitted by a bidder."

b) Addendum No.2 Clause 73.1(b) Payment of Local Tax

the prices bid by the contractor shall include all customs duties, import duties, sales tax, octroi and other taxes that may be levied in accordance with the laws and regulations in force on the date 28 days prior to the latest date for submission of bids in Pakistan on the contractor's equipment, plant, materials and supplies (permanent, temporary, and consumables) acquired for the purpose of the contract and on the services performed under the contract. nothing in the contract shall relieve the contractor from his responsibility to pay any tax that may be levied in Pakistan in relation to execution of the contract.

Ref: S.D. 22 D.



中国精密机械进出口总公司
CHINA NATIONAL PRECISION MACHINERY IMPORT & EXPORT CORP

CAA had not asked for a separate bid price without duties & taxes. At no time did CAA ask to provide any clarification/information regarding the quantum of duties and taxes incorporated in the bid price.

Our letter MCCL/CAA/BID/NBBIA/2316/09 dated December 8, 2009 remains unanswered till date and the contents of this letter refutes completely the CAA assertion of quoting prices without including duty & taxes.

We take this opportunity to confirm that our competitor has no expertise of Refueling Hydrant systems. We have had the privilege of having successfully completed the Refueling Hydrant System at Allama Iqbal International Airport, Lahore

Based on the above indisputable facts, we request you, Sir, to intercede and direct the Civil Aviation Authority (CAA) to call us and finalize the Contract Award with us.

Yours Sincerely,


Tariq Rasheed Khan
Managing Director, J.V. Partner

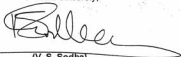
Encl: Copy of the previous correspondence

CC: Director General, CAA
✓ Director Planning & Development, CAA
CNPMIEC Representative

6. In case of any deviation from the above confirmation and stipulations of contract, your bid becomes non-responsive.

7. Thus in order for the bidders to be responsive to contract stipulations, irrespective of your verbal statement, the bid price entered by your firm in the 'Form of Bid', has been interpreted in conformity with the text of the Form of Bid and Contract Clauses.

Yours Sincerely,



(V. S. Sodha)
Director Planning & Development

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