



7<sup>th</sup> June 2010

Managing Director,  
Public Procurement Regulatory Authority,  
1st Floor FBC Building Near State Bank,  
Sector G-5/2, Islamabad

Sub: Irregularities in DHA Karachi Bidding Process

Dear Sir,

The reply of DHA Karachi to PPRA, dated 11 May 2010, on PPRA letter dated 26.4.2010 and TIP letter dated 23.4.2010 on the complaints of irregularities in the award of three contracts by DHA has been examined, and views of TIP are given below.

However, this is to point out that DHA Karachi has not responded since last 7 months to the TI Pakistan letter to DHA dated 16.09.2009 and PPRA letter dated 18.9.2009, on the allegations of default of NLC to provide Contractors all Risk Insurance Policy (CAR Policy) on various contracts.

**a) Street Lighting Phase-VIII.**

DHA has admitted that the Contract was awarded to M/s Oslo Lighting at Rs. 231 million, and they were 3<sup>rd</sup> Lowest, and not the lowest Bidder.

Public Procurement Rules 2004, MES Rules and Pakistan Engineering Council Rules do not allow award of work to bidder other than the lowest evaluated responsive bidder. Awarding contract at a cost of Rs 231 million, i.e. reportedly at 55% more than the bid price of the lowest evaluated responsive bidder, M/s Siemens Pakistan Ltd is therefore a serious violation of rules. Further change in the tendered condition of Mobilization Advance increased from tendered limits of 10%, to 50% is also a very serious violation of rules, as had this been known to other bidders at the time of tendering, they would also have participated in the tender and might have quoted less rates. On this particular violation of procurement rule, TIP would like to quote from the famous Judgment the Supreme Court announced on 23 June 2006 in the Pakistan Steel privatization case, in which the award of contract was declared void, as one of the reason being the the final terms offered to the successful consortium which were not in accord with the initial public offering given through advertisement

*4. While exercising the power of judicial review, it is not the function of this Court, ordinarily, to interfere in the policy making domain of the Executive which in the instant case is relating to the privatization of State owned projects as it has its own merits reflected in the economic indicators. However, the process of privatization of Pakistan Steel Mills Corporation stands vitiated by acts of omission and commission on the part of certain State functionaries reflecting violation of mandatory provisions of law and the rules framed thereunder which adversely affected the decisions qua prequalification of a member of the successful consortium (Mr. Arif Habib), valuation of the project and the final terms offered to the successful consortium which were not*



*in accord with the initial public offering given through advertisement. For the foregoing reasons, the Letter of Acceptance (LoA) dated 31st March, 2006 and Share Purchase Agreement dated 24th April, 2006 are declared as void and of no legal effect."*

**b) Development Works for Widening and Construction of Roads at Zulfiqar and Murtaza Commercial Areas.**

DHA letter does not clarify the licensing objection of required category of PEC of the Contractor M/s MJB Construction Company, which shall have been C-2, required to execute contracts of value of max Rs 200 million.

Extra/additional works required under the recommendations of Supervision Consultants to complete a contract are allowed as stated by DHA. However, increase in the scope of assignment, such as extending a boundary wall awarded for 100 meter, to 10,000 meters, or under a contract of Road Construction Contract, award of additional work of Storm Water Drain, or Water Supply mains, etc are not allowed.

According to DHA, the cost of contract has increased due to inclusion in this contract, as variation order the works of side walks, water supply, and sewerage. Such variations orders are not allowed.

The contractor M/s MJB Construction Company has also clarified the objections in their letter to Transparency International Pakistan dated 2.6.2010. (copy enclosed).

According to M/s MJB Construction Company, the incomplete and abandoned works of M/s Geo China was awarded to them under the same contract as Variation Order, at the old rates of M/s Geo China. If contractors clarification is correct, such abandoned works can be awarded under Public Procurement Rules 2004, Rule No 42 (d).

**42 (d) negotiated tendering.-**

*A procuring agency may engage in negotiated tendering with one or more suppliers or contractors with or without prior publication of a procurement notification. This procedure shall only be used when,*

*(iii) for reasons of extreme urgency brought about by events unforeseeable by the procuring agency, the time limits laid down for open and limited bidding methods cannot be met. The circumstances invoked to justify extreme urgency must not be attributable to the procuring agency:*

DHA has to confirm the following clarifications of M/s MJB Construction Company;

1. PEC License in C-2 was provided to DHA and it was delayed due to PEC procedural delays.

2. The clarification that variation order was for the award of the abandoned works of M/s Geo China given to them due to urgency.

**c). Construction of Roads 16 Street Phase-VIII.**



The DHA has not given Clarification on the objection that M/s Areebco & Company is registered by PEC in C 2, which is only allowed to execute works of upto Rs 200 million only. For contract of Rs 332 million PEC License in C1 was required.

The reason given by DHA for the variation order for additional works of drainage, utility culverts not included in the original contract, increasing the contract value from 332.7 million to about Rs 500 million, (as reported ) is not allowed under PPRA Rules, due to the reason had this been known at the time of tendering to the other bidders that the value to contract will be increased by 50% after the award of contract, more firms would also have participated in the tender and quoted less rates. The admission of DHA for increase in the contract value in violation of rules is a serious matter. This in fact is a collusive practice under Public Procurement Rules 2004, Rule No 2(f).

Lastly, TIP would like to point out that under Public Procurement Rules 2004, Rule No 7, and also under the PEC regulations for Works which according to DHA they are using, in the Appendices to Bid, Appendix-L to Bid, it is mandatory that " The Employer is to provide the form of the Integrity Pact which the bidder shall sign and stamp along with his Bid".

Yours Sincerely,

  
Syed Adil Gilani  
Chairman

Copy forwarded for the information of;

1. Chairman Public Accounts Committee, National Assembly, Islamabad.
2. Auditor General Pakistan, Islamabad
3. Registrar, Supreme Court, Islamabad
4. Chairman, NAB, Islamabad.
5. Administrator, DHA, Karachi



Engineers, Developers,  
Army & Civil Contractors

Mr. Adil Gilani  
Chairman  
Transparency International,  
Pakistan.

Subject: **Irregularities in the DHA Bidding Process**

Dear Sir,

A complaint regarding our firm M/s MJB Construction Company in award of contract "NO RD-11 Tender for development works for widening and construction of roads of Zulfiqar And Murtaza Commercial Areas" have been raised vide TIP letter dated 23<sup>rd</sup> April, 2010. In this regard we would like to submit following facts for coordination:-

- i. On 29<sup>th</sup> December 2008, we applied to PEC for upgradation of our license NO. C-3 / 4079 for C-2. All necessary fees etc were paid on 9<sup>th</sup> January 2009 (copies enclosed). We also approached PEC for expediting our upgradation license from C-3 to C-2. It was informed by the PEC that new license for C-2 will be issued in due to course of time. On this assurance, we participated in the bidding process for above mentioned tender. We also intimated DHA that by the time, the work is awarded to us we will be in position to produce the required certificate. However, PEC producers are so lengthy and time consuming that we obtained the C-2 certificate on 19<sup>th</sup> February, 2010. As such we have not committed any violation of rules, it is only due to late receipt of C-2 certificate from the PEC which has resulted in pointing out the anomaly by the TIP. We have also applied for upgradation of our license from C-2 to CB/OB on 3<sup>rd</sup> April 2010 (copy enclosed)
- ii. Our initial bid price in which we were lowest in the tender (9<sup>th</sup> March 2009) was Rs. 187.426 Million. This bid price was lowered to Rs. 143.106 Million (13<sup>th</sup> April, 2009) due to change in certain quantities. At the time of award of work the final contract amount mentioned was Rs. 150.261 Million (copies enclosed).
- iii. The contact period was 180 days. Somehow, our company couldn't commence the work on following grounds:-



- (1). M/s Geo China was constructing the drains and sewerage network. The work could have only been started once these works were completed. M/s Geo China abandoned the work in middle of 2009. Due to delay in the decision by the DHA that who and how these abandoned works will be completed, our project got delayed. Finally the left over works of M/s Geo China were awarded to us and made part of the main contract through variations order.
  - (2). The consultant M/s Osmani Company Limited also delayed the provision of drawings and required gradient for more than Seven Months. In this regard we have also submitted a claim to the employer.
  - (3). The back street sewerage system laid by M/s Geo China and some by other contractors (10 years back) wasn't conforming to the revised re-planning done by DHA. Thus this dirty and piece meal work was also made part of our contract on the same old rates.
- iv. The site constraints and lack of accurate BOQ estimates by the department/ consultant has resulted in the enhancement of the contract amount.

The facts mentioned above can be verified from DHA. In the end, we request your honour to kindly clear our name for the complaint forwarded by the TIP vide letter date 23 rd April 2010. This will not only enable our company to complete the said contract but will also be helpful in the salvaging our reputation which has been built on consistent hard work with honesty and dedication from the last 15 years.

Assuring you of our best service and cooperation at all times

Thanking you in anticipation.

Best Regards

  
(Mirza Jamil Baig)  
Chief Executive

Date: 2<sup>nd</sup> June 2010

Encl: (copies of PEC Registration & contract details)