

Government of Pakistan  
Ministry of Privatisation  
(Privatisation Commission)

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Subject: PROCUREMENT LAW NATIONAL CORRUPTION PERCEPTION SURVEY (NCPS) 2009

Enclosed herewith is a letter of Transparency International (TI) who has asked for various documents/contract agreement and Evaluation Report regarding the Transaction of KESC. The TI has further stated that in case the said documents are not sent, our Organization would be declared violator of Public Procurement Rules 2004.


2. In this regard it is stated that the requested documents are very sensitive in nature and their public disclosure may result in complications for future transactions specially those in Power Sector. It is added that a number of power sector Companies are on active privatisation list at this point of time.

3. Besides the Regulation 3 of "*The Privatisation Commission (Confidentiality and Secrecy of Documents) Regulations, 2003*" allows treating certain document (including "*all assignments, deeds executed during the course of privatisation including sale agreements, sale or conveyance deeds, financial advisory agreements*") as Confidential (A copy of the Regulations is Enclosed).

4. In this scenario the advice of Ministry of Law & Justice is solicited as regards the relevance of Public Procurement Rule 2004 in respect of the documents requested by Transparency International. This Commission holds that in terms of Regulations mentioned above, the documents required by TI cannot be provided.

5. The advice of Ministry of Law & Justice was solicited whose reply is also enclosed. Ministry of Law & Justice has stated that the case may be taken up with Public

Procurement Regulatory Authority for approving the documents for withholding the same from public disclosure. It is accordingly request to accord the requisite approval.

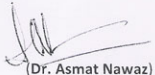
  
(Dr. Asmat Nawaz)  
Director (P&C)  
Ph: 2855203

Public Procurement Regulatory Authority (Mr. Jamil Ahmed Rathore, Dy. Director-III),  
Islamabad.

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P.C's U.O. No. 16(11) P&C/PC/2009, dated 20/06/2009

✓  
Copy to Transparency International – Pakistan, Karachi.

  
(Dr. Asmat Nawaz)  
Director (P&C)

Government of Pakistan  
Ministry of Privatisation  
(Privatisation Commission)

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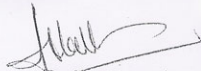
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(Dr. Asmat Nawaz)  
Director (P&C)

Ministry of Law and Justice (Justice (Retd.) Riaz Kayani, Secretary), Islamabad.  
P.C's U.O. No. 16(11) P&C/PC/2009, dated 12/06/2009

Law & Justice Division

(Law Section)

Dy No - 512/09

13-6-09

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Government of Pakistan  
Law & Justice Division  
(Law Section-1)  
Islamabad.

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5. Rule 47 of the Public Procurement Rules, 2000, having been made under section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002) provides for public access and transparency regarding contracts awarded by a procurement agency. Rule 47 *ibid* reads as follows:-

**“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.”.

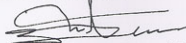
6. On the other side the Privatization Commission (Transparency and Secrecy of Documents) Regulations, 2002, by invoking the provisions of section 41 of the Privatization Commission Ordinance, 2000 (LII of 2000), and under Regulation 3 are enumerated the documents which are considered confidential and clause (g) *ibid* says that agreements, deeds executed during the course of privatization included the sale agreement, sale and conveyance financial advisory agreement are confidential document.

7. The proviso to rule 47 *supra* clearly saves from disclosure any information related to award of a contract where the procurement agency is convinced that its disclosure shall be against public interest it can withdraw any such information from public disclosure subject to approval of the Procurement Regulatory Authority. Therefore, the object can be achieved by requesting the Authority to approve the documents mentioned in regulation 3 of the

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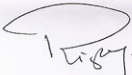
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aforesaid Regulations for withholding the same from public disclosure as provided in the proviso to rule 47 *ibid*.

  
(Muhammad Azam Warraich)  
Draftsman/Addl. Secretary  
16<sup>th</sup> June, 2009.

Secretary I agree with 'A' in para 7/N.

Mr.  
D.A./Add. Sec.

  
16.6.09

✓ Ministry of Privatization,  
(Privatization Commission),  
(Dr. Asmat Nawaz, Director (P&C),  
Islamabad. Law & Justice Division  
U.O.No. 512/09-Law-1  
Dated 17-6-2009

26th May 2009

Mr. Ahmed Jawad,  
Federal Secretary,  
Ministry of Privatisation,  
Government of Pakistan,  
(Privatisation Commission),  
5-A, Constitution Avenue,  
Islamabad.

**Sub: Your Organization may be declared as Violator of Procurement Law  
National Corruption Perception Survey (NCPS) 2009**

Dear Sir,


In response to the letter sent by Transparency International Pakistan in connection with National Corruption Perception Survey (NCPS) 2009, to inform public how many organization are following Procurement Law, TI Pakistan has received Contract Agreement and Evaluation Reports from most of the organization. A number of organizations like Ministry of Health, PQA, Pakistan Steel, KPT etc. are posting or are in the process of posting of their Contracts and Evaluation Reports on the website.

However, your organization is not posting the Contract Agreement and Evaluation Reports on the website, and has also not supplied the documents to TI Pakistan. The information was requested by TI Pakistan in March 2009.

Kindly note that according to the Public Procurement Rules 2004, under Rule No. 47, Contract Agreement and Evaluation Report are public documents.

Transparency International Pakistan would again like to inform you that all those departments who do not provide the information to TI Pakistan by 20<sup>th</sup> June 2009, will be declared as Violator of Procurement Rules 2004.

Yours Sincerely,



Syed Adil Gilani  
Chairman

Copy forwarded for the information of Chairman Public Accounts Committee, National Assembly, Islamabad