



16th August 2012

Chairman,
Karachi Port Trust, (KPT),
Edujlee Dinshaw Road,
Karachi -74000

Subject: Complaint on the Irregularities committed in the Dredging Contract by
M/s. China International Water and Electric Co. Ltd expected to cause loss of more
than Rs 8.5 Billions of Rupees to Exchequer

Dear Sir,

TIP has received a serious complaint on the Irregularities being committed in the Dredging Contract by M/s. China International Water and Electric Co. Ltd, expected to cause loss of more than Rs 8.5 Billions of Rupees to Exchequer.

The complainant has made the following allegations which are very serious ;

1. That M/s. China International Water and Electric Co. Ltd (CWE), were awarded the Contract for dredging and reclamation works (the D&R Project) by KPT on 26 November 2008, for a total dredging quantity of 33 Million Cubic Meters (MCM) to be completed in 30 months, i.e. by February 2011, for Pakistan Deep Water Container Port worth over Rs. 19,288,183,520/- (equal to USD 317 Million), with 40% payment to be made in US dollars at the fixed rate of Rs 61/\$, but till Feb 2011, the contractor only did 30% of the work, 10 Million Cubic Meters (MCM) and KPT did not impose Liquidated Damages, which is 10%, i.e. RS 1.9 Billion.
2. That KPT is facing delay in other related projects of Marine Pretention Works (MPW Contract) and Quay Wall Construction (QW Contract) worth over Rs 30 Billion, and resulting in claims from other Contractors which may be over 20% of the contract cost, i.e. 6 Billion.
3. That Secretary Ministry of Ports & Shipping has also initiated an inquiry into this case, and formed a "Fact Finding Committee" vide its letter No, 11(8)/2007 (P&S-1) dated 9 April 2012, to fix the responsibility on the part of Karachi Port Trust Management, Consultants, Contractors and other stakeholders for entering into Agreements which caused huge losses to KPT.
4. That the terms of Reference for the Inquiry Committee included for M/s CWE were; (a) Why M/s CWE was awarded D&R Works despite low marking and how and by whom the same was approved, (b) Why the shortcomings pertaining to technical & experience related matters was not taken into consideration at the time of evaluation, (c) Why stringent measures were not taken by KPT Management against the Contactor, who continues to be a non-performer, and (d) Why notices were not issued to the contractors, when M/s CWE were lagging behind since last two years.



5. That the inquiry was to be completed in 30 days, i.e. by 8th May 2012, but it has been deliberately delayed by 3-1/2 month in order to suppress the findings, and also to benefit M/s CWE by paying him additional cost of Rs 8.5 billion.
6. That the delay by M/s CWE may also cause loss to KPT in the US dollar parity rate, which was about Rs 62/US\$ in Nov. 2008, and now in August 2012 it is Rs 96/US\$. On balance quantity of 23 MCM, the difference to be paid by KPT may be above Rs 2.8 Billion (40% of Rs 6.21 Billion).
7. That M/s CWE did not have the required experience and appropriate dredger to dredge hard soil/rock, which is more than 4 MCM, and therefore Consultants did not prequalify M/s CWE. But on KPT's written orders, M/s. China International Water and Electric Co. Ltd (CWE) were prequalified.
8. That the Consultants informed KPT in its Bid Valuation Report that CWE's bid price was unreasonably lower than the Engineer's Estimate, and CWE did not have any convincing experience of marine dredging practice.
9. That KPT awarded the Contract to M/s CWE against the Consultants recommendations. In order to secure the Risk of KPT in case M/s CWE fails to complete the project in time, Consultants and KPT increased the amount of performance guarantee from 10% as required in the Tenders, by 50% more, i.e. 15%.
10. That M/s CWE is trying to claim additional cost for dredging Hard Soil, though according to the Tender, Contractors rate is inclusive of Hard and Soft Soil, and estimated quantity of Hard Soil was estimated in the KPT Tender as 8 MCM, but the responsibility of verification of hard and soil quantities were stated to be that of bidders.
11. That Consultants and KPT had already rejected Contractors claims many times in writing.
12. That Consultants and KPT have issued contractual notices to Contractors for penalty on the delay, and encasement of performance guarantee.
13. That M/s CWE instead of completing the Contract, is trying to take illegal additional cost for hard soil dredging, which is not allowed under the Contracts.
14. That Consultants are being pressurized to allow Rs 3.1 billion additional cost claim of Contractors.
15. That Contractor has recently demanded Rs 8.5 billion as additional cost of degrading hard soil.
16. That KPT has also favored M/s CWE and reduced scope of work of M/s CWE by about 7.5 MCM, and new reduced total quantity is 25.5 MCM instead of 33 MCM.
17. That following table shows the actual cost to KPT, if KPT Board of Trustee approves illegal additional cost of Rs 8.5 billion to M/s CWE.

Compensation demanded by M/s CWE	Rs 8.5 Billion.
Total payments for balance work including retention money of M/s CWE	Rs 6.6 Billion
Total	Rs 15 Billion
Cost of dredging per Cubic Meter for 8.5 CMC	Rs 1765 per cubic meter.



40% quantity is to be paid in US \$ at Rs 61/\$	\$ 11.57
60% in Pak Re at Rs 96/\$	\$ 11.10
Total	\$ 22.67

This rate does not includes escalation due to 100% increase in cost of POL in 4 years.
Which may be another 15%, i.e Rs 300/CM.

Additional cost due to \$ parity difference
Rs 96-Rs 61 to KPT, Rs 35per cm.


That KPT will pay **Rs 2476 per cubic meters** for dredging 8.5 MCM to M/s CWE, against their Contractual Rate of **Only Rs 428/ CM including disposal in 2008**. It is also reported by the complainant that cost of hard soil dredging in PQA in **2011-12** was approx. **Rs 800/CM** including disposal cost.

Chairman KPT is requested to check whether the complaint is correct or not.

If the complaint is found correct, TIP request KPT not to pay any additional cost to M/s CWE for Hard Soil, and not act in contradiction to the Conditions of Contract Agreement signed on 26 November 2008, and impose penalties as required under the terms, and also recommended by the consultants.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

Yours sincerely,


Syed Adil Gilani
Adviser

Copy forwarded for information with request to take action under their mandate to,

1. Chairman Public Accounts Committee, Islamabad
2. Chairman, NAB, Islamabad,
3. Secretary, Ministry of Ports & Shipping, Islamabad
4. Registrar, Supreme Court of Pakistan, Islamabad
5. MD, PPRA, Islamabad, to take action under section 5(2) (a) and section 5(2) (i) of the PPRA Ordinance 2002.

Government of Pakistan
Ministry of Ports & Shipping

No: 11(8)/2007-(P&S-I)

Islamabad the 9th April, 2012.

OFFICE ORDER

In pursuance to the presentation made by the Chairman, KPT regarding Pakistan Deep Water Container Port (PDWCP) to the Federal Secretary, Ministry of Ports & Shipping on 21-3-2012 at Karachi, it has been decided to constitute a Facts Finding Committee to fix the responsibility on the part of Karachi Port Trust Management, Consultant, Contractor and other stakeholders for entering into Agreements which caused huge losses to the KPT. The Committee is constituted as below:-

(i)	Vice Admiral (R) Azhar Shamim D.G (P&S) Wing, Karachi	Chairman
(ii)	Rear Admiral M. Azhar Hayat G.M (Ops) KPT	Member
(iii)	Cdre. (R) Anwar Mohiyuddin Trustee, KPT Board	Member
(iv)	Mr. Muhammad A. Rajpar, Trustee, KPT Board	Member
(v)	Mr. Adnan Lakhani Trustee, KPT Board	Member
(vi)	Lt. Commander (R) Mr. Meraj Abbas Hydrographer, GPA	Member
(vii)	Mr. Mashood A. Jan Deputy Chief Auditor, KPT	Member
(viii)	Mr. Raghieb ul Khair Project Engineer, KPT	Secretary

2. The Terms of Reference (TOR) for the said Committee are as under:-

- (i) Why was the Agreement with M/s HPH (Terminal Operating Company) signed before the conclusion of other agreements for infrastructure works, i.e Dredging and Reclamation, Marine Protection and Quay Wall Construction?
- (ii) Why tenders and works were awarded before finalization of design by the Consultants?
- (iii) Why M/s China Water Electric (CWE) was awarded Dredging and Reclamation work despite low marking and how & by whom the same was approved?
- (iv) Why the shortcomings pertaining to technical & experience related matters was not taken into consideration at the time of evaluation?
- (v) Why stringent measures were not taken by the KPT Management against the Contractor, who continued to be a non-performer?

U.S. Khan
9/4/12

- (vi) The Committee may look into the fact as to why the matters of serious nature were being concealed from the Federal Government for the past one and a half year and never brought on surface? What was the intent to hold back such a vital information. This definitely caused delay in taking retrieval measures.
- (vii) Why the Board of Trustees, KPT were not taken into confidence on the subject?
- (viii) The Committee may also look into the fact that M/s CWE was lagging behind since last two years and were not performing upto the mark, the reasons as to why notices were not issued to the Contractor and why the shortcomings of the Contractor were concealed.
- (ix) Why the 3 agreements i.e with M/s CWE, China Harbour and M/s HPH were not executed in single package. This resulted in claims and counter claims. It is also noticed from the agreements that date of completion of projects have been awarded in a haphazard manner like the agreement with M/s HPH indicates the date of handing over at an earlier stage whereas the date of completion by M/s CWE & CHIEC is at a later stage, thus resulting into claims as mentioned above.

3. The Committee, if it deems necessary may co-opt any further expert or technical person as member.

4. Office of the D.G. (P&S) Wing will work as the Secretariat of the Committee. The Committee should submit its recommendation as soon as possible but not later than one month from the date of issue of the instant Order.


(M. Sohail Noman)
Section Officer (P&S-I)

Distribution:-

- (i) Director General, Ports & Shipping, Karachi
- (ii) Chairman, Karachi Port Trust, Karachi with the request to extend full cooperation & assistance to the Committee.
- (iii) Mr. Muhammad A. Rajpar, Trustee, KPT Board
- (iv) Rear Admiral M. Azhar Hayat, G.M (Ops) KPT
- (v) Cdre. (R) Anwar Mohyuddin Trustee, KPT Board
- (vi) Mr. Adnan Lakhani Trustee KPT Board
- (vii) Lt. Commander (R) Mr. Meraj Abbas, Hydrographer, GPA
- (viii) Mr. Mashood A. Jan, Deputy Chief Auditor, KPT
- (ix) Mr. Raghib ul Khair, Project Engineer, KPT

Aug-2011

KARACHI PORT TRUST
PLANNING AND DEVELOPMENT DIVISION

No. P&D/-AI (1555)/2008/

Date

Steve Hinton
Project Manager
Royal Haskoning UK Ltd.,
4 Deans Yard, Westminster,
London, SW IP 3NL,
ENGLAND

PROJECT: DREDGING AND RECLAMATION WORKS (PDWCP)

SUBJECT: Delay in Dredging works

It has been observed that M/s CWE is not taking any action to expedite the progress. CRE vide letter No 198 dated 12 Nov 2011 issued Notice of Delay in Dredging Works to contractor stating that no improvement in the progress of dredging work has so far been observed, despite of our several notices issued to CWE. All commitments made by CWE to date appears to be vague and the progress so far achieved is a manifestation and ample proof of gross failure on part of CWE. CRE has further stated that the delay in completion of whole works inevitably, is due to CWE inefficient management and improper planning and deployment of inappropriate dredging plants not meeting the requirements.

M/s CWE vide letter 223 dated 17 Nov 2011 instead of improving the progress denied CRE and stated that it is unilateral and subjective opinion of the Engineer and Client to blame and compel the contractor to be responsible for the delay of this project. On the contrary, all the objective fact and truth existed in this project has been ignored. "CWE's inefficient management and improper planning and deployment of inappropriate dredging plant not meeting the requirement" is totally unaccepted by the contractor.

Thus contractor is not making any efforts to improve the progress and despite previous warning from the Engineer, in writing is otherwise persistently or flagrantly neglecting to comply with its obligations under the contract.

Thus as per contract clause 46.1 contractor fails to improve the rate of progress therefore Notice is to be issued to the contractor under Clause 46.1 to proceed with the work otherwise Employer will issue Notice in accordance with the contract Clause 63.1(d).

In view of above you are advised to issue Notice to the Contractor under Clause 46.1 and if the no action is taken by the contractor within 14 days of the Notice Issued under clause 46.1 KPT will issue the Final Notice under clause 63.1(d).

GENERAL MANAGER (P&D)
K.P.T.

Copy to:

1. S O to Chairperson for information of Chairperson KPT
2. Mr. Charles Scot Humphreys
Chief Resident Engineer.
3. Farooque A Chaudhry M/s Techno Consult