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## KARACHI PORT TRUST

No.S-PDS/2754

Dated 01 NOV 2016

From:

**Cdr (R) Syed Hasan Taj Tirmizi**  
**Secretary**

Engr. Syed Adil Gilani,  
Consultant, Prime Minister's Inspection Commission  
Advisor, Transparency International Pakistan (TIP)  
4-C, 1st Floor, Khayaban-e-Ittehad, Phase VII,  
DHA, Karachi.  
Tel: 92 21 3539 0408-9 & 92 21 3531 1897-8  
Facsimile: 92 21 3539 0410

**SUB:- PAKISTAN DEEP WATER CONTAINER PORT PROJECT -**  
**QUAY WALL CONSTRUCTION WORKS.**

- ESCALATION ON STRUCTURAL STEEL.

I am directed to state that KPT is developing a new container terminal at East of Keamari Groyne. The project is named as Pakistan Deep Water Container Port Project. This project contains a sub subject i.e. Quay Wall Construction Works. This sub-subject project has been awarded to M/s China Harbour Engineering Company- Pemcon JV.

There has been dispute between Employer (KPT Board of Trustees) and the Engineer / Contractor on account of Escalation on Structural Steel. Brief of the case is enclosed.

Contractor has shown his willingness to settle the dispute amicably by referring the subject matter for independent Third Party Assessment. The KPT management proposed your good name for the Third Party Assessment and Contractor has also agreed to your proposed name.

In view of above, your good office is requested to kindly convey your willingness to act as Third Party for the independent assessment of the subject matter, along with your fees so that we may proceed further. It is further requested that the matter may be assessed in 30 working days.

Encl: As above.

  
SECRETARY

Copy to:-

1. M/s China Harbour Engineering Company Ltd.  
No. 21, Askari Villas, Kayaban e Tauheed,  
Phase 5, DHA, Karachi.  
Fax: +92 21 3587 3884
2. CRE- QWCW, Fax: +92 21 3286 2732

**BRIEF****SUBJECT: ESCALATION ON STRUCTURAL STEEL**

1. Escalation is calculated in accordance with Formula prescribed in the Contract at 70.1 COPA Part II B

2. Inputs (source & rates)

a. Base Rates - Schedule B

b. Current Rates Monthly Statistical Bulletin

3. **Structural Steel including casing**

Source	Rates
Monthly Statistical Bulletin	Rs.63500/- per ton

4. The bulletin does not publish rates of Structural Steel

5. **Engineer, firstly, recommended to change only source as "Pakistan Steel Mill"**

6. **Contractor did not agree to the Engineer's Assessment**

7. **Contractor went for Engineer's Decision as per Clause 67.1 and cited that they had made inadvertent mistake while preparing tender documents.**

8. Timeframe of Clause 67.1

a. Engineer to give his Decision in 84 days

b. Engineer's decision to be agreed or disagreed within 72 days. In this case the due date was 05 Aug 2013

c. P&D issued letter of agreement on the last day, with prior approval of the then Chairman, KPT.

9. **Engineer's Decision:**

Current value may be linked with HR Coils of Pakistan Steel Mill. Thus, the current rate is obtained from PSM Coils plus the sales tax to arrive at ex-factory price. Further, Cost of Dealer Premium + Transport + Insurance + delivery etc. Therefore, **the Engineer decided to calculate the current rate for Structural Steel including casing PSM Rate + Sales Tax (19.5%) + Multiplying factor 1.2077 (to include cost of Dealer Premium + Transport + Insurance + delivery etc)** i.e. Current Rate of Structural Steel including casing =  $PSM \times 1.195 \times 1.2077$

10. KPT communicated to the Engineer that incorporating factor of 1.2077 will amend the base price of the item i.e. from Rs. 63,500 / ton to Rs. 44,000 / ton.

$$P_n = P_o [ a + c C_n/C_o + d R_n/R_o + e L_n/L_o + f D_n/D_o + g A_n/A_o + h SS_n/SS_o ] - P_o$$

h = Coefficient of Structural steel = 0.07

SSn = Current Price = Unknown

SSo = Base Price = 63,500.00 as given in contract

PSM Rate @ June 2009	=	Rs. 44,000.00
Add 19.5% Sales Tax	=	<u>Rs. 8,580.00</u>
	=	<u>Rs. 52,580.00</u>
 Multiplying Factor	=	$\frac{63,500}{52,580} = 1.2077$

Now,

$$h \times \frac{\text{Current Rate} \times 1.2077}{\text{Base Rate}}$$

$$h \times \frac{\text{Current Rate} \times 63,500}{\text{Base Rate} \quad 52,580}$$

$$h \times \frac{\text{Current Rate} \times 63,500}{63,500 \quad 52,580}$$

$$h \times \frac{\text{Current Rate}}{52,580}$$

As shown above,  
52,580 = 44,000.00 + Sales tax 19.5%

$$h \times \frac{\text{Current PSM Rate} \times \text{Sales Tax}}{44,000 \times \text{Sales Tax}} \longrightarrow \begin{array}{l} \text{(on 28 days prior to IPC)} \\ \text{(on June 2009, 28 days prior to tender submission)} \end{array}$$

$$h \times \frac{\text{Current PSM Rate} \times 1.195}{44,000 \times 1.195} \longrightarrow \begin{array}{l} \text{(on 28 days prior to IPC)} \\ \text{(on June 2009, 28 days prior to tender submission)} \end{array}$$

$$h \times \frac{\text{Current PSM Rate}}{44,000} \longrightarrow \begin{array}{l} \text{(on 28 days prior to IPC)} \\ \text{(on June 2009, 28 days prior to tender submission)} \end{array}$$

**Hence Base rate of Rs. 63,500/- as given in the Contract, is being amended to Rs. 44,000/ton**

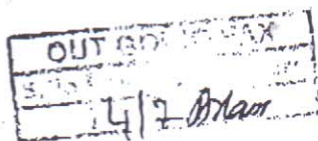
11. Ex. GM(P&D) issued agreement to the Engineer's Decision without Board's approval.
12. Later the case was put up before the KPT Board of Trustees. Board's Decision was communicated to the Contractor vide our letter dated 04 July 2016 (copy enclosed)
13. In response Contractor vide letter dated 06 Aug 2016 proposed to amicable settlement by Third Party assessment.

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KARACHI PORT TRUST  
PLANNING & DEVELOPMENT DIVISION

*SNOR 26(0)*



No. P&D-G (560) /2013/Escalation /4/ 1248  
Dated: 04 JUL 2016

To,

Chief Representative,  
M/s China Harbour Engineering Company Ltd.  
No. 21, Askari Villas, Kayaban e Tauheed,  
Phase 5, DHA, Karachi.  
Tel: +92 21 3586 5186 , +92 21 3586 4988  
Fax: +92 21 3587 3884

**SUBJECT:** PAKISTAN DEEP WATER CONTAINER PORT PROJECT - QUAY WALL CONSTRUCTION WORKS  
• ESCALATION ON STRUCTURAL STEEL

Reference: Our letters no. P&D-G(567)/2007/11/1510 dated 05 Aug 2013 & P&D-G(560)/2007/34/271 dated 30 Jan 2014 and Attached List of your letters.

Dear Mr. Wang Xiaoping,

1. With reference to the subject, as informed vide our above cited letter dated 30 Jan 2014 that the case for the Escalation on Structural Steel had to be submitted before the Employer i.e. Trustees of the Port of Karachi for Decision.
2. Engineer vide his letter no. 75163/Kh/Sw dated 27 May 2013 notified his Decision and same was submitted before the Employer. The Employer has disapproved the Engineer's Decision on the subject matter. Therefore, our letter no. P&D-G(567)/2007/11/1510 dated 05 Aug 2013 may be treated as cancelled. The disapproval of Engineer's Decision is based on following facts:
  - a. The Contractor misrepresented the facts and misled the Engineer.
  - b. Engineer's Decision dated 27 May 2013 is outside the scope of the Contract, being contrary to the provisions of Clause 70.1 of the Conditions of Contract Part II as well as the Tender Schedule B and created huge liability on KPT.
  - c. The General Manager (P&D) has no authority to issue letters which has financial implications without prior approval of the Trustees of the Port of Karachi. Moreover, the consent given by the then GM(P&D) has no legal value in the absence of approval / consent by the Trustees of the Port of Karachi, defined as Employer in the Conditions of Contract.
  - d. KPT should not take responsibility for the mistakes of the contractor.
  - e. It appears that the Engineer, by his Decision, has created new contract alien to the original contract signed by the parties.
3. In view of above, it is to inform you that your all letters (annexed) cannot be entertained for further action. You are also hereby informed that KPT reserves the right to Claim Arbitration Proceedings in accordance with the Conditions of Contract 67.3 against the Engineer's Decision dated 27 May 2013 and would plead against the Engineer's Decision.
4. You are also advised to review your submissions for amicable settlement of the subject matter, please.

Sincerely,

*[Signature]*  
GENERAL MANAGER  
P&D DIVISION

*4/7/2016*

Copy to:

Dr. Klaus Richter

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M/s Indus Associated Consultants (Pvt) Ltd.

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D:\Karachi Port Trust\Planning & Development Division\PCIN\Quay Wall Construction\Bnef\Case for Escalation on Structural Steel\LT to Contractor - FINAL letter Escalation on structural Steel amended 1 dated 24 June 2016\_01 JULY 2016.docx

*P&D*

