



7th October 2011

General Manager,
P & D Division,
Karachi Port Trust,
Head Office,
Eduljee Dinshaw Road,
Karachi

Sub: Action for Recovery of Loss incurred to KPT of Rs 55 million for change in Tie Rod Rates
and for Tax Evasion in accordance with "Integrity Pact" in the Contract of KPT
Project "Reconstruction of Berths 10-14"

Dear Sir,

Kindly refer to Transparency International Pakistan letter dated 8th July 2011, forwarding complaint of Custom duty evasion on fraudulent exemption, causing alleged loss to GoP of Rs 105 millions of rupees by M/s Ssangyong Engineering & Construction Co., Ltd., Korea Usmani Associates, in import of Steel Tie Rods and Bollards for the KPT Project of Construction of Berths for KPT, and TIP letter to Chairman FBR dated 16th September 2011 on GST refunds of Rs 158 claimed by same Contactors and has been refunded Rs 122 Million by FBR. (Annex-A).

Transparency International Pakistan has received another complaint alleging as proof of alleged fraudulently corruption by M/s Ssangyong Engineering & Construction Co., Ltd., on KPT Contract.

The investigations of the alleged complaint against M/s Ssangyong Engineering & Construction Co., Ltd is proceeding at the office of Federal Tax Ombudsman.

According to the new complaint, it has been reported that the Project Engineer KPT has written letter to CRE of M/s Lyon Associates and Techno Consult on 28th June 2011, to calculate and recover refund of Sales Tax of Rs 112 Million to KPT (KPT Statement: By submitting Sales Tax Invoices for period 01-11-2008 and onward to Sales Tax Department mentioning KPT as buyer and not forwarded the copy of invoice to KPT as per Sales Tax Rules which is a breach of Sales Tax Act and thereafter applied for the refund which has been granted) and recovery of Custom Duty and Sales Tax of Rs 105 Million (KPT Statement: Thus according to Clause 70.9 the adjustment in rates of imported item is to be made and savings incurred due to exemption from custom duty in excess of 5% and whole of Sales Tax on import of capital goods is to be passed on to Employer. Contractors working of Variation Order).

As KPT has itself reported that these refunds/exemptions have not been reported to KPT by M/s Ssangyong Engineering & Construction Co., Ltd, not been refunded to KPT by the Contractor,



application of Rule No 2(f) for fraudulent practice as have been alleged by the complainant, stands proved. If not done so far, KPT and Consultants M/s Lyon Associates and Techno Consult should take action in accordance with the terms of the Integrity Pact.

“Without limiting the generality of the foregoing, [name of Supplier] represents and warrants that it shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder’s fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP,... and accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoP under any law, contract or other instrument, be voidable at the option of GoP, and agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten time the sum of any commission, gratification, bribe, finder’s fee or kickback”

If the complaint is true, according to PPRA Notified SBD vide S. R. O. 805(I)/2008, the Standard Form of Bidding Documents (Civil Works) prescribed by the Pakistan Engineering Council, Clause 74.1 following actions shall be taken by KPT.

74.1 Integrity Pact

If the Contractor or any of his Subcontractors, agents or servants is found to have violated or involved in violation of the Integrity Pact signed by the Contractor as Appendix-L to his Bid, then the Employer shall be entitled to:

- (a) *recover from the Contractor an amount equivalent to ten times the sum of any commission, gratification, bribe, finder’s fee or kickback given by the Contractor or any of his Subcontractors, agents or servants;*
- (b) *terminate the Contract; and*
- (c) *recover from the Contractor any loss or damage to the Employer as a result of such termination or of any other corrupt business practices of the Contractor or any of his Subcontractors, agents or servants.*

It is also recommended for KPT to ;

- (a) Proceed action on blacklisting the Contractors under PP Rule No 19.
- (b) Report to NAB for criminal action against Contractors under NAO 1999 Section 9.

Another loss to KPT of at least Rs 5 carores reported by the complainant is in case of Change of Size of Tie Road, from 140mm diameter reduced to 130 mm diameter.



The Contractor has also got changed the quoted rates of Tie Rod, which was of 140mm dia in BOQ, and reduced to 130 mm dia, and increased the rates by almost by 112% , whereas the weight per meter is reduced by 16%.

BOQ Item S. No. 8.1 Supply & Install Tie Bars of HYS 140mm dia @ 4.2 m c/c of Approx 50m each as specified in section 1300 at Rate of Rs 22,693 per meter has been deleted.

Additional Item S. No. 8.10A has been added for Supply & Install Tie Bars of HYS 130mm dia @ 2.1 m c/c of Approx 57.80 m each as specified in section 1300 at Rate of Rs 48,199.20 per meter.

KPT by this ambiguous change has ended up paying Rs 1.03 Billion against Rs 235 .7 million, and consultant shall be held responsible for this faulty design. ,

Why the Design has been changed to increase the quantity by 100%, and why 140mm has not been used instead to 130mm, which would have saved Rs 550 million.

This has to be examined by KPT that if same diameter tie rod were used, i.e. 140 mm diameter, then Contractor was entitled rate of Rs 22,693 per meter, and not new rates claimed Rs 48,199.20, and KPT would not have to pay additional sum of Rs 55 carores. This claim is reported to be by circumventing the conditions of contract for obtaining extra item rates, under the method of extra item rate derivation. This amount of **Rs 55 carores** needs to be recovered by KPT if the documents supplied by the compliant is correct. .

Transparency International Pakistan is striving for the Rule of Law in Pakistan.

Regards,


Syed Adil Gilani
Adviser

Copies forwarded for the information with the request for action under the prevailing Rules and regulations invoke in their respective domain,

1. Chairman Public Accounts Committee, National Assembly, Islamabad
2. The Registrar, Supreme Court of Pakistan, Islamabad
3. Auditor General Pakistan, Islamabad
4. Secretary, Ports & Shipping, Islamabad
5. Chairperson, KPT, Karachi
6. Director General, NAB Sindh, Karachi,
7. Managing Director PPRA, Islamabad.