



27th September, 2009

Mr. Shaukat Tarin,
Federal Minister of Finance,
Government of Pakistan,
Islamabad

Subject: The Asian Development Bank (ADB), under the third party validation mechanism, has begun evaluating rental plant contracts reportedly aimed at investigating allegations of kickbacks.

Dear Sir,

Transparency International Pakistan refer to news reports refereeing to Ms Farahnaz Ispahani published in NEWS on 26 and 27 September 2009, and Staff Reporter in Business Recorder on 10 September 2009, and ECC decision to have the third party validation of all RPP project prior to award of Contracts. .

The role of ADB is not questionable, but they do not have the in-house expertise to conduct such exercises in past. ADB most probably hire consultants, and the report of consultant will be forwarded with a foot note that ADB do not take responsibility of the report, as it is based on the documents provided by GoP and report prepared by Consultant. They normally only acts as agents and outsource assignments. Moreover, RPP are to be processed under Public Procurement Rules 2004, which are not acceptable to ADB, as they always makes it mandatory to use ADB Procurement Rules on their funded Projects, which are not as transparent as PPR 2004, and does not include “Integrity Pact”, declaration of Evaluation Report to bidders prior to Award, and publication of Evaluation Report and Contract Agreement on website. Therefore, ADB does not have capacity to evaluate RPP Procurement under the Public Procurement Rules 2004.

Pakistan has credible agencies, who can be more useful, as well as economical, and will also be accountable to the nation for their report.

Few of them are, PPRA which may take assistance from CCP, PEC Committee on Construction byelaws, and AGP.

However, which ever agency government wished to decides to appoint for third party validation, the TOR of the validation study shall have to be very clear. Following are the recommended TOR, which Transparency International Pakistan feels will justify the third party validation.

TOR

Issue No 1. Which may be evaluated by ADB

1. Assessment of requirement of RPP. The causes of electricity shortfall of supply verses capacity and verses demand.



2. If capacity was available, but could not be fully generated, why steps were not taken to obtain the electrify for such plants. May be timely repairs, supply of fuel, streamlining of cash flow, would have accommodated supply verses demand.

Issue No 2. Which shall be Evaluated by PPRA

1. In 2005-6 RPP were awarded on three years terms. The rationale of RPP is that it is costly venture, but takes 3-4 months to install and start operation, whereas IPP and PP take 3 years. Why in 2005-6 while awarding RPP, and no action to award IPP or Install PP was not taken simultaneously.
2. Why in 2007-8 the RPP tenders were called, and again in isolation to IPP or PP, and that too for 5 years and not for 3 years..
3. Why IPP and PP are not even at he planning stage presently, or they are and a schedule of their operations has been checked so that RPP are not needed after 3 years, the normal time of IPP setting up.
4. Why the terms of RPP tender were changes from 3 year to 5 years, and other conditions also, when the previous RPP were operating very well on old terms.
5. The Tender evaluation process for all the RPP shall have been based on Public Procurement Rules 2004. ADB can not do it, as they have their own rules, This work has to be entrusted to PPRA who are the only regulatory authority to monitor such assignment. They may co-opt experts in case they need one, but as the procedures are clearly defined in 50 Rules, it will not be difficult task for PPRA.

The evaluation procedures of PPRA Public Procurement Rules 2004 are

7. Integrity pact.-

Procurements exceeding the prescribed limit (Rs 10 million) shall be subject to an integrity pact, as specified by regulation with approval of the Federal Government, between the procuring agency and the suppliers or contractors.

30. Evaluation of bids.-

(1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in sub-clause (iv) of clause (c) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

(2) For the purposes of comparison of bids quoted in different currencies, the price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate, prevailing on the date of opening of bids specified in the bidding documents, as notified by the State Bank of Pakistan on that day.

(3) A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issue of notice for invitation of bids.

(4) Announcement of evaluation reports.-

Procuring agencies shall announce the results of bid evaluation in the form of a report giving justification for acceptance or rejection of bids at least ten days prior to the award of procurement contract.



48. Redressal of grievances by the procuring agency.-

(1) *The procuring agency shall constitute a committee comprising of odd number of persons, with proper powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.*

(2) *Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances not later than fifteen days after the announcement of the bid evaluation report under rule 35.*

(3) *The committee shall investigate and decide upon the complaint within fifteen days of the receipt of the complaint.*

(4) *Mere fact of lodging of a complaint shall not warrant suspension of the procurement process.*

(5) *Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction.*

49. Arbitration.-

(1) *After coming into force of the procurement contracts, disputes between the parties to the contract shall be settled by arbitration.*

(2) *The procuring agencies shall provide for a method of arbitration in the procurement contract, not inconsistent with the laws of Pakistan.*

50. Mis-procurement.-

Any unauthorized breach of these rules shall amount to mis-procurement.

TI Pakistan Views. (based on the contents of news reports)

The RPP awarded on the terms different from the advertised terms, for whatever reason, are mis procurements, and tenders shall be discharged, and public tender shall be reinvited on new terms for 3 year rental, and shall be installed within 120 days.

Basis of above views.

TI Pakistan would like to bring it in the knowledge of Minister of Finance, that the famous case of Privatization of Pakistan Steel where the Contract was awarded, and was terminated by the Supreme court in 2006. In its landmark judgement which has changed the course of political setup, getting rid of dictatorial regime, as well as high hope of beginning of good governance in the country under an independent Judiciary, . The main reason of the court judgement is quoted below.

“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 relatable 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.”.”

If the tendered conditions are changed after bid opening, it is a violation of Public Procurement Rules NO 30 (1), and according to Rule No 50, such Contracts are mis-procurement. On this very ground that the advertised tender conditions have been changed in the awarded Contract , the SC Judgement in case pf Pakistan Steel Privatization, treats such Procurements and Contract Awards as mis-procurement.

TI Pakistan wishes to inform the Minister that in past TI Pakistan has been referred such privatization project for third party validation e.g. KPT Tower US 3 billion Project, by the government of Pakistan which was terminated on TIP report that the final terms offered to the successful consortium which were not in accord with the initial public offering given through advertisement, Pakistan Steel refurbishment of coke oven batteries project, PQA Capital dredging Project, PQA Fertilizer Terminal Project Also the Wold Bank has appointed TI Pakistan as official Observers in the \$ 176 Sindh Water Sector Improvement Phase-I Project Id P084302 in Sindh Irrigation Department, to be observer and report on the tender award process of each and every procurement to the World Bank at every stage. .

Yours sincerely,

Syed Adil Gilani
Chairman

There will be light, Mr Hayat

Saturday, September 26, 2009
By Farahnaz Ispahani

In recent columns for this newspaper, Faisal Saleh Hayat, MNA from the opposition party PML-Q, has questioned the government's power sector policies, especially its rental power programme. It is imperative to correct the public record without dignifying Mr Hayat's partisan pot shots. Not only is Mr Hayat's knowledge of the government's rental power programme fundamentally flawed, but his memory of the five years he spent in government also appears to have failed him.

The Pakistan People's Party-led coalition government remains committed to eliminating loadshedding in the country. In order to ensure the availability of power, the government has taken several important visible measures including induction of fast-track rental power projects, awarded through transparent, international competitive bidding. While Mr Hayat alludes to a "negative fallout" from rental power plants introduced through "self-seeking knee-jerk policies", he is perhaps unaware that the absence of stable, uninterrupted power is costing Pakistan's economy between Rs220 billion, according to the study undertaken last year by a Lahore-based university whose vice chancellor is former Finance Minister Sartaj Aziz, and Rs282 billion, according to the State Bank of Pakistan.

Mr Hayat is right when he says it is incorrect to claim that the previous government did not introduce a single megawatt of new power generation capacity in Pakistan. After all, it was his government that introduced the rental power model in 2006 after the first major power riots were televised.

The government of which Mr Hayat was a part approved 1,000MW of rental power projects. This is a fact Mr Hayat may verify from his former patrons in London. Mr Hayat's unfortunate allegation of a "deliberate sinister scheme" of "deliberate persistent power shutdowns" is not only intellectually dishonest, it also reflects scandalously on his own government. Lack of power was one of several glaring failures of his government that led to his party's resounding defeat in last year's general elections.

Mr Hayat's sudden interest in the power sector is welcome. However, the public interest would be better served, had he equipped himself with facts instead of self-righteously parading his ignorance of his own government's initiatives and decisions. In his televised appearance with the Federal Minister for Water and Power, Mr Hayat did not know the difference between the benchmark tariff, which is a tariff ceiling, and the signed tariff, which is used for calculating payments for electricity produced and purchased. When his error was also pointed out by Nepra and reluctant to make good on his promise to resign from the National Assembly if he were proven wrong, Mr Hayat simply accused the regulatory body of being coerced.

Similarly, Mr Hayat does not know the difference between installed capacity and de-rated capacity. The former is the nameplate capacity of a power plant when it is installed. The latter term refers to the plant's reduced production potential after it has aged. The power shortfall in Pakistan ranges between 3,000-4,000MW, and this does not factor in suppressed demand.

While this government has near eliminated the circular debt crisis created by Mr Hayat's government and that was hobbling the power sector, acquired captive power from industries, facilitated delayed power projects, commenced work on rehabilitating state-owned power plants that were criminally ignored by his government, embarked on brand new power initiatives including the construction of water and coal based projects, there is no alternative but to introduce the globally-tested rental power model if loadshedding is to be eliminated and the economy is to be resurrected.

The government has and shall continue to follow a rigorous, transparent process of award and implementation. Rental power projects have been awarded through a multilayered screening process to parties that have been able to demonstrate the technical and financial competence to undertake these projects and offer the most competitive tariff. Mr Hayat also conveniently ignores the contractual obligations of the rental power sponsors to ensure an availability of 85 percent if their plants use furnace oil and 92 percent if their plants run on gas. If rental power plants do not perform in accordance with these contractual obligations, they are liable to pay substantial damages. Mr Hayat is also unaware that lenders to rental power projects undertake their own due diligence after appointing special engineering companies for the purpose of evaluating the performance capability of the relevant plants.

To be continued
Part-II

Sunday, September 27, 2009
By Farahnaz Ispahani

Mr Hayat should know that his government committed a 7 per cent mobilisation advance to rental power sponsors as well as a confirmed standby letter of credit, which would have cost the government an additional 17 per cent of the contract value in unrecoverable banking fees and commissions. While not wishing to violate the inherited agreements signed between state-owned corporations and private sector parties, this government has saved taxpayer money by replacing expensive standby letters of credit with sovereign guarantees, and reducing the government's financial exposure from 24 per cent to 14 per cent, which is entirely recoverable and also secured against a bank guarantee in case the rental power sponsor defaults. Simply put: if a rental power sponsor fails to perform, their bank will refund the mobilisation advance in its entirety. A standard rental services contract containing all terms and conditions was provided to all parties who purchased tender documents from Pepco and PPIB.

The government has furnished the Public Procurement Regulatory Authority (PPRA) with all information on the rental power programme for scrutiny. Detailed information on rental power project tariffs have been advertised by the National Electric Power Regulatory Authority (Nepra) and is available on its website. Pakistan Electric Power Company Limited (PEPCO) has also been directed to post all rental service agreements on its website. To counter the misconceived notion that PPRA, Nepra and Pepco would fail in the honest application of their duties, the government has additionally asked the Asian Development Bank (ADB) to audit the entire power sector, including the rental power programme. Instead of acknowledging these measures, Mr Hayat has simply questioned ADB's competence. This is not surprising given that Mr Hayat is approaching this nationally-important topic with a highly prejudiced mind and is seeking relevance in the political arena by levelling baseless allegations against the government.

Mr Hayat's brazen attempts to mischaracterise for his own peculiar political purposes the transparent and unimpeachable process through which rental power projects are being set up is odious, contemptible and fraudulent. Mr Hayat claims to have "quotations" for power plants at half the cost and using brand new and more efficient machines than those that are being set up. Notwithstanding the deep scepticism with which this claim is to be viewed, Mr Hayat and the parties he claims to represent should have participated in the tenders for rental power plants when they were advertised by his government and by present government.

Unlike its predecessor, the present government will not rely on speculative market practices and artificial bubbles to portray a false sense of prosperity. The economic situation of Pakistan has vastly improved under the leadership of President Asif Ali Zardari and Prime Minister Yusuf Raza Gilani. This is reflected not only in improved credit ratings for Pakistan but also the historic and unprecedented global support being extended to Pakistan for purposes of socio-economic development. On Thursday night in New York, the Friends of Democratic Pakistan meeting was co-chaired by no less than President Zardari, US President Barack Obama and UK Prime Minister Gordon Brown. The same evening, the Kerry-Lugar bill was passed by the US Senate that will provide \$7.5 billion to Pakistan.

The present government believes in transparency, accountability and responsibility. The government remains committed to eradicating loadshedding despite the spirited disinformation campaign against its policies. The government remains committed to transforming Pakistan into an economic power.

The successes of Pakistan's democratically-elected government may not be acknowledged by political opponents, but these are certainly not lost on the people of Pakistan. (Concluded)

The writer is a PPP MNA.

Rental power plants: best decisions futile if not implemented effectively

MUSHTAQ GHUMMAN

ISLAMABAD (September 10 2009): The Economic Coordination Committee (ECC) of the Cabinet's decisions of February 15, 2008, on rental power plants (RPPs), have not been implemented in letter and spirit. The Asian Development Bank (ADB), under the third party validation mechanism, has begun evaluating rental plant contracts reportedly aimed at investigating allegations of kickbacks.

Official documents available with *Business Recorder* show that the ECC in its meeting on February 15, 2008 had directed the Ministry of Water and Power to negotiate tariff for RPPs lower than allowed to the independent power producers (IPPs), based on similar technology, for their first 10 years.

This direction has not been followed by the tariff negotiators i.e. the Private Power and Infrastructure Board (PPIB) and Pakistan Electric Power Company (Pepco) as, according to Minister for Water and Power Pervez Ashraf, average RPP tariff would be 13.5 cents per Kwh—one cent per Kwh higher than IPPs.

The documents further say that the ECC had also directed that Secretaries of Finance and Water and Power along with Managing Director of Public Procurement Regulatory Authority (PPRA) will review the mechanism of procurement to ensure that further delay is avoided and PPRA Rules are strictly observed in letter and spirit. These instructions of the ECC were also violated by the Ministry of Water and Power which forced PPRA to seek details of the contract agreement signed between the GoP and RPP sponsors.

On July 30, Deputy Director PPRA, Naeem Ahmad wrote a letter to the Ministry of Water and Power seeking a complete record of rental power contracts for evaluation. It is still unclear whether the government provided the contracts to the PPRA for evaluation.

Under the Shaukat Aziz and Mohammadmian Soomro governments, following conditions were laid down in the tender documents and subsequent contracts awarded through ICB process: (i) 7 percent mobilisation advance, adjustable against dues, to RPPs after Commercial Operation Date (COD); and (ii) SBLC for 93 percent of the contract value confirmed by an A-rated bank to cover event of default of power buyer.

In most cases of RPPs, the signed contracts have been amended in writing and new contracts awarded through ICB process contain the following: (i) 14 percent mobilisation advance, adjustable against dues to RPPs after COD; and (ii) sovereign guarantee to cover any events of default on part of power buyer.

The government also made amendments in the conditions for RPPs, according to which non-recoverable cost of SBLC borne by GoP was 8 percent which was a sunk cost going neither to GoP nor to RPP, claimed one of the analysts requesting anonymity.

According to him, if the GoP had abided by its original commitments the following outlays would have been made: (1) mobilisation advance of 7 percent secured against bank guarantee and adjustable from rental dues; (2) SBLC commission of 2 percent per annum on declining balance for typical 3-year RPP contract. This would cost GoP almost 5 percent of the contract value as non-recoverable, non-refundable cost of transaction/earning by bank.

SBLC's confirmation charges of 6-8 percent in the first year, subsequently on reducing balance on annual renewals. Total non-recoverable, non-refundable cost of transaction/earning by banks would be 12 percent.

Under the original contracts, GoP would have incurred a non-recoverable, non-refundable cost of 17 percent of the total contract value on account of SBLC charges and annual renewals. The GOP, went back to the RPP sponsors and offered them 14 percent of the contract value as mobilisation advance to be adjusted against rental