



1st August, 2014

Mr. Mohammad Zubair,
Chairman,
Privatisation Commission,
Islamabad.

Sub: Violation of Public Procurement Rules 2004, PPRA Ordinance 2002, in appointment of Financial Advisory Services of all Six projects costing approx., over Rs 1/2 billion each to exchequer, and allegation of undue favoring of M/s Haidermota BNR & Co. (HMCO),.

Dear Sir,

Transparency International Pakistan has received complaint on violation of Public Procurement Rules 2004, PPRA Ordinance 2002, in appointment of Financial Advisory Services by Privatisation Commission, alleging undue favoring to M/s Haidermota BNR & Co. (HMCO), who have been awarded 4 Projects with different JVs.

The complaint has been examined by TI Pakistan, and following violations in all six appointments so far finalized are reported;

1. NAB on 8th January 2014 and in consultation with PPRA has issued the new directives, vide its letter No 5-2 (75) Pre/ A & P/ NABHQ/ 2013 all procuring agencies should make available the bidding or prequalification documents and other related communication in downloaded format, and any violation is mis-procurement, and thus an offence cognizable under NAB Law. But the RFP documents which includes evaluation criteria of all six projects were not uploaded on Privatisation Commission website.
2. The Evaluation report of five projects, UBL, OGDCL, NPCC, (TPS) 1350 MW Muzaffargarh and PPL do not indicate the financial costs which is only made public in PIA case, and out of three JVs for UBL, OGDCL and PPL evaluated by Committee declare only one Joint Venture as responsive. It is violation of Rule 35.
3. In PIA case, M/s Haidermota BNR participated with 2 JVs, in first ranking JV of Dubai Islamic Bank, IATA Consulting, Deloitte, Haidermota BNR, Freshfields Bruckhaus Deringer, Abacus Consulting, APCO, and Prestige, and also 2nd ranking JV, EY, Seabury, Haidermota BNR, Freshfields Bruckhaus Deringer, UBL, Excelerate, Mediators (Pvt) Ltd. According to PPRA Regulations, PEC Standard Bidding Documents do not allow one bidder to participate in more than one JV. Quoted below is the relevant rule. **Both JVs, as per PPRA Rules stands disqualified and should not have been allowed to participate in this as well as in future protects of PC.**

IB.4 One Bid per Bidder



- 4.1 *Each bidder shall submit only one bid either by himself, or as a partner in a joint venture. A bidder who submits or participates in more than one bid (other than alternatives pursuant to Clause IB.16) will be disqualified.*

Even World Bank SBD also do not allow one firm to be partner in two JVs.

A firm can be a partner in only one joint venture or consortium; bids submitted by joint ventures or consortiums including the same firm as partner will be rejected.

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:20062806~pagePK:84269~piPK:84286~theSitePK:84266,00.html>

4. According to PPRA Rule 35, the evaluation report are to be given to all bidders ten days prior to award of contract , who are allowed to object within 15 days. In all five projects except in UBL Case, this condition was reportedly not followed .
5. According to PPRA, all Contracts shall be posted on PPRA website, declaring fiscal details in form of Contract Award PROFORMA – I & II. In all five projects except in UBL Case, this PPRA requirement is not followed by PC.
6. Haidermota BNR has also submitted bids with 2 JVs in FESCO project, first ranking United Bank Limited (UBL), Ernst & Young Ford Rhodes Sidat Hyder (EY), Lahmeyer International GmbH (Lahmeyer), HaidermotaBNR & Co. (HMCO) & Bhandari, Naqvi & Riaz (BN&R) and Excelerate Private Limited (Excelerate) and also with And Grant Thornton Consulting (Pvt) Ltd. (GTCPL), Pak Oman Investment Company Ltd. (Pak Oman), HaidermotaBNR & Co. (HMCO) & In Consult (Pvt.) Ltd. and Anjum Asim Shahid Rehman Chartered Accountants (AASR). **Both JVs, as per PPRA Rules stands disqualified.**
6. Haidermota BNR has submitted bids with 3 JVs in National Power Construction Corporation (NPCC) project , First Ranking JV of United Bank Limited (UBL), Muslim Commercial Bank Ltd. (MCB), KPMG Pakistan (KPMG), HaidermotaBNR & Co. (HMCO), JV of Grant Thornton Consulting (Pvt) Ltd. (GTCPL), Pak Oman Investment Company Ltd. (Pak Oman), HaidermotaBNR & Co. (HMCO) & Elan Partners (Pvt) Ltd. (Elan) and JV of KASB Bank Ltd. (KASB), HaidermotaBNR & Co. (HMCO), Yousuf Adil Saleem & Co. CA, member of Deloitte Touche, Tohmatsu Ltd. (Deloitte). **All three JVs as per PPRA Rules stand disqualified.**
7. M/s HaidermotaBNR & Co. (HMCO), has consistently been violating PPRA Rules, and submitting more than one bid with different JVs, the company should have been debarred by PC, which is according to Rule 2(f) (“corrupt and fraudulent practices”) is a collusive practice.
8. But PC did not act transparently, and award 4th Project of Privatisation of Thermal Power Station (TPS) 1350 MW Muzaffargarh of Northern Power Generation Company Limited (NPGCL) also to a JV which includes HaidermotaBNR & Co. (HMCO), to JV of United Bank Limited (UBL), Ernst & Young Ford Rhodes Sidat Hyder (EY), Lahmeyer International GmbH (Lahmeyer), HaidermotaBNR & Co. (HMCO) and Bhandari, Naqvi & Riaz (BN&R) and Excelerate Private Limited (Excelerate).



Violating the PPRA rules in 'appointment of Financial Advisory Services' by Privatization Commission may already have made the whole process of privatization as non-transparent, as one favored bidder has been awarded four projects in contravention to rules. This is to point out that in all JVs, all partners have to give commitments that all partners will be "Jointly and Severally will responsible for performance. A common firm in two JVs is also conflict of interest, and amounts to cartelization.

Participation of one firm in two or more tenders for same procurement is also illegal according to the Competition Commission of Pakistan Act 2010. Ref FILE NO. 3(17)/L.O/CCP/2009, CCP has ordered on 23 July 2010, in case of PQA dredging tender, that such acts are violation of Section 4 (2) (e) of the Competition Ordinance, 2010, (collusive tendering or bidding, for sale, purchase or procurement of any goods or services) read with Section 4 (1) of the Ordinance, which prohibits collusive tendering/bidding.

TI Pakistan suggestion to PC is to scrap all the six projects, and re start the process of appointments of consultants in transparent manner, and in compliance with the PPRA rules, the evaluation criteria shall be given in RFP so that firms of integrity should participate, awarded the contract as per rules, and perform on merit and at the most economical cost.

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

With Regards,

Sohail Muzaffar
Chairman

Copies forwarded for the action under rules to;

1. Secretary to Prime Minister, Islamabad
2. Chairman, PAC, Leader of Opposition, National Assembly, Islamabad
3. Chairman, NAB Islamabad,
4. Registrar SC, Islamabad.
5. MD, PPRA Islamabad.



GOVERNMENT OF PAKISTAN
NATIONAL ACCOUNTABILITY BUREAU
ATTA TURK AVENUE, G-5/2
ISLAMABAD

AWARENESS & PREVENTION DIVISION

Mandated to educate, advise, assist and instruct in Prevention of Corruption and Corrupt Practices
(Section 33B & C of NAO 1999)

5-2(75)Pre/A&P/NABHQ/2013
January 08, 2014 /40

All Ministries / Divisions /
Departments / Regulatory Bodies
and Corporation etc. (Ist attached)

Subject: MEASURE FOR PREVENTION OF CORRUPTION IN PUBLIC
PROCUREMENT PROCESS FOR TRANSPARENCY AND
MERCITOCRACY

To plug the possible corruption holes during procurement process, National Accountability Bureau (NAB) under its Prevention Regime, as enshrined in section 33B and 33C of National Accountability Ordinance (NAO) 1999 read with Public Procurement Rules 2004, advises to abide by the following instructions, in order to ensure transparency in the public procurement process:

- a. Registration or enlistment of contractors on periodic basis a procurement agency is not needed under the Public Procurement Rules 2004 nor any charging of fee on this account is admissible. This practice should be stopped forthwith as it supports the Corrupt Practices of collusive limited competition to favor the favorites.
- b. A procurement agency may adopt the process of pre-qualification of contractors to establish their ability to perform for a particular work; therefore enlistment of the contractors, as condition in pre-qualification is not required and cannot be imposed as condition for pre-qualification under Public Procurement Rules 2004.
- c. It is further required to completely specify the conditions and circumstances explained in rules 15 and 16 "pre-qualification of contractors and suppliers" and "pre-qualification process" of Public Procurement Rules 2004.

- d. All procuring agencies should make available the bidding or pre-qualification documents and other related communication in *downloadable format, for any interested bidder or party, at their websites to use these documents for submitting bid(s) with admissible tender fee, if any, paid in bank as prescribes by procuring agency. This will break cartelization and collusive biddings. (Instructions under Prevention Regime of NAB)*
- e. Mis-procurement declared and falling within Rule 50 of PP Rules 2004 at any stage shall be liable for cognizance by NAB under relevant Section of NAO 1999.

2. The above information be communicated to all subordinate offices responsible for procurement processes.

3. It is to inform that these instructions are issued after consultation with Public Procurement Regulatory Authority and with the approval of DG A&P NAB HQ / President Prevention Committee on Procurement, Projects and Auctions, constituted by Chairman NAB under Section 33C of NAO 1999, please.


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Copy for info to:-

- a. PS to Chairman NAB
- b. MD, Public Procurement Regulatory Authority (PPRA) Islamabad
- c. Addl. Directors Staff, All Regional NABs
- d. Director A&P, All Regional NABs
- e. MD, Punjab Public Procurement Regulatory Authority, Lahore