



23<sup>rd</sup> September, 2013

Honorable Justice Iftikhar Muhammad Chaudhry,  
Chief Justice of Pakistan,  
Supreme Court of Pakistan,  
Constitutional Avenue, Islamabad.

**Attn: Human Rights Cell**

Sub: Prayer for taking SUO MOTO action on the alleged illegal award of Rs 4.75 Billion Golan Gol Hydropower Project Lot 3.2 E/M works, to a Norwegian firm after scrapping the entire process and inviting new bids for the project

Respectfully Sheweth, ,

My Lord, the Transparency International Pakistan prays that the Honorable Chief Justice of Pakistan to consider a Suo Moto Case on the alleged illegal award of Golan Gol Hydropower Project to a Norwegian firm after scrapping the entire process and inviting new bids for the project, as has been reported in press on 23<sup>rd</sup> September 2013. **Annex-A.**

The allegations reported against WAPDA are very serious, and are quoted below;

- 1. That the LoI of Golan Gol Hydropower Project has been issued to Norwegian firm by WAPDA and the Ministry surprised.*
- 2. That the Ministry of Water and Power is reportedly "surprised" over Water and Power Development Authority's (Wapda) daring move to issue Letter of Intent (LoI) of 106MW Golan Gol Hydropower Project to a Norwegian firm after scrapping the entire process and inviting new bids for the project.*
- 3. That a ministry official has said we are totally unaware of this development. What we know is that negotiations were in progress on withdrawal of the case from Islamabad Court (IHC).*
- 4. That on September 16, 2013, Wapda had sent an LoI to M/s Rainpower Consortium, Norway regarding Golan Gol Hydropower Project-LOT 3.2- procurement/design, supply, testing and commissioning of electrical and mechanical equipment for powerhouse and switchyard.*
- 5. That official documents reveal that on August 20, 2013, National Accountability Bureau (NAB) had advised Wapda to comply with PPRA Rules to ensure transparency and fair play. NAB had recommended that Water and Power Ministry, being the regulator, may take its decision as deemed appropriate keeping in view the observation made by NAB under the ambit of PPRA Rules and Section 33B of NAO 1999 viz-a-viz position explained.*



6. That NAB maintained that Wapda or any other government organisation has no right to establish scope and span or minor deviation that compromises the integrity of procurement process in violation of letter and content of government rules and regulations. Post qualification of additional consortium members at a belated stage (in case 12 months after initial prequalification) is a major violation of PPRA rules. Clause 24.5 of Pakistan Engineering Council (PEC) referred by Wapda is subverting to PPRA rules and not vice versa. In any case it is not a minor informality or irregularity but a major material deviation giving benefit and thus causing loss to the national exchequer, meritocracy and fair play.

7. That Ministry of Water and Power, in its reply on a petition filed by Al Fajr International in Islamabad High Court has submitted the following facts:

(i) the petitioner has neither participated as a sole entity in the pre-qualification process, nor participated in the bidding process, therefore it has no right to file the instant petition. Further the WP is liable to be dismissed on this score alone with award of exemplary damages;

(ii) the validity of tender security of the petitioner has already expired, the process of bidding has been made controversial by the contending bidders. The consultants hired by the respondents have devised the schedule curtailing the tendering process period to synchronise different activities of the project;

(iii) competing bidders have involved Transparency International, press, media and unnecessary litigation, just in their own rivalry. To promote their agendas they have played with process of law, in result of such litigation, creating external pressures, huge financial loss is likely to be caused to government exchequer;

(iv) Petitioner has not mentioned any illegality/irregularity committed by answering respondents, in fact a complete open, transparent procedure has been adopted by Wapda to fulfil the power need of the country, which could not succeed due to rivalry of the contending bidders;

(v) Petitioner has raised many factual controversies, which could not be decided while exercising constitutional jurisdiction;

(vi) Wapda authorities vide letter dated 12.04.2013 annulled the bidding process and rejected all the bids received on 3006.2011 regarding LOT 3.2 Golen Gol Hydropower Project and the same has also been addressed to M/s Rainpower ASA Norway and M/s Andritz Hydro GMBH;

(vii) Wapda authorities after cancellation of previous bidding process, invited new bids through publication on April 25, 2013;

(viii) Petitioner claims to be a member of consortium lead by M/s Rainpower, therefore, the petitioner has no independent right or locus standi to file the instant petition;

(ix) petitioner has not participated in any bidding process, proposal with answering respondent Wapda authorities, hence the petition is liable to be dismissed on this



score alone.

8. That Wapda which gave advertisements in national and international media for fresh tendering now argues that fresh bidding and re-tendering will cause one year delay in restarting the project. The delay topped with the onset of the winter season, transportation would be restricted and the physical progress would not be possible before next summer resulting in substantial increase in the cost and loss of national exchequer and delay in increase in much needed generation capacity by 106MW.

9. That when contacted, Wapda spokesman said that Wapda took this decision to avoid cost overrun, further delay and uncertainty about the project. He, however, did not respond to the query as to why Wapda first scrapped the entire process and is now reversing this decision.

In this regards, TI Pakistan also reported to the Minister of Water & Power, Mr. Khawaja Muhammad Asif on 31 August 2013, providing him documents that WAPDA is delaying this project for its vested interests, and mis using NAB, to award a discharged tender. **Annex-B**. The Minister was requested to kindly order WAPDA to comply with PPRA Rules and open the tenders without any further delay, as well as order accountability of the WAPDA and MoW & Power officers responsible for delaying this project by 2 years. *Annex-B*

The Minister was also informed that on the intervention of the ex Prime Minister Raja Perwez Ashraf, and NAB in October 2012, MoW & Power discharged the tenders, and had re invited new tenders in April 2013. Delay of 6 months in retendering has caused opportunity loss as the project was delayed by 6 months by MoW & P.

NAB again vide its letter No 2(27)/SOD/NAB-HQ/2012 date 3<sup>rd</sup> September 2013 ( relevant paragraphs quoted below), has called the explanation of Secretary Minister of Water & Power. **Annex-C**.

*Reference: your letter No: Dev-2(70)/2011 dated August 07, 2013*

*It has been learnt through reliable sources and press reports that bidding process of the Golen Gol subject contract has already been completed and is awaiting evaluation and announcement. The tender announcement date has been extended four times lately taken to 27<sup>th</sup> September. More than one extension is not permitted under the rules; more so your above quoted letter was misleading where position was taken that process will take a year where as the ground situation appears to be quite contrary.*

**In the light foregoing please explain position to this Bureau and be advised to ensure transparency in bidding process strictly following PPRA Rules.**

Another serious issue is the Funding of this Project, which was from Kuwait Fund for Economic Development KFED. Due to various irregularities committed in tendering by WAPDA, KFED had suspended the funding of this project. And when KFED were informed by WAPDA that previous tenders have been discharged, and new tenders have been invited, the Mr. Ghanem Sulaiman Al-Ghanaiman Deputy Directors General Kuwait Fund for



Economic Development KFED has sent letter to Secretary EAD, GoP on 3 June 2013, for stating violations committed by WAPDA on the conditions for providing funds for the project. **Annex-D.**

1. *The Fund will receive and official letter from the Government of Pakistan stating that GOP has decided to retender for LOT 3.2 and seeking Kuwait Fund Approval.*
2. *Upon approval of the Fund based on the written decision of GOP. The fund will receive a copy of the changes in the tender documents ( in particular changes made in the Pre-Selection of Bidders, the instruction to bidder and the criteria of evaluation of bids) will be submitted to the fund for review and approval.*

On 16<sup>th</sup> September 2013, APP has reported that the Minister of State for Water & Power, Mr. Abid Sher Ali informed that National Assembly that the government would ensure transparency in the bidding process of Golan Gol Hydropower Project. And that the Islamabad High Court has disposed off the case against the project, and the government has retendered the bidding of the project. **Annex-E.**

If this decision of WAPDA which was taken unilaterally without approval of the Ministry of Water & Power, and the financiers Kuwait Fund for Economic Development may cause more losses to the exchequer. Further, in case the LOI is not cancelled, this award will become a precedence for future illegal awards of Contracts, on the plea that due to risk of higher rates, old and discharged illegal tender can be revived. All Contracts has escalation clauses, and this particular contract is quoted in Foreign Currency which is being funded by Kuwait Fund for Economic Development, and currency fluctuation is also covered.

TI Pakistan is of the view, that if the withheld tenders, which have been extended for 4 times, are opened, the competitive prices may even be lower than the prices quoted on 30 June 2011 by the non responsive bidder, M/s Rainpower Consortium.

Transparency International Pakistan request the Honorable Chief Justice of Pakistan to take a consider a Suo Moto Case to protect loss to the country and protection of Transparent Tendering Procedures.

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

An indulgence of the Honorable Court in the matter is prayed for.

Yours Obediently,

  
Syed Adil Gilani,  
Adviser

Encl: Annex A, B, C, D and E