



27<sup>th</sup> January, 2014

Mr. Khawaja Muhammad Asif,  
Minister for Water & Power,  
Pak Secretariat  
Islamabad.

**Sub: News of Ministry to seeks exemption from PPRA Rules and that the Govt. is considering 'direct contracting' to spur investment in power sector**

Dear Sir,

Transparency International Pakistan refers to the following news reports published on 25<sup>th</sup> January 2014. Annex-A. That,

1. A top water and power ministry official told Dawn that a fresh "Draft Framework for Implementation of Power Sector Projects in Pakistan" has been finalized and sent to the ministries of law and finance for their expert input and had already been discussed with the political leadership.
2. The "direct contracting" would be adopted in cases where the foreign private investor or sovereign lender would take care of 85 per cent of the total project cost while remaining 15pc would be arranged by the government of Pakistan or its designated agency. The government would also provide sovereign guarantee for the project financing.
3. "The framework mainly draws its strength from the provisions of Rule 42 C (vi) of PPRA Rules 2004 which enables the public sector to enter into direct contracting", said a formal summary on the issued circulated by the ministry of water and power and available with Dawn.
4. Another official said the government could stretch the clause in national interest or use clause (v) of the same section that deals with emergencies.
5. This would finally require an order by the federal government to "declare national emergency in the power sector" to sidestep bidding process because the Public Procurement Regulatory Authority (PPRA) Act and PPRA rules of 2004 do not allow any procurement or contract award without a transparent bidding process.
6. Within the government, however, there are some key ministers who adversely look at direct contracting for short-term objectives.
7. For example, when Minister for Petroleum and Natural Resources Shahid Khaqan Abbasi was asked as to why the government was not adopting section 42(c) of the PPRA for import of liquefied natural gas (LNG), he said the option could be used only for emergencies and entailed a lot of far-reaching repercussions.
8. An official said China, Russia and some friendly states in the Arab world were being pursued under the new scheme for expedited implementation of new power projects like Gadani Power Corridor and others including High Voltage Transmission Network.
9. He said the proposed framework had already been informally discussed with some of investors who had shown their willingness to accept its terms and conditions



TI Pakistan would like to caution the Minister not to be misled by wrong opinions of bureaucrats, as either they, or their colleagues were involved in similar wrong advices given in 2006 and 2008 for bypassing PPRA Rules in RPP, NICL, EOBI, PIA, Pakistan Steel Mills, PIA Project. If the govt. approves the proposal to award Power Project without tendering, all the Public office Holders, declared as guilty by the Supreme Court of Pakistan of violation of PPRA Rules in RPP Case, EOBI, NICL, PIA, Pakistan Steel, CDA and Safe City, Pakistan Railways Cases, will get opportunity to take protection of your forthcoming illegal act, on false emergency basis. TI Pakistan warn the Minister to beware of the PPRA Chairman's wrong advices. This is to point out that any procurement contract awarded, by open bidding, negotiated tendering or direct contracting must be comply the Rule 4, i.e. Principles of procurements, which states that Procuring agencies, while engaging in procurements, shall ensure that the procurements are conducted in a fair and transparent manner, the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

This is also to remind the Minister that he, as a Member of National; Assembly was one of the main player in pleading the illegal award of 19 RPP in the Supreme Court of Pakistan, and to the following four sub paragraphs of para 84 the Court Judgment of 30<sup>th</sup> March 2012.

*84. Thus, in the light of the above facts and circumstances, we hold as under: -*

*(iii) The contracts of all the RPPs - solicited and unsolicited, signed off or operational, right from BHIKKI & SHARAQPUR upto PIRANGHAIB, NAUDERO-I & NAUDERO-II were entered into in contravention of law/PPRA Rules, which, besides suffering from other irregularities, violated the principle of transparency and fair and open competition, therefore, the same are declared to be non-transparent, illegal and void ab initio. Consequently, the contracts of RPPs are ordered to be rescinded forthwith and all the persons responsible for the same are liable to be dealt with for civil and criminal action in accordance with law;*

*(ix) All the Government functionaries, including the Ministers for Water & Power holding charge in 2006 and onward and from 2008 to onward, during whose tenure the RPPs were approved/set up and Minister as well as Secretary Finance holding the charge when the down payment was increased from 7% to 14%, prima facie, violated the principle of transparency under Articles 9 & 24 of the Constitution and section 7 of the Act, 1997, therefore, their involvement in getting financial benefits out of the same by indulging in corruption and corrupt practices cannot be overruled in view of the discussion made hereinabove. Consequently, they are liable to be dealt with under the National Accountability Ordinance, 1999 by the NAB;*

*(x) All the functionaries of PEPCO, GENCOs, PPIB and NEPRA along with sponsors (successful bidders) who had derived financial benefits from the RPPs contracts are, prima facie, involved in corruption and corrupt practices, therefore, they are also liable both for the civil and criminal action; and*

*(xi) The Chairman NAB is directed to proceed against all the persons referred to in subparagraphs (iii), (ix) & (x) above forthwith in accordance with law and submit fortnightly progress report to Registrar for our perusal in Chambers.*





85. Before parting with the judgment, we would like to place on record our appreciation of the valuable assistance provided during the hearing of the case by the learned counsel appearing for the parties and learned Amicus Curiae. The role of the petitioners, Makhdoom Syed Faisal Saleh Hayat, Federal Minister for Housing & Works and Khwaja Muhammad Asif, MNA is also laudable; they being the holders of public offices, highlighted the instant scam of corruption and corrupt practices and fulfilled their commitment to the Constitution as well as the general public whose rights enshrined in Articles 9 and 24 of the Constitution were being violated.

How can Khawaja Muhammad Asif, after becoming the Minister, now even think of circumventing and violating the Public Procurement Ordinance 20012 and Public Procurement Rules 2012 for his ministry, when he himself in recent past has challenged in the Supreme Court these very illegal actions committed in 2006 and 2008/9 by the previous two successive governments.

The definition of "emergency", is very explicitly defined in Rule 2 (g) "emergency" means natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment. Emergency under PPRA Rules does not cover shortage of electricity which is caused by bad governance and corrupt practices of the governments

The present Secretary Finance, who in past 3 times and presently also is the Chairman of PPRA, could not allow the use of direct contracting, when Mr Shaid Khaan Abbasi requested the ECC to allow award of LNG Contracts without tendering. Refer to TIP letter dated 19-7-2013 Annex-B.

In view of above, Transparency International Pakistan request the Minister desist from asking any exemption or amendment in Public Procurement Rules, 2004, or use direct contracting for Power Projects, and order strict compliance of Public Procurement Rules 2004 in his ministry, so that the projects could be awarded within shortest time, and to the technically best bidder and at the most economical cost.

TI Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

Regards,

  
Sohail Muzaffar  
Chairman

Copies forwarded for information and appropriate action under the mandate vested, to,

1. Secretary to the Prime Minister, for information of the Prime Minister, Islamabad.
2. Chairman, Public Accounts Committee, Islamabad,
3. Chairman, NAB, Islamabad.
4. Minister of Finance, Islamabad,
5. Minister of Interior, Islamabad
6. Registrar, Supreme Court Pakistan.
7. Managing Director PPRA, Islamabad.

Annex-A

DAWN 25 January 2014

## Govt considers 'direct contracting' to spur investment in power sector

KHALEEQ KIANI

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**ISLAMABAD:** The government is contemplating to bypass bidding process and instead adopt "direct contracting" mode to secure investment in the power sector from international firms and even sovereign investors for early resolution of chronic energy shortage.

A top water and power ministry official told Dawn that a fresh "Draft Framework for Implementation of Power Sector Projects in Pakistan" has been finalised and sent to the ministries of law and finance for their expert input and had already been discussed with the political leadership.

The "direct contracting" would be adopted in cases where the foreign private investor or sovereign lender would take care of 85 per cent of the total project cost while remaining 15pc would be arranged by the government of Pakistan or its designated agency. The government would also provide sovereign guarantee for the project financing.

"The framework mainly draws its strength from the provisions of Rule 42 C (vi) of PPRA Rules 2004 which enables the public sector to enter into direct contracting", said a formal summary on the issued circulated by the ministry of water and power and available with Dawn.

The said clause is general in nature that in fact applies to majority of items like electricity, all forms of natural gas, oil products and major infrastructure projects.

It says the procuring agency will enter into direct contracting "when the price of goods, services or works is fixed by the government or any other authority, agency or body duly authorised by the government on its behalf".

Another official said the government could stretch the clause in national interest or use clause (v) of the same section that deals with emergencies.

This would finally require an order by the federal government to "declare national emergency in the power sector" to sidestep bidding process because the Public Procurement Regulatory Authority (PPRA) Act and PPRA rules of 2004 do not allow any procurement or contract award without a transparent bidding process.



Within the government, however, there are some key ministers who adversely look at direct contracting for short-term objectives.

For example, when Minister for Petroleum and Natural Resources Shahid Khaqan Abbasi was asked as to why the government was not adopting section 42(c) of the PPRA for import of liquefied natural gas (LNG), he said the option could be used only for emergencies and entailed a lot of far-reaching repercussions.

The power ministry, however, argued that "the prices of such contracting are determined/decided by the government or by its authorised body". In this case, the role of government's authorised body is being played by the National Electric Power Regulatory Authority (Nepra) whose determination would be binding on the sponsor to execute the project.

Therefore, the government would take the project to the Nepra for determination of project cost that would be acceptable to the foreign investor, enabling speedy determination of tariff at the later stage.

Under the agreement, various benchmarks of the project implementation would be locked and failure would lead to termination of the contract. Disputes would be settled through mutual consultation and negotiation instead of arbitration.

Under the proposed framework, the two sides would keep the project information strictly privileged and confidential and would not disclose it to any third party.

The new model is being pushed by the power ministry on the ground that increasing shortfalls were raising discomfort level and hitting the economy badly but international investors were "shy of the procedural nitty-gritty and do not want to enter into the practice of lengthy, non-transparent, inefficient and defective system of bidding, evaluation and award".

Therefore, no headway was taking place in implementation of mega projects. "Foreign investors, companies and even a few sovereign states have come up with an idea to enter into some sort of MoUs which are generally non-binding and do not cover the difficult part of how to assign a specific project to a specific interested company", the ministry added.

An official said China, Russia and some friendly states in the Arab world were being pursued under the new scheme for expedited implementation of new power projects like Gadani Power Corridor and others including High Voltage Transmission Network.

He said the proposed framework had already been informally discussed with some of investors who had shown their willingness to accept its terms and conditions.