



16th February 2013

Mr. Hamid Ali Khan,
Chairman,
National Highway Authority,
NHA HQ, 27, Mauve Area, G-9/1,
Islamabad.

Sub: **Violations of Public Procurement Rules 2004-Additional Financial Benefits to Contractors, against Tendered Conditions**

Dear Sir,

Transparency International Pakistan has received a complaint that NHA in Violations of Public Procurement Rules 2004 is according additional financial benefits to contractors, against the **Tendered Conditions**.

The complaint is summarized below;

1. Since 2010, 5% to 10% advance, that too without any Bank Guarantee, is given to Road/Bridge Contractors in addition to the Mobilization Advance, which is given against Bank Guarantee, and deposited into an escrow account.
2. That this 5% to 10% unsecured advance is not mentioned in the Tender Documents. tendered conditions, and is a financial assistance to Contractors, not allowed to bidders at the time of tendering.
3. That advance against material not required in beginning is given to all Contractors since 2010. Viz. advance for bitumen is given at the time of contract award.
4. That this advance is unsecured, and without material purchased and brought to site.

This is to inform NHA that as according to PPRA & PEC Standard Bidding Documents mandatory under PPPRA Regulations 2008, only advance of 75% of the cost of material is permitted, that too after the material is purchased by contractors, brought to site, and against an indemnity bond securing the material cost.

CoC 60.11

Secured Advance on Materials

- a) *The Contractor shall be entitled to receive from the Employer Secured Advance against an indemnity bond acceptable to the Employer of such sum as the Engineer may consider proper in respect of non-perishable materials brought at the Site but not yet incorporated in the Permanent Works provided that:*
- (1) *The materials are in accordance with the Specifications for the Permanent Works;*
 - (2) *Such materials have been delivered to the Site and are properly stored and protected against loss or damage or deterioration to the satisfaction of the Engineer but at the risk and cost of the Contractor;*
 - (3) *The Contractor's records of the requirements, orders, receipts and use of materials are kept in a form approved by the Engineer, and such records shall be available for inspection by the Engineer;*
 - (4) *The Contractor shall submit with his monthly statement the estimated*



and providing evidence of ownership and payment therefor;

- (5) Ownership of such materials shall be deemed to vest in the Employer and these materials shall not be removed from the Site or otherwise disposed of without written permission of the Employer; and
- (6) The sum payable for such materials on Site shall not exceed 75 % of the (i) landed cost of imported materials, or (ii) ex-factory / ex-warehouse price of locally manufactured or produced materials, or (iii) market price of other materials.

Transparency International Pakistan request the Chairman to inquire and find out whether the complaint is correct or not as only 10% Mobilization Advance is allowed.

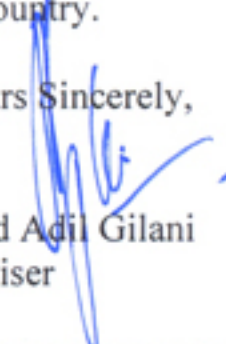
In case the Complaint is found to be correct, all the contracts awarded may be declared as illegal in which tendered conditions have been changed, and contractors provided with additional financial benefits of 5%-10 % advance in escrow account, in addition to 10% Mobilization Advance. Also additional financial benefit provided to Contractors as Material Advance at the time of award of Contract is also a violation of PPRA Rules & Regulations, and may render such contracts as illegal.

This is to point out that the judgment announced on 8 August 2006 by the Supreme Court in Pakistan Steel Privatization, Constitution Petition No. 9 of 2006 & Civil Petition Nos. 345 & 394 of 2006, and the Judgment announced on 30 March 2012 in RRP case, based on the post tendered financial benefits to Contractors, all the Contracts were declared illegal, and terminated.

Transparency International Pakistan request the Chairman to please act as per law, and any benefit if provided to contractors in violation of Tendered Condition, it is a corrupt act under NAO 1999, Section 9 a (vi).which states "A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices if he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or ⁵[attempts to grant] any ⁶[undue] concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar ¹[or any other person] ⁷

Transparency International 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.

Yours Sincerely,


Syed Adil Gilani
Adviser

Copy forwarded for action under the rules regulations to,

1. Chairman, Public Accounts Committee, Islamabad.
2. Minister of Communications, Islamabad
3. Chairman, NAB, Islamabad
4. Auditor General Pakistan, Islamabad,
5. Registrar, Supreme Court of Pakistan, Islamabad
6. Secretary Communications, Islamabad
7. MD, PPRA, Islamabad