



2nd December 2010

Mr. Hafeez ur Rehman
Managing Director,
Public Procurement Regulatory Authority,
Islamabad.

Sub: NHA is violating PPRA Rules in almost all Procurements
TIP Letter dated 9th July 2010, 6 August, 14 Sept. 2010, and 18 Sept. 2010, and DHA
latest reply dated 16 November 2010

Dear Sir,

National Highway Authority is not clarifying specific violations highlighted by TIP in various letter quoted above. The latest reply of the Chairman NHA to PPRA dated 16 November 2010 is also an unsuccessful effort to avoid the violations NHA has committed.

Responses of following violations as intimated to NHA in TIP letters dated 9th July 2010, 6 August 14th & 18th September 2010 remains unexplained, and under PPR 2004, Rule No 50. If unauthorized breach has been committed by NHA, all these shall be declared mis-procurement.

TIP comments are given below.

1. The Consultants Evaluation Criteria is against PPRA rules not detailed, and not based on lowest evaluated bid cost, as prescribed in Rule No 37 and is same for all consultancies which against Public Procurement Rules 2004.

Rule 36 (b) (viii) after the evaluation and approval of the technical proposal the procuring agency, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and

Rule 36 (b) (ix) the bid found to be the lowest evaluated bid shall be accepted.

2. Illegal Award of Contracts to NESPAK.

TIP has not received the clarification from NHA for the awarded 3 major contracts to M/s NESPAK without inviting public tenders.



MD Nespak is member of NHA Board. As member Board and working as contractor of NHA are conflict of interest. One cannot be owner as well as contractor, under the Law of Pakistan. And that Nespak was awarded illegal Contracts without tender by NHA, while MD Nespak is a Board member, falls under Rule No 2(f). (f) "corrupt and

fraudulent practices" as it is a collusive practice designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition.

In NHA Clarification dated 25 June 2010, NHA has admitted that 3 Contracts in 2008 & 2009 worth Rs 467 million, Rs 203 Million and Rs 124 Million have been awarded to NESPAC in violation of Public Procurement Rules 2004. In spite of HHA admission of violation, no action has been taken by the regulators. The action if taken by PAC, AGP and Supreme Court of Pakistan are also not known to TIP.

3. Contractors All Risk Policy.

NHA has failed to Obtain CAR Policies on Coastal Highway from FWO, and GoP had to pay reconstruction cost of Coastal Highway Damaged due to Flood The result is that all cost of reconstruction, two times, was over Rs 430 million, and was by GoP, due to failure of Contractors and willful default of NHA. It is also reported the NHA has never obtained CAR from NLC and FWO in past ten years, in violations of Contract Agreement requirements, and that all CAR Policy fees on those project not paid by NLC and FWO, should have been recovered from them, and deposited in NHA Accounts. NHA/NLC Contract of Shreshah Bridge has the following provision for CAR Policy, which has not been performed by NLC. NHA also failed to act under Clause 25.3 to take out CAR Policy from Insurance Company, and deduct the Insurance Fee from NLC Payments. The cost of reconstruction of the damaged bridge shall have been paid by the Insurance Company.

4. Rule No 2(f) of the Public Procurement Rules 2004.

NHA according to Rule 32 is not allowed to restrict bidders from bidding for more than 1 project.

32. Discriminatory and difficult conditions.-

Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related

TIP would request PPRA, PAC, AGP to ascertain that such practice was applied in case of other contracts awarded in last 2 years. If found correct, then it amounts to the Cartelization, and comes under Rule 2(f). "corrupt and fraudulent practices"



collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition TIP again refer to the Supreme Court order given on 28th April 2010 in case of disputed award of multibillion dollar LNG contract to GDF-Suez, in which the SC has announced that "Here we may observe that it is duty of the court to ensure that the Public Procurement Regulatory Authority Ordinance 2002 read with the Public Procurement Rules 2004 are adhered strictly to exhibit transparency".

5. Contract Award Performa.

NHA has not supplied Contract Award details on PPRA website, for any contract awarded by NHA in last 2 years.

6. Re-advertisement .


NHA has not been allowed free hand. Following rules No 27 , requires it to be in special circumstances, and the reasons for 3times repeat re-advertisement shall have been recorded, which has not been given y NHA.

27. Extension of time for submission of bids.-

Where a procuring agency has already prescribed a deadline for the submission of bids and due to any reason the procuring agency finds it necessary to extend such deadline, it shall do so only after recording its reasons in writing and in an equal opportunity manner.

TI Pakistan is for across the board **Rule of Law** in Pakistan.

Regards,


Syed Adil Gilani
Chairman

Encl: Photocopies of Contract Agreement and Insurance Clauses of Northern Bypass

Copy forwarded for the information and actions under their obligations to implement statutory rules of for the sake of making Pakistan a "Rule of Law Country".

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