



21<sup>st</sup> December 2011

Mr. Muhammad Ali,  
Chairman,  
Securities & Exchange Commission of Pakistan,  
National Insurance Corporation Building, Jinnah Avenue,  
Islamabad.

Sub: Violation of Public Procurement Rules 2004 by OGDCL under assumed exception from Public Procurement Regulatory Authority Ordinance 2002 and Public Procurement Rules 2004 under Companies Ordinance 1984, with the blessings of SECP,

TIP Letter dated 12/11/2011 and SECP Reply dated 16/12/2011

**Amended letter**

Dear Sir,

Transparency International Pakistan has received reply from Mr. Haris Bin Tipoo, Dy. Dir. Enforcement dated 16/12/2011, on the complaint of TIP about OGDCL taking shelter of SECP, by committing violation of PPRA Ordinance 2002 and Public Procurement Rules 2004.

SECP through this letter has given a strange verdict against PPRA Ordinance 2002 and Public Procurement Rules 2004, by stating that "Section 252 and 253 of the Companies Ordinance 1984 deals with the appointment of Auditors( without open bidding), and that PPRA Ordinance 2002 and Public Procurement Rules 2004 are subsidiary legislations, and cannot override specific provisions of Companies Ordinance 1984".

SECP being a regulator itself should have read the establishment of M/s Oil & Gas Development Company being a public sector organization set up by the Federal Government, under the OGDC Ordinance, dated 20th September 1966.

The questions to be considered is whether the OGDCL is under any obligation to adhere to the rules or whether it can continue under its own policy for procurement and Section 252 and 253 of the Companies Ordinance 1984 . In order for the Public Procurement Rules 2004 to be applicable to OGDCL it has to be established that;

- (a) OGDC is either a corporation or body established by or under a Federal law or it is owned or controlled by the Federal Government; and
- (b) that the acquisition of goods and services by the OGDC are financed wholly and partly out of the Public Fund.

TI Pakistan has examined the sections of the OGDCL Ordinance at length and a perusal of the same indicates that the OGDC has been established under the OGDC Ordinance 1966, as a statutory body wherein a Central Board has been delegated all powers relating general superintendence and direction of affairs and business of the OGDC. Thus, it is evident that the OGDC has been established under a Federal Law by the Federal Government.

The Chairman and Managing Director of the Board are appointed by the Federal Government and also member's therein are approved by the Federal Government prior to their election by the share holders. It is evident from the OGDC Ordinance that the Federal Government controls the OGDC. Thus, not only is the OGDC established under a Federal Law , it is also controlled by the Federal Government. The OGDC may therefore, be considered as a "procuring agency" within the meaning of that term under the Ordinance.



The question of whether the acquisition of goods and services by the OGDC is to be treated as a "Public Procurement" should be considered in the light of whether the OGDC Utilizes the Federal Consolidated Fund and the Public Account. However, we may add that funds of "enterprise owned and controlled by the Federal Government" are also treated as "Public Fund. Thus, it would appear that the OGDC is procuring agency and the acquisitions of goods by it are considered "Public Procurement" to which the rules apply.

Award of contracts without open competitive bidding to directors, auditors, commercial companies of directors has been allowed by SECP in case of public listed companies, but SECP is not entrusted the authority to overrule Laws of Pakistan.

PPRA Ordinance 2002, Section 5 states, Subject to other provisions of this Ordinance, the authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector and recommend to the Federal Government revisions in or formulation of new laws, rules and policies in respect of or related to public procurement.

And S.R.O. 432(I)/2004 states that in exercise of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Federal Government is pleased to make the following rules, namely the Public Procurement Rules, 2004 and they shall come into force at once.


Also Public Procurement Rules 2004, Rule No 51 states that the provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules concerning public procurements:

This is to be noted by the Chairman that Mr. Haris Bin Tipoo, Dy. Dir. Enforcement has given a decision on behalf of SECP of exempting from application of PPRA Ordinance 2002 & Public Procurement Rules 2004 to all public sector agencies registered with SECP in companies ordinance 1984.

This is also to inform the Chairman that SECP Ordinance 1997, the Chairman Members, Commissioners, employees and other persons authorized to perform or exercise any function or power under this Act or rendering services to Commission as consultant or adviser shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

TI-Pakistan requests the Chairman to review the contents of Mr. Haris Bin Tipoo, Dy. Dir. Enforcement letter dated 16/12/2011, and respond to TI Pakistan complaint within 7 days.

With Regards,

  
Syed Adil Gilani  
Adviser

Copies forwarded for the information of:

1. Chairman, Public Accounts Committee, Islamabad.
2. Chairman, NAB, Islamabad.
3. Registrar, Supreme Court.
4. Auditor General, Islamabad.
5. Managing Director, PPRA, Islamabad.
6. MD, OGDCL, Islamabad