



10th February, 2014

His Excellency Muhammad Nawaz Shareef,
Prime Minister of Pakistan,
Prime Minister,
Islamic Republic of Pakistan,
Prime Minister House,
Islamabad.

Sub: News of Prime Minister consent to award Power Project Contracts worth over Rs 2,600 Billion rupees without Tendering.

His Excellency,

Transparency International Pakistan refers to the following news reports published on 8th February 2014, which is attributed to the Prime Minister.

پاور سیکٹر میں 25 ارب ڈالر کی سرمایہ کاری، وزیراعظم نے

بولی 'ہائی پاس' کرنے کا گرین سگنل دیدیا

لدحل اور پاور سیکٹر میں 25 ارب ڈالر کی سرمایہ اسلام آباد (احمد احمدانی/ دی نیشن رپورٹ) ملک میں بجلی کی شدید ترین بحران کے ج کاری کے تحفظ کیلئے بولی کے عمل کو ہائی پاس کرتے ہوئے براہ راست کنٹریکٹ کا عمل اختیار کرنے کیلئے گرین سگنل دیدیا ہے۔ اس حوالے سے ہونے والی پیشرفت سے واقف افراد نے دی نیشن کو بتایا کہ توانائی کے سرملکی سرمایہ کاری کے تحفظ کیلئے یہ اقدام کیا ہے تاہم وزارت قانون اور پیپرا نے ڈرافٹ فریم ورک میں بہاری غ تیار ہونے کے 10 روز بعد بھی اس بارے میں کوئی جواب نہیں دیا۔ وزارت قانون نے اس پر فیصلے کیلئے معاملہ پیپرا جنوری کو وزیراعظم ڈاکٹر نواز شریف 27 سیف اللہ چٹھہ نے کی عدالت کے سامنے اٹھایا ہے۔ وفاقی سیکرٹری وزارت پانی و بجلی ارب ڈالر کی سرمایہ کاری 25 سے ون آن ون ملاقات کر کے نئے ماٹل پر بریف کیا۔ انہوں نے وزیراعظم کو بتایا کہ عالمی فرمز پاور سیکٹر میں کرنے کی صورت میں سرمایہ کاری سے میں دلچسپی رکھتی ہیں۔ ان فرمز نے ٹینڈر جاری کرنے اور بولی کا عمل اختیار انکار کر دیا تھا

The Secretary of Ministry of Water & Power has reportedly submitted following proposal for your consent, so as to allow him to bypass the PPRA Ordinance 2002 and Public Procurement Rules 2004, and award on Rs 2,600 billion contracts on his choice, and on non competitive costs.

That 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. And that "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".

His Excellency, this is to bring to your notice that it was this very Ministry, Water & Power which had mis guided the last two Prime Ministers in 2006 and 2008 also, for awarding RPP Contracts without tendering. Three ex Ministers, 2 Secretaries, and one PM are now facing corruption charges in NAB Accountability Courts, only due to the contracts awarded on the wrong advices of the Minister of Water & Power. The Supreme Court of Pakistan in its Judgment in Case No HRC 7734 G/ 2009 announced on 30 March 2012, while declaring all RPPs contracts nul and void, also stated following principles and international judgments in para no. 17, which are legally binding on the government in all procurements, specially in the Power Sector Projects.

TRANSPARENCY OF CONTRACTS

17. It is important to note that all the executive authorities are bound to enter into contracts for supplies at the least expense to the public exchequer. Most significant consideration for every department of the Government must be the best economical mode of meeting the public needs. Agreements for pecuniary considerations are against public policy, as such, are void. Reference in this behalf may be made to the case of Tool Company v. Norris [69 U.S. (2 Wall.) 45 (1864)], wherein the Supreme Court of United States, as back as in 1864, has held that all contracts for supplies should be made with those, and with those only, who will execute them most faithfully, and at the least expense to the government. Considerations as to the most efficient and economical mode of meeting the public wants should alone control, in this respect, the action of every department of the government. No other consideration can lawfully enter into the transaction, so far as the government is concerned. Such is the rule of public policy, and whatever tends to introduce any other elements into the transaction is against public policy. That agreements, like the one under consideration, have this tendency is manifest. They tend to introduce personal solicitation and personal influence as elements in the procurement of contracts, and thus directly lead to inefficiency in the public service and to unnecessary expenditures of the public funds. it is sufficient to observe generally that all agreements for pecuniary considerations to control the business operations of the government, or the regular administration of justice, or the appointments to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question, whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements, and it closes the door to temptation, by refusing them recognition in any of the courts of the country. Every



action taken by the Government must be in public interest and its action would be liable to be invalidated on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

This is also to highlight that Public Procurement Rules 2004, Rule 4 is exactly what the SC Order of 30-3-2012 para 17 has noted.

4. *Principles of procurements.-*


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.

Therefore the direct contracting of US \$ 25 Billion projects on non competitive costs, which is a violation of Rule No 4, as suggested by the Ministry of Water & Power is recommended not to be approved for transparent application of Rule of Law.

In case the approval is granted by the PM, all these procurements will deemed to be treated as mis procurement under Rule No 50, similar to the RPP Contracts and the US \$ 125 Million Safe City contract (CP 91/2011 dated 23-8-2012).

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,


Sohial Muzaffar
Chairman

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

1. Chairman, Public Accounts Committee, Islamabad,
2. Chairman, NAB, Islamabad.
3. Minister of Water & Power, Islamabad,
4. Registrar, Supreme Court Pakistan, Islamabad.
5. Managing Director PPRA, Islamabad.