



7th September, 2012

Mr. Ayub Qazi,
Principal Secretary to the Prime Minister,
Prime Minister House,
Islamabad.

Sub: Violation of Public Procurement Rules 2004 in awarding **Rs 13.6 billion** 'Railways Track Doubling Project' contract to a Chinese company without open Tendering

Dear Sir,

This is to inform the Prime Minister that Pakistan Railways, Ministry of Finance, EAD, Planning Commission, Ministry of Law and Ministry of Foreign Affairs, may be causing another major Corruption Scandal, if the following news report is correct, and the Prime Minister has approved the award of unsolicited Rs 13.6 billion Contract in the Cabinet meeting held on 5th September 2012;

"Federal Government is considering giving Rs 13.6 billion 'railways track doubling project' contract to a Chinese company without tender, based on negotiations between Khalil Ahmed, Special Presidential Envoy to China and Ambassador-at-Large with Chinese Minister for Railways, official sources told Business Recorder.

The project will be considered by the Federal Cabinet on Wednesday (today) with Prime Minister Raja Pervez Asharaf in the chair.

*The sources said **Khalil Ahmad** had held consultations with the China Railway Engineering Corporation (CREC), a state-owned entity, during his visits to Beijing*

According to sources, Ambassador-at-Large thereafter held meetings with the Minister for Railways, on March 29 and May 9, on the possibility of concluding a non-binding memorandum of understanding (MoU) between Pakistan Railway, and the China Railway Engineering Corporation for implementation of priority infrastructure projects through Chinese assistance on Build-Transfer basis.

A draft MoU to be signed by Pakistan Railways and China Overseas Engineering Group Company Limited (COVEC), a subsidiary of the CREC, has since been received from the Chinese side.

The MoU has the following salient features: (i) COVEC shall be invited to undertake the project relating to doubling of track between Shahdara and Lalamusa, a project approved by Ecnec at a cost of Rs13.6 billion, on Build-Transfer basis; (ii) cost estimates for the project worked out by COVEC shall be subject to scrutiny of and validation by Pakistan Railways; (iii) subject to prior approval of the competent forum within the federal government, work could be awarded to COVEC on sole source basis, and (iv) COVEC would arrange funds from financial institutions in the People's Republic of China to implement the project.



The sources said repayment arrangements through a concessional loan for this liability would naturally have to be lined up by the Government of Pakistan before any initiative is taken by the Ministry of Railways.”

I want to remind the Prime Minister that the Supreme Court Judgments on RPP Case dated **30 March 2012**, and Safe City Case dated **23 August 2012**, have declared all unsolicited Contracts awarded in 2006, 2008 and 2009 as illegal.

TIP request the Prime Minister to read paragraphs 54 and 55 of the Supreme Court Orders of 23 August 2012 in the Constitutional Petition No.91 Of 2011 & CMA No.2624 of 2011 and Constitutional Petition No.57 Of 2012, US \$ 126 million Safe City Project.

54. The learned counsel for the respondents as well as the Attorney General for Pakistan have laid great emphasis on the fact that allegedly a sum of over US\$ 68 million has already been disbursed and interference by this Court may have serious pecuniary consequences for the Government and also result in exposure to multiple litigation. We are afraid, if the contentions of the learned counsels are accepted, we would open the door to illegalities, arbitrariness and the squandering of public wealth. Public functionaries merely by making a large upfront payment on the execution of an agreement would present this Court with a fait accompli perpetuating an illegality which cannot be countenanced.

55. The upshot of the above discussion is that the Contract dated 29.12.2009 is illegal and invalid having been executed in violation of the mandatory provisions of the Public Procurement Rules, 2004, as the exemption therefrom purportedly granted under Rule 42 (c)(v) ibid was based on extraneous and irrelevant reasons and therefore of no legal effect or consequence. The entire transaction was carried out in a nontransparent manner and for a cost which appears to be inflated. Consequently, the respondent- Government is directed to reinitiate the process for the procurement of the required equipment, software and services in a fair, just, rational and transparent manner, strictly in accordance with the provisions of the Public Procurement Regulatory Authority Ordinance, 2002 and the Public Procurement Rules, 2004 and the law. Needless to say that the respondent-Company would be at liberty to participate in such de novo process of procurement.

The respondent-Government shall also take all necessary steps permitted by law to safeguard and protect itself from any liability under the Contract dated 29.12.2009.

This is to inform the Prime Minister that if such approval has been granted by him on 5th September 2012, then government has committed a crime under NAO1999. TIP is of the view that as all procurements even on BOT basis are made through Tax Payer Money, and according to the two landmark judgments quoted above, no one, even the Prime Minister, Cabinet, ECC of Ministry is allowed to award unsolicited contracts, as they are unconstitutional and non competitive. This Contract was awarded without Open Tendering was also and was approved by the Prime Minister on 14 March 2011 (**Annex-A**), and the Supreme Court has also directed NAB to take action under NAO 1999 against all responsible for such illegal award of Contract.




It is noted that Pakistan Railways' adamant attitude of trying to award procurement contracts without Tenders. viz Railway Engines, Railway Tracks etc. has resulted in its total in last 4-1/2 years, causing losses of Pakistan Railways of over Rs 120 billion, and has brought Pakistan Railways at a standstill with a closure of all cargo trains and half of passenger trains. These losses of approx. Rs 120 billion can be termed as the cost of corruption in Pakistan Railways.

I refers to the directives of the Prime Minster given on 6th September 2012, (copy enclosed) that public money shall be spent in Most Transparent manner, in the interest of public interests, and appeals the Prime Minster to cancel the approval of award Rs 13.6 billion Contract without inviting Open Tenders, in case he has given it on 6th September 2012.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With regards,


Syed Adil Gilani,
Adviser

Copy forwarded for information with request to take action under the Rules and Regulations to;

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

MINUTES

The Cabinet was informed that, with a view to safeguarding the Federal Capital Islamabad against the increasing incidents of terrorism, a US\$ 124.719 million "Safe City Islamabad Project" was conceived, and after getting Chairman ECNEC's anticipatory approval, as subsequently endorsed by the Cabinet, the Loan and Framework Agreements were signed during the visit of the Chinese Prime Minister to Pakistan in the 3rd week of December 2010.

2. The Project containing a highly integrated system comprising the provisions for a fortified Call Centre, Video Surveillance, Geographical Information System (GIS), Global Positioning System (GPS), Radio Frequency Identification (RFID), Smart Card, Data Centre and Resource Dispatching etc. has been cleared by the Intelligence Bureau, Directorate General of Inter-Services Intelligence (ISI), Law, Justice & Parliamentary Affairs Division, Ministry of Foreign Affairs and the Ministry of Information Technology. The exemption from the PPRA Rules 2004 in awarding contract to M/s Huawei Technology Company Limited has since been approved, on the recommendation of the Finance Division, by the Prime Minister who had directed to subsequently place the Project before the Cabinet for information and endorsement. The matter was, therefore, placed before the Cabinet for endorsement on the directions of the Prime Minister.

SECRET

3. Some members of the Cabinet, however, expressed their reservations on the departure from the PPRA Rules and grant of the Project to a single party without formally advertising the Project. The Minister for Interior stated that sensitivities of the Project and special relations with China warranted a departure from the PPRA Rules as the Chinese loan facility was linked with the grant of Project exclusively to M/s Huawei Technology Company Limited and hence the Summary to the Prime Minister for waiver of the PPRA Rules was initiated.

DECISION

The Cabinet considered the Summary dated 2nd March 2011 submitted by Interior Division on "Safe City Islamabad Project" and, keeping in view the extraordinary security situation in the country and categorical assurance given by the Interior Minister, endorsed the decision for grant of waiver of PPRA Rules by the Prime Minister and approved the project already awarded to M/s Huawei Technology Company Limited.



7 September 2012

سُرکاری رقوم کا عوام کی فلاح و بہبود کیلئے شفاف استعمال یقین بنانا منگے وزیر اعظم

حکومت تاریخی قانون سازی میں کامیاب رہی، جمہوریت کیلئے رواداری ضروری ہے، ارکان پارلیمنٹ سے گفتگو

صوبوں میں کام باقی ہے الیکشن کمیشن کا کام ووٹرز لسٹوں کی تیاری اور پولنگ اسٹیشنز کا قیام ہے اور یہ کام مکمل ہو گیا ہے اس لئے ہم بلدیاتی انتخابات کیلئے تیار ہیں۔ بلدیاتی الیکشن کے حوالے سے ایک بڑا کام انتخابی حلقہ بندیوں کا ہے جسے صوبائی حکومتوں نے مکمل کرنا ہے۔

اشتیاق احمد خان نے منگل کو ”جنگ“ کے استفسار پر بتایا کہ الیکشن کمیشن بلدیاتی الیکشن کرانے کیلئے پوری طرح تیار ہے۔ مقامی حکومتوں کے انتخابات کا بیشتر کام صوبائی حکومتوں کو کرنا ہے۔ الیکشن کمیشن نے دو سال پہلے صوبائی حکومتوں کو بلدیاتی الیکشن کی تیاریوں کی ہدایات جاری کر دی تھیں مگر اب تک صرف بلوچستان اور خیبر پختونخوا کی حکومتیں بلدیاتی قوانین تیار کر سکی ہیں۔ دو

اسلام آباد (اے پی پی) وزیر اعظم راجہ پرویز اشرف نے کہا ہے کہ سرکاری رقوم کا عوام کی فلاح و بہبود کے لئے شفاف استعمال یقینی بنائیں گے، حکومت نہ صرف تاریخی قانون سازی کرنے میں کامیاب رہی ہے بلکہ عوامی پالیسیاں تکمیل دی ہیں جن سے تہدیلی آئے گی اور بلایا جائے گا جس میں بلدیاتی انتخابات کیلئے صوبوں کی تیاریوں کا جائزہ لیا جائے گا۔ سیکریٹری الیکشن کمیشن