

No.F.1(130)/DD-II/PPRA/2009
GOVERNMENT OF PAKISTAN
PUBLIC PROCUREMENT REGULATORY AUTHORITY
(CABINET DIVISION)

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Islamabad, the December 1, 2009.

From : Naeem Ahmed,
Deputy Director – II,

To : Syed Adil Gilani,
Chairman,
Transparency International-Pakistan,
5-C, 2nd Floor,
Khayaban-e-Ittehad, Phase-VII,
Defence Housing Authority,
Karachi.

Subject: COMPLAINT ON THE PROCUREMENT FOR INTEGRATED
BUILDING MANAGEMENT SYSTEM (IBMS) AT PNSC BUILDING.

Please refer to Transparency International-Pakistan's letter No. nil,
dated 10th November, 2009 on the above subject.

2. Your complaint was forwarded to Pakistan National Shipping
Corporation for disposal under Rule-48 of Public Procurement Rules, 2004.
Procuring Agency has given the comments on the complaint and the same is being
enclosed for your kind perusal.



(NAEEM AHMED)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



Pakistan National Shipping Corporation

(ESTABLISHED UNDER ORDINANCE NO. XX OF 1979)

No File /

November 26, 2009

Deputy Director
Public Procurement Regulatory Authority
Cabinet Division
Islamabad

Attention: Mr. Naeem Ahmed

Subject: **COMPLAINT OF PROCUREMENT OF INTEGRATED BUILDING MANAGEMENT SYSTEM (IBMS) AT PNSC BUILDING.**

Reference: PPRA letter No. F.1(130)DD-PPRA/2009 dated 16-11-2009 & Transparency International Pakistan letter dated 10th November 2009

1. It is submitted that Pakistan National Shipping Corporation (PNSC) is in process of rehabilitation of its building named PNSC Building located at M T Khan Road, Karachi.
2. The services of country's renowned consultant M/s Fahim Nanji & De Souza (FND) were hired to design, tender, award & supervise the execution of rehabilitation works.
3. Tender for Integrated Building Management System (IBMS) is one of the most critical tender as it integrates & controls the HVAC, Electrical, Fire Suppression, Access control, Close circuit television system etc., thus the consultant has designed it with lots of deliberations & in tender preparation, moreover they have tried to ensure that only the specialized contractors who are actually executing such works should be able to qualify. It is pertinent to mention that this tender had already been scrapped three due to which considerable time had already been lost & it was fourth time that this tender was launched.
4. The transparency international's offer was forwarded to our consultant M/s FND to give his view point and the reply received from the consultant is enclosed as per Annexure -A.
5. We being the Government organization had been rigidly following the rule of law & intend doing so in future too, submit you the reply of consultant as desired, however, the re-tender process generally takes 02 to 03 months & due to this delay the PNSC would be suffering a substantial loss of approximately Rs. 400,000/- per day due to non renting out of the building.

Regards,


ENGR. M. SIDDIQ AJEED
MANAGER (TECHNICAL)

Enclosed : FND Letter dt: 19/11/09 (02 pages)

P.N.S.C. BUILDING, MOULVI TAMIZUDDIN KHAN ROAD, KARACHI, PAKISTAN.
PHONE : 9203980-99 (20 LINES) FAX: 9203974 - 5636658
E-mail : communication@pnscc.com.pk.


**FAHIM, NANJI & DESOUZA
CONSULTING ENGINEERS**

 HVAC, PLUMBING, MECHANICAL &
ELECTRICAL
OFFICE # 16, ILACO HOUSE ABDULLAH HAROON
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TEL: (9221) 8637878-82
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E-mail: fahimfnd@cyber.net.pk

Ref: 1096/E/NJ/CORR/0/W/040/R1

November 19th, 2009

M/s. Pakistan National Shipping Corporation
1st Floor, PNSC Building
M.T Khan Road,
Karachi-74000
Ph: 021-920-4003
Fax: 021-920-3974
Email: pnsckar@paksnet3.pnc.pk

Att: **Brigadier Rashid Siddiqui**
Chairman

Dear Sir,

Re: Procurement of IBMS for PNSC Building

Apreres the letter of TI Pakistan dated 10-11-2009, we have the following comments to make:

1. The basis of TIP's letter is the PPRA Rules 2004, on which FND is not an expert. We prepared the tender on the basis of our understanding of the procedure.
2. Our observations on the three points raised in the letter, which do not seem to be specifically dealt with in PPRA Rules 2004, are as follows:
 1. **Negative marking for Litigation & Arbitration**
 - a) Reference to the tender's Annexure B, *Marking Criteria for Qualification of Bidders*, Line 3 indicates the marking as (- 4) for litigation and (- 1) for arbitration. PPRA Rules 2004 do not provide any guidance or limitations on the criteria for marking and evaluation: they are silent on this issue. It is our understanding that government departments have viewed litigation & arbitration in which the contractor has not succeeded as a notable flaw in a contractor's profile, and have generally disqualified such bidders where such failed arbitration/litigation exceeds 50%.
 - b) This tender's marking criterion only impacts the standing of a bidder to a maximum of 5% negative marking, a minor impact.
 - c) Furthermore, in this tender, none of the bidders has been marked negatively, and so, in effect, this criterion has not been applied.
 2. **Joint Ventures are not allowed**
 - a) PPRA rules are silent on this aspect, and therefore this criterion is a matter of judgment of the Client/Consultant.
 - b) Out of all the tenders for the PNSC Building refurbishment (approx. 6 tenders), the IBMS tender was the only one on which a JV has not been accepted. The specific reason for this is that this bid includes a three-year 24-hour x 365 days Operation & Maintenance contract for the IBM System, and a JV will not provide PNSC with the comfort level of a one-window contract; in the event of disagreement or instability between the JV partners (a not unknown occurrence in Pakistan), the operations of PNSC Building may be seriously threatened.
 - c) We also are given to understand that in a joint venture, each of the JV partners must be individually technically capable of undertaking the work.



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- d) Further this matter of JV was earlier referred to by PNSC to their legal department, and some legal aspects that were brought out by them on this subject were:
- ✓ Definition of a bidder does not envisage a consortium submitting a joint bid.
 - ✓ The JV agreement submitted by the bidder does not give the three separate consortium entities one identity.
 - ✓ If PNSC is to consider the JV for the bid, then each member of the JV must satisfy the evaluation criteria individually and independently.
 - ✓ The legal experts has opined that it might be advisable to reject the JV bid on the basis of the specified evaluation criteria, as it appears from the documents that that M/s Electra has failed to meet the technical requirements.
3. Evaluation Criteria is OCBS at 70: 30 being the technical & financial weightages
We have used 60: 40 (not 70: 30) as the criterion for the Quality & Cost Based Selection. This procedure was originally defined by PPRA to PNSC and makes eminent sense as it does not classify bidders as merely black or white, but evaluates their offers technically in various shades of grey, based on their technical submission. This technical evaluation weightage consequently affects the bid price evaluation weightage to give the lowest evaluated price.

Yours faithfully,

(Fahim I. Siddiqui)
for FAHIM, NANJI & DESOUZA