



15th May 2011

Chairman,
Port Qasim Authority,
Port Qasim,
Karachi.

Sub: Complaint on Award of Second Oil Terminal to FOTCO
TIP Letter dated 8 -3-2011,15-3-2011, 21-3-2011 and 25-4-2011, and PQA replies dated
14-3-2011, 18-3-2011,1-4-2011& 10-5-2011

Dear Sir,

Transparency International Pakistan after examining the legal opinion of PQA Legal advisor dated 10-5-2011, that according to the Implementation Agreement of FOTCO PQA can not deny the renewal of the Lease to FOTCO after 30 years, nor terminate the IA even if FOTCOP do not agree on the mutual terms at the time of renewal of lease, under Article 18.1. This Opinion negates the rules and regulations of government of Pakistan for award of Contracts.

Legal Advisor of PQA has also quoted BOI guidelines for BOT/BOO Project, and that bidder are allowed proponent to offer more favourable terms to the government to make the proposals more attractive, such as increase of government share in revenues; less government guarantees or reduction in the level of government undertakings or support.

This clarification does not allow bidder to offer favourable terms such as no other party shall be allowed to built another Oil Terminal except with their option to refuse first, or conditioning guarantee for 4,000,000 tons of oil annual throughout etc.

According to the BOI requirements in the same BOI Guideline, PQA was required to provide a draft contract agreement to all bidders, which if provided may have resulted in better offers from other psarties. The terms had been amended by PQA after the Tender Opening, by adding the three conditions, viz. perpetual period of BOO, no other party shall be allowed to built another Oil Terminal except with their option to refuse first, and guarantee for 4000,000 tons of oil annual throughout which are illegal.

TIP would like to inform PQA that PQA Legal Advisor is misguiding PQA again, as the BOI guidelines for BOT/BOO Project were issued in 1998, vide MOF Ref No. A.F.1 (25) – EF (Inv.) /97 – 729Islamabad, on August 12, 1998, whereas the Tender for Oil terminal was issued by PQA in 1991/1992.

These facts as quoted by PQA and PQA Legal Advisor renders the award of Oil Terminal to FOTCO in 1992 as illegal.

TIP has quoted Supreme Court decision on a Pakistan Steel Mill case in 2005 is not related with PPRA Rules, and declare that the change of tendered terms and awarded terms, is one reason of nullifying the contract agreement in following words



"Final terms offered to the successful consortium which were not in accord with the initial public offering given through advertisement.

The Competition Act, 2010, Article 3 also does not allow such condition of not allowing any other party to establish another Oil Terminal at PQA which does not allow competition, as has been changed by PQA for FOTCO after the Tender Opening in 1992.

Transparency International Pakistan stands by its letter of 15-3-2011, PQA is advised that Post tender changes in the conditions of Tender and government assurances/guarantees as given by PQA to FOTCO, at the time of Agreement are not allowed, and PQA shall ^{not} negotiate with FOTCO for 2nd Oil Terminal, and invite public tenders, in which FOTCO may also participate. By this exercise PQA may be able to award 30 years BOO Contract of Oil Terminal II, instead of an objectionable 11 year contract being negotiated with FOTCO for the Second Oil Terminal and on much better terms.

Yours sincerely,


Syed Adil Gilani
Chairman

Copy forwarded for the information of

1. Chief of Army Staff, Army House Rawalpindi.
2. Registrar Supreme Court of Pakistan, Islamabad
3. Secretary, Ministry of Defense, Chairman Fauji Foundation, Islamabad
4. DG P&D, PQA for information please.