TRANSPARENCY
INTERNATIONAL-PAKISTAN

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25th September 2012

Vice Admiral (Retd) Muhammad Shafi,
Chairman,
Port Qasim Authority,
Port Qasim,
Karachi.

Sub: Complaint on loss incurred to PQA of over Rs. 0.5 billion in tenders awarded in 2009 to M/S NLC and M/S FWO, due to discriminatory specifications of GRP pipes, and in 2012 same discriminatory specifications may cause loss of Rs. 1.44 billion to the exchequer.

Dear Sir,

The reply of TI-Pakistan's letter, dated 04th September 2012, given by the Secretary PQA, Mr. Mohammad Saqib, vide PQA's letter No. PQA/P&D/EIZ-01/2011 dated 20th September 2012, is totally contradictory to the provisions of Public Procurement Rules 2004 and M/S NESPAK's report, dated 29th May 2012, advising PQA to use locally manufactured pipes and to advise their consultant, M/S ECIL, to draft generic specifications **(Annex A)**.

This advice of M/S NESPAK was neither highlighted by PQA nor M/S ECIL in their correspondence on the issue.

Port Qasim Authority's reply is contradictory to the Ministry of Defence's letter No. F.5/5/2008/D-14/N-II, dated 15th May 2012, addressed to TI-Pakistan, clarifying that M/S FWO is providing Bid Guarantee, Project Insurances, Performance Guarantee, Mobilization Advance Guarantee as well as Retention Money is also being deducted by the clients. **(Annex B)**

According to Rule 15 of the Public Procurement Rules 2004, Pre-Qualification, which is not mandatory, and is allowed in case of technically complex works, may be conducted before inviting any tender.

By inviting tenders only from M/S NLC and M/S FWO for two projects, worth more than Rs. 10 billion, PQA has committed violation of Rule 2(f) "corrupt and fraudulent practices" as the whole act of PQA and M/S ECIL appears to be designed to establish bid prices at artificial, non-competitive levels and to deprive PQA of the benefits of free and open competition.

Transparency International Pakistan does not understand how PQA can award contracts for two different works based on one tender, and that too issued to only two contractors. The contract can only be awarded to the lowest responsive evaluated bidder, and if M/S FWO and M/S NLC give different rates for the two projects, then the collusion between M/S FWO, M/S NLC and PQA will be established, as a cartel made with the blessings of PQA.

TI-Pakistan also refers to its objections sent to ex-Chairman PQA three years ago on 16th September 2009, which still stands. **(Annex C)**

The onus of loss of Rs. 1.44 billion due to barring GRP Pipes' manufacturers from Pakistan on fictitious grounds, and violation of Public Procurement Rules 2004 in inviting open tenders, which may render these procurements as mis-procurement under Rule 50 rests with the Board Members of PQA, Chairman PQA and the Secretary, Ministry of Ports and Shipping.

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

Copies forwarded for the information of:

1. Chairman, Public Accounts Committee, Islamabad.
2. Registrar, Supreme Court of Pakistan, Islamabad.
3. Federal Minister, Ports and Shipping, Islamabad.
4. Chairman, NAB, Islamabad.
5. Auditor General, Islamabad.
6. Federal Secretary, Ministry of Ports and Shipping, Islamabad.
7. All PQA Board Members with a request to strictly follow Rule of Law, and note that they are public office holder under section 5 (v) of NAO 1999, and accountable for their act as Board Members of PQA under PQA Act 1973.
8. Managing Director, PPRA, Islamabad - *with a request to take action under section 5(2) (a) "monitor application of the laws, rules, regulations, policies and procedures in respect of, or relating to, procurement" and under section 5(2) (i) of the PPRA Ordinance 2002.*

JUN 01 2012 11:04AM HP LASERJET FAX P. 1

29-MAY-2012 17:01 FROM NESPAK KARACHI TO 84299231913 P.01

NATIONAL ENGINEERING SERVICES PAKISTAN (PVT) LIMITED
13th Floor, N.I.C.L. Building, Abbasi Shaheed Road, Off Shahrah-e-Faisal, Karachi - 74400, Pakistan.

098/SCA/PA/01/1542

29th May 2012

The Vice Admiral (R) Mohammed Shafi
Chairman
Port Qasim Authority
Karachi

USE OF LOCALLY MANUFACTURED GRP PIPES FOR PORT QASIM PROJECT

Dear Sir,

With reference to our meeting held with your goodself on 10th May 2012 wherein local pipe manufacturer's letter no. BETIPQA/12-45 dated 7th May 2012 was also discussed in the light of NESPAK's Inspection Report on the locally manufactured GRP pipes.

We would like to mention here that NESPAK prepared the report on the basis of the Terms of Reference provided by PQA for the use of GRP pipes for their specific project and submitted the same with our comments for the suitability of these pipe. This report was prepared specifically for this Project in accordance with the TOR and the Technical specification provided. As regards the manufacturer's proposal/undertaking for adherence with the Specification after award of work to them, it is upto PQA to accept or otherwise.

In addition to this we also suggest that to encourage the use of locally manufactured pipes and other materials, PQA should advise to all their Consultants to recommend generic specifications for the use of material on various Projects. This will enable locally manufacturing industry to be developed at par with their foreign counterparts providing level playing field for all manufacturers including local ones.

Thanking you and assuring you of our best professional services at all times.

Sincerely,
for, National Engineering Services Pakistan (Pvt.) Limited

(FARHAT ADIL)
Vice President

Managing Director. for information pl.

29/5

Phone : +92-21-99090000 & 99207277-84 (08 Lines)
Fax : +92-21-35651994, 99202305
E-mail : nespakkh@khi.wol.net.pk, P.O. Box: 5772, Karachi.

Mar. 18 1997 03:19PM P1 PHONE NO. :

No.F.5/5/2008/D-14/N-II
GOVERNMENT OF PAKISTAN
MINISTRY OF DEFENCE
(DEFENCE DIVISION)
Rawalpindi, the 15th May, 2012

To

Syed Adil Gilani
Advisor, Transparency International Pakistan
5-C, 2nd Floor, Khayban-e-Ittehad, Phase VII,
Defence Housing Authority, Karachi.

Subject: - **Exemption from Providing Bank Guarantee Against Performance Security and Mobilization Advance Granted by the Ministry of Defence to M/s FWO on December 03, 1985 is against the Public Procurement Rules 2004 and the Competition Act 2010**

Dear Sir,

I am directed to refer to Transparency International Pakistan letter No. Nil dated 7th February 2012 on the above subject and to state that the case has been examined in consultation with the HQ FWO and following categories of 'Perceived' Financial Concessions, mentioned by Transparency International-Pakistan are re-viewed as: -

a. Bid Guarantee. **FWO is providing Bid Guarantees** on all the projects.

b. Project Insurances. **All the projects entailing 'insurance clause' are being deliberately insured,** as per clients' demands.

c. Deduction of Retention Money. **Retention money is being deducted by all clients** on all the projects being executed by FWO.

d. Performance Guarantee. FWO is a state owned organization and performance guarantees are not required from one state owned organization to another. "Performance Warranty", however, is provided by FWO, whenever requested by a client department, fulfilling the basic need and necessity of "performance guarantee"

e. Mobilization Advance Guarantee. The Spirit of this guarantee is similar to that of performance guarantee and FWO provides warrantee against this also, whenever requested by a client.

2. It may be evaluated that with "Bid Guarantee", "Insurance Costs" and "Retention Money" out of the equation, the left over competitive advantage not only becomes insignificant but also is permissible under prevailing law of the land.

3. In view of above, it is contended that the little assistance being offered in the form of two categories of exemption may be weighed against utility/employment potency of FWO for operating in challenging environments/difficult situations

(Khalid Parvez Bhatti)
Deputy Secretary (N&C)

Copy to:-

Col. Sibte Hassan Rana - w.r.t. their letter No. 444Gen/Plans/CS
HQ FWO, Rawalpindi dated 6th April 2012

TRANSPARENCY
INTERNATIONAL-PAKISTAN

5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defence Housing Authority, Karachi.
Tel: (92-21)-5390408, 5390409, Fax: 5390410
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Website: www.transparency.org.pk

16th September, 2009

Vice Admiral M. Asad Qureshi
HI (M),

Chairman,
Port Qasim Authority,
Port Qasim,
Karachi.

Sub: Implementation of Public Procurement Rules, 2004 in PQA, Karachi

Dear Sir,

Transparency International Pakistan has received complaints that M/s NLC and M/s FWO who are executing Contracts at PQA Karachi have not complied with the requirement of providing Contractors all Risk Insurance Policy.

According to the Standard Contract Agreement, on all Contracts in Pakistan, a provision of all cost for the loss to project are to be paid under Contractors all Risk Insurance Policy (CAR Policy) . This Insurance policy cover cost of all damages due to any cause, and incidental to the reconstruction of the damaged works, including professional fees and the cost of demolishing and removing any part of the Works. Under PPRA Regulations, Procuring agencies when engaged in procurement of works, PQA and all procuring agencies shall use the standard form of bidding documents prescribed by the Pakistan Engineering Council constituted under the Pakistan Engineering Council Act, 1975 (V of 1976), which includes responsibility of Contractor to take out CAR Policy.

It is also reported to TI Pakistan that PQA has also not complied with the Contract provisions, which requires that in case of Contractors failure to take out CAR Policy, or even pay the annual premium of the CAR Policy, PQA shall have taken out the CAR Insurance Policy itself, and deducted the cost of premium from Contractors bills.

We quote the relevant Contract provisions.

21.1 **Insurance of Works and Contractor's Equipment**

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure:

(a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost (the term "cost" in this context shall include profit),

(b) an additional sum of 15 per cent of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature.

Under Clause 21.2, Scope of Cover, insurance shall be in the joint names of the Contractor and the Employer and shall cover the Employer and the Contractor against all loss or damage from whatsoever cause arising, other than as provided in Sub-Clause 21.4, from the start of work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be.

Exclusions under 21.4 is ; war, hostilities (where war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, or military or usurped power, or civil war, ionising, radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, or pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds.

25.3 **Remedy on Contractor's Failure to Insure**

If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the policies to the Employer within the period required by Sub-Clause 25.1, then and in any such case the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

The approximate costs of CAR Polices is normally about 1-1/2 % to 2-1/2 % of Contract Value Cost. If CAR Polices were not taken out in previous Contracts of PQA, NLC/FWO shall refund the insurance premium saved, which shall be deposited in PQA accounts.

However, Transparency International Pakistan request PQA that in case of current contracts, if NLC/FWO have not provided the CAR Policies, PQA shall obtain CAR policies itself, and deducted the costs from the payments to be made to NLC/FWO.. All obligations by contractors shall also be complied for NLC & FO also, and nondiscriminatory benefits, like bid security, performance security, retention money, insurance polices.

A report in this respect shall be sent to Transparency International Pakistan Transparency International Pakistan by Saturday the 19th September 2009, under the terms of MOU signed with PQA.

Yours Sincerely,

Syed Adil Gilani
Chairman

Copy forwarded for the information of;

1. Chairman Public Accounts Committee, National Assembly, Islamabad.
2. Auditor General Pakistan, Islamabad
3. Chairman, NAB, Islamabad.
4. Managing Director PPRA, Islamabad
5. Director, FIA, Karachi