

No. PQA/SY/29/2014
Dated: 26.02.2016

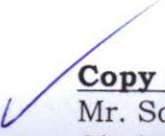
The Secretary (P&S),
Ministry of Ports & Shipping,
Government of Pakistan,
Islamabad.

SUBJECT: **COMPLAINT OF MANIPULATION IN PURCHASE OF 4 NEW RHIB TYPE BOATS TENDER BY PORT QASIM AUTHORITY (PQA).**

I am directed to refer Transparency International Pakistan (TIP)'s letter No. TL16/2202/2A, dated 22.02.2016, on the above subject (copy enclosed) and to enclose necessary reply prepared by PQA's Legal Advisor to the queries / observations of TIP in their above referred letter for information and record please.

Encl: As above.


(MUHAMMAD SAQIB)
SECRETARY

 **Copy for information**
Mr. Sohail Muzaffar,
Chairman,
Transparency International Pakistan.
Karachi.

22nd February, 2016

TL16/2202/2A

Mr. Agha Jan Akhtar,
Chairman,
Port Qasim Authority,
Karachi.

Sub: Complaint of Manipulation in Purchase of 4 New RHIB Type Boats Tender by Port Qasim Authority (PQA)

Dear Sir,

Transparency International Pakistan has received a complaint on the allegation of 'Manipulation in Purchase of 4 New RHIB Type Boats Tender by PQA' (Annexure A).

The complainant has made following allegations;

1. PQA floated tender on 28th March, 2015 (Newspaper Announcement Copy Attached).
2. PQA cancelled tender without assigning any reason on 10th June, 2015 (Copy Attached).
3. Second tender was floated on 30th July, 2015 (Newspaper Announcement Copy Attached).
4. PQA totally changed the evaluation criteria and in the second tender they made sure that the local indigenous manufacturers could not qualify (Copy of first tender evaluation criteria and second tender evaluation criteria attached).

The above allegation have been examined and prima facie it appears that PQA has violated PPRA Rules of not informing bidder the reason of discharge of first tender in its letter No. PQA/OPS/OM/Fibre/15/491 dated 20th June, 2015 to bidders.

The manipulation in the re-invited tender is evident from the change in the earnest money which was 2% of offered value in 1st tender, and Rs. 2.5 Million as fixed amount in re-invited tender to indicate the cost of 4 Boats to be over Rs. 100 Million. The evaluation criteria in the 1st tender did not specify requirement of Naval Architect, and the average gross revenue which for last 3 years increased from Rs. 5 Million in 1st tender to Rs. 40 Million in the next tender, confirms the complainant's allegations that the tender was aimed for particular supplier. The evaluation report discloses that this was a single responsive bid as other 2 bidders M/s OTC Pakistan and M/s Bahria Foundation were declared non-quantified.

According to PPRA a single bid can't be awarded as it lacks competitive prices and can only be awarded if PQA has purchased same equipment in current fiscal year which should be criteria for financial bids. As PQA has no record of such procurement in current fiscal year the award of this contract is declared as mis-procurement under Rule No 50 of PPRA Rules.

Question No. 4 & 12 of PPRA 'Frequently Asked Questions' is quoted below;

Q4:

Can procuring agency reject bids without assigning any reason?

Answer: In terms of Rule 33(1) of the Public Procurement Rules 2004 the procuring agency may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring agency shall immediately give notice of rejection of bid(s) to all bidders. On request by the bidders, the Procuring Agency shall intimate the reasons of rejection of bids but will incur no liability on this account nor is required to justify the rejection of bids

Handwritten signatures and initials:
DG (Ops)
[Signature]
D (Ops)



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Q12:

- i. If only one tender/bid is received in response to a tender notice advertised in both or one of the media (Authority's website/ print media), should the single tender be accepted or re-advertised the tender.
- ii. How to compare the only one bid received by a procuring agency?
- iii. If no tender/ bid is received against a requirement, what method of procurement is recommended to be adopted (Re-advertisement or Direct Contracting)

Answer:

i. Public Procurement Rules, 2004 don't put any limit on number of tenders/ bids received in response to tender notices provided that the procurement opportunity has been advertised in the prescribed manner. The single bid may be considered if it meets the evaluation criteria expressed in tender notice and is not in conflict with any other rules, regulations or policy of the Federal Government. However the procuring agency should make a decision with due diligence and in the light of Rule 4 "Principles of Procurement".

ii. Whenever a procuring agency is confronted with such a situation whereby the rate quoted by the single bidder cannot be compared so as to declare it as the lowest rate or otherwise it may make a prudent decision. While making a decision, the following factors may be kept in view: -

- a. The comparison of price of the goods, works or services if procured during the current financial year.
- b. Market price of the goods works and services to be procured.
- c. In case abnormal Increase in prices is observed, the procuring agency may like to re-advertise the procurement opportunity, if time permits.

iii. Re-advertisement would be a preferred option. Direct contracting could also be used provided it meets the prescribed condition for direct contracting

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

With Regards,


Sohail Muzaffar
Chairman

Copies forwarded for the information with request to take action under their mandate to:

1. Secretary to Prime Minister, Islamabad.
2. Director General, NAB, Karachi.
3. Chairman, Prime Minister's Inspection Commission, Islamabad.
4. Registrar, Supreme Court of Pakistan, Islamabad.
5. Managing Director, PPRA, Islamabad.

Isani & Associates

Legal Consultants

M.A. ISANI

ADVOCATE,
MASTER IN COMPARATIVE LAW,
GEORGETOWN UNIVERSITY,
U.S.A.

26th February, 2016

The Chairman,
Chairman Secretariat,
Port Qasim Authority,
Port Qasim,
Karachi.

Subject:- Complaint of Manipulation in Purchase of 4 New RHIB Type Boats
Tender by Port Qasim Authority (PQA)

Reference:- Transparency International - Pakistan (TIP)'s Letter dated 22/02/2016

Dear Sir,

1. TIP's above referred letter has been sent to PQA without enclosing Annexure "A" - the complaint allegedly received by it.
2. TIP in its above referred letter has made the following misconstrued determination regarding PQA's Tender for 4 (four) new RHIB Type Boats :-

"According to PPRA a single bid can't be awarded as it lacks competitive prices and can only be awarded if PQA has purchased same equipment in current fiscal year which should be criteria for financial bids. As PQA has no record of such procurement in current fiscal year the award of this contract is declared as mis-procurement under Rule No. 50 of PPRA Rules."

3. TIP's stated premises for its erroneous deduction are Question No. 12 of PPRA "Frequently Asked Questions" and Answer 12 thereto available on PPRA website quoted below :

"Q.12 :

- i. If only one tender/bid is received in response to a tender notice advertised in both or one of the media (Authority's website / print media), **should the single tender be accepted or re-advertised the tender.**
- ii. **How to compare the only one bid received by a procuring agency ?**
- iii. If no tender / bid is received against a requirement, what method of procurement is recommended to be adopted (Re-advertisement or Direct Contracting)

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