



3rd November 2011

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

Sub: Complaint of Violation of PPRA Rules in Tender of Channel Maintenance
Dredging Works 2011-2012 as the Bid of M/s. Dredging International alleged to be a
Non Responsive bid.

Dear Sir,

Transparency International Pakistan has received a complaint of Violation of PPRA Rules in Tender of Channel Maintenance Dredging Works 2011-2012, as one of the bid does not qualify to be considered by PQA, as it is a non-responsive bid.

The complaint is described below;

The financial bids for PQA Maintenance Dredging 2011-2012 were publically opened at PQA office on Wednesday 2nd November 2011. M/s. Dredging International (DI) offered the lowest price of Rs. 1.426 billion. However, a long list of conditions were found in the bid inclusive of changes to important tender conditions:

It is clearly specified in the PQA tender documents that Arbitration shall be in Pakistan as per Pakistan Arbitration Act 194 But DI's condition is that Arbitration shall be in London as per other laws.

It is specified in the PQA tender documents that all custom duties and taxes for import of dredger shall be borne by the contractor and included into the bid price. But DI's condition is that all import duties and taxes shall be borne by the Employer.

Transparency International Pakistan request the Chairman to confirm whether the complaint is true or false. In case the complaint correct, and the bid of M/s. Dredging International contains the tow above mentioned conditions, the evaluation has to be conducted as per PEC SBDs under PPRA regulations 2008, regulation No 3 **Bidding documents.**- A Procuring agency when engaged in procurement of works, 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).



According to Tender Documents Part II particular conditions, Article 67.3, states that Arbitration shall be finally settled under the provisions of the Arbitration Act, 1940 as amended or any statutory modification or re-enactment thereof for the time being in force.

According to PEC Bidding documents, SBD for Evaluation of Works 2002 also included in POA Procurement Manual Annexure VIII, following conditions are defined to declared a Bid as non-responsive,

“A bid is not to be considered in the light of paras(a) to(e) above if;

(xi) It indicates that Bid Prices do not include the amount of taxes & duties.

Also not accepting arbitration condition is a major deviation for taking exception to critical provisions such as applicable law, taxes and duties and dispute resolution procedures.”

TI Pakistan request the Chairman to kindly direct the department evaluated this and all tenders to comply with the mandatory requirements of PPRA Ordinance 2002, Public Procurement Rules 2004 and PPRA Regulation 2008, in order to avoid allegation of misprocurement under Rule No 50.

Transparency International Pakistan is striving for the Rule of Law in Pakistan.

Yours sincerely,

Syed Adil Gilani
Adviser

Copies forwarded for the information of,

1. Chairman Public Accounts Committee, National Assembly, Islamabad ,
2. Chairman NAB, Islamabad
3. The Registrar, Supreme Court of Pakistan, Islamabad
4. Auditor General Pakistan, Islamabad
5. Secretary, Ministry of Ports & Shipping, Islamabad
- 6.
7. Managing Director PPRA , Islamabad

(b) **Correction for Provisional Sums :** Bids may contain provisional sums set by the Employer/Engineer for contingencies or for nominated subcontractors, etc. As these sums are the same for all bids, they should be subtracted from the read out prices in Table 6, column-e of Annex-II to allow for a proper comparison of bids in subsequent steps. However, those provisional sums set aside for Day-work etc, where priced competitively, should not be included in the deductions.

(e) **Substantial Responsiveness:**

(A) Major (Material) deviations

Major deviations to the commercial requirements and technical specifications are a basis for the rejection of bids. As a general rule, major deviations are those, that if accepted, would not fulfill the purposes for which the bid is requested, or would prevent a fair comparison or affect the ranking of the bids that are compliant with the bidding documents. Examples of major deviations include:-

- (i) Stipulating price adjustment when fixed price bids were called for.
- (ii) Failing to respond to specifications.
- (iii) Failing to comply with Mile-stones/critical dates provided in Bidding Documents.
- (iv) Subcontracting contrary to the Conditions of Contract specified in Bidding Documents.
- (v) Refusing to bear important responsibilities and liabilities allocated in the Bidding Documents, such as performance guarantees and insurance coverage.
- (vi) Taking exception to critical provisions such as applicable law, taxes and duties and dispute resolution procedures.
- (vii) Those deviations that are specified in the ITB requiring rejection of the bid (such as, in the case of works, participating in the submission of other bids other than as a subcontractor).
- (viii) Refuses to sign Integrity Pact.

(B) Minor Deviations

Bids that offer deviations acceptable to the Employer and which can be assigned a monetary value may be considered substantially responsive at least as to the issue of fairness. This value would however be added as an adjustment for evaluation purposes only during the detailed evaluation process

(f) **A bid is not to be considered in the light of paras(a) to(e) above if;**

- (i) It is submitted by a Bidder who has participated in more than one Bid.

- (ii) It is received after the time and date fixed for its receipt.
- (iii) It is submitted through fax, telex, telegram or e-mail.
- (iv) It is not accompanied with Bid Security.
- (v) It is unsigned.
- (vi) Its validity is less than specified.
- (vii) It is submitted for incomplete Scope of Work.
- (viii) It indicates completion date later than specified.
- (ix) It indicates that prices quoted are not firm during currency of the contract except those prices where escalation/adjustments are permitted in the Conditions of Contracts.
- (x) It indicates that material to be supplied does not meet the eligibility requirements.
- (xi) It indicates that Bid Prices do not include the amount of taxes & duties.
- (xii) If Bidder refuses to accept the arithmetic corrections.
- (xiii) It is materially and substantially different from the Conditions/Specifications of Bidding Documents.
- (xiv) It provides Sub-contracting, contrary to conditions specified in the Bidding Documents.
- (xv) It fails to comply Mile-Stones/critical dates specified in Bidding Documents.
- (xvi) The bidder is not valid license holder of the PEC.
- (xvii) Fails to Sign Integrity .

(g) ***Results of Preliminary Examination***

The results of preliminary examination should be presented in Table-5 of Annex- II. It should be however realized that Table 1 to Table 4 Annex-II are for summarizing the essential information from the bids. If the bid fails in preliminary acceptance, the reasons must be clearly explained in footnotes or in an attachment, as necessary. An example is shown in Annex-III. Executing agencies may find it useful to include additional tables for itemization of responsiveness to a list of technical or commercial specifications. These should be attached to Table-5 of Annex-II.