



6<sup>th</sup> September 2010

Chairman,  
Port Qasim Authority,  
Port Qasim,  
Karachi.

Sub: Channel Maintenance Dredging Works 2010-2011 and Capital Dredging Works for Turning Basin

Dear Sir,

Transparency International Pakistan has received request from PQA vide letter No. PQA/C.D/17/2010 dated 3<sup>rd</sup> September 2010, requesting for vetting of the draft tender documents for Channel Maintenance Dredging Works 2010-2011 and Capital Dredging Works for Turning Basin, with a view to make it a compliant to the requirements of Public procurement Rules 2004.

The Draft Tender Documents have been examined, and amended.

Special amendments were also made by deleting procurement of car and equipment like survey boat, GPS equipment etc as these procurements shall be procured separately, inclusion of which in this tender will cost PQA an additional cost margin to be paid to the dredging Contractor. TIP recommends PQA to procure them through open public tendering separately. In fact for Car purchase, PPRA Rules allows PQA to purchase it direct from the manufacturer or agent at the company listed prices.

Second issue is about the four contractors on whom the Competition Commission of Pakistan (CCP) has imposed a penalty of Rs 50 million each on M/s China Harbour Engineering Company Limited (CHEC), M/s Dredging International (DI), M/s Jan De Nul N.V (JDN) and M/s China International Water & Electric Corporation (CWE) for collusive business activities in the dredging contracts at Port Qasim. On 20<sup>th</sup> July 2010 CCP passed following orders.

*"89 The parties to the Consortium Agreement namely CHEC, DI and JDN have clearly violated Section 4 (1) read with Section 4 (2)(e) of the Ordinance. They have also attempted to misrepresent and mislead us. The maximum fixed penalty under Section 38 of the Ordinance is fully justified. Therefore, CHEC, DI and JDN will each pay penalty of Rs. 50 million (Fifty Million Rupees).*

*90. CHEC and CWE are also in violation of Section 4 (1) read with Section 4 (2) (b) (e) of the Ordinance by filing cover bids and dividing territories. Their conduct before the Commission has also not been co-operative either. CHEC has already been imposed the maximum fixed penalty as per para 93 above, since the PQA Project has not yet been awarded and keeping in view the duration of the infringement, we are not imposing any further penalty on CHEC. As for CWE, we see no justification for imposing a penalty less than the maximum penalty prescribed under Section 38 of the Ordinance. CWE will, therefore, pay a penalty of Rs. 50 million (Fifty Million Rupees)."*

On 5<sup>th</sup> August 2010 TI Pakistan informed PQA that in the circumstances when the three contractors have been declared to have acted in collusion by the Competition Commission of Pakistan under Section 38 of the Competition Commission Ordinance, PQA has to take action



against the three contractors , M/s China Harbour Engineering Company Limited (CHEC), M/s Dredging International (DI), M/s Jan De Nul N.V (JDN) under Public Procurement Rules 2004, Rule No 2 (f), "corrupt and fraudulent practices" for the collusive practices among bidders (prior to or after bid.

The Tender documents of 2009, Vol I also included the following conditions for such acts,

**S-15. Fraud and Corruption**

(iii) "Collusive practices" means a scheme or arrangement between two or more Contractors with or without the knowledge of PQA , designed to establish prices at artificial, noncompetitive levels and to deprive PQA of the benefits of free and open competition;

(c) will sanction Contractors, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a PQA Contract if it at any time determines that the Consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices.

PQA did not act upon S- 15 (c), nor chose to act upon PPRA Rule No 19.

All the contractors declared by CCoP order dated 20 July 2010 as colluders , are therefore not eligible to participate in PQA tenders, unless PQA decides not to take action against them, or the order of CCoP has been declared as null and void , or restrained to be acted upon on the such contractor or contractors by a court of law.

Following clause therefore shall be included in the qualification criteria.

**" Contractors effected with the orders of Competition Commission of Pakistan dated 20 July 2010 shall provide the orders that either the CCoP Orders have been adjudicated by court of law as null and void, or each contractor shall provide a valid court order for not taking any coercive action to be taken against the contractor."**

Copies of the vetted tender documents are enclosed for further action. Soft copies of each documents shall be provided o TIP when they are issue to applicants.

Yours Sincerely,

Syed Adil Gilani  
Chairman

Copy forwarded to the Secretary Ports & Shipping for information.