



Member (Power)

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No. GMH/CEHO/TRB-4/15234
Dated 01.12.2011

Transparency International Pakistan,
5-C Second Floor Khyaban-e-Ittehad,
Phase-VII Defence Housing Authority,
KARACHI.

Subject: **COMPLAINT ON VIOLATION OF PUBLIC PROCUREMENT RULES 2004 IN TENDER NO. OP / ITR - 270 OF TARBELA POWER STATION: AWARD OF CONTRACT TO THE SECOND LOWEST RESPONSIVE BIDDER CAUSING LOSS OF RS 38.66 MILLION TO EXCHEQUER.**

Ref: i) Letter dated 30-06-2011 of Transparency International Pakistan to Chairman WAPDA.
ii) This office letter No. 8442/MP/GMH/CEHO/TRB-4 dated 05-08-2011 to you.
iii) Letter dated 17-08-2011 of Transparency International Pakistan to Chairman WAPDA.

Further comments to your reply dated 05-08-2011 [Ref-i] are as under:

- 1) Bids for "Design, Supply, Installation, Testing & Commissioning for Up-gradation of existing Electro-mechanical Governors of Tarbela Units 1-10 with the latest Digital Type Governors" were invited through the transparent procedure of International Competitive Bidding (ICB). It is to emphasize that the subject Assignment is a retrofitting Work in which some portion of the existing system is replaced with the new state-of-the-art system while the remaining is kept intact. Such works can be handled only by those companies who have adequate knowledge and experience of the existing system as well as interfacing of the old and new systems.
- 2) Technical and Financial Evaluation of seven(7) Bids was carried out by the Evaluation Committee on Quality Basis and in accordance with the criteria and procedures prescribed in the Tender Document. The Bid Evaluation procedure, as per PEC Standard Form of Bidding Document (also adopted in the subject Tender), specifies following sequence of steps;
➤ **Clause IB.24[24.1(a)] Preliminary Examination & Determination of Responsiveness of Bids**
24.1 Prior to the detailed evaluation of bids, pursuant to Clause IB.26.
(a) The Engineer will examine the bids to determine whether;
(i),(ii),(iii),(iv),(v),(vi),(vii).....[are met with].
(viii) **The bidder / manufacturer is eligible to Bid and possess the requisite experience.**
.....(ix),(x).....[are met with].

The Requisite Documents for establishing Bidder's Eligibility and Qualification based on General & Specific Experience have been narrated in Clause IB.13 of Bidding Document.

➤ **Clause IB.24[24.3]**

Determination of Substantial Responsive Bids; that is the Bids which conform to all the terms and conditions of the Bidding Documents without material deviations.

A material Deviation is one;

- (i) Which affects in any substantial way the scope, quality or performance of the Works / Goods / Spares.
- (ii) Which limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the bidder's obligations under the contract.

Clause IB.24 [24.4]

A Bid determined as substantially non-responsive will be rejected and will not subsequently be made responsive by the Bidder by correction of non-conformity.

Clause IB.30 [30.1] Award Criteria

Subject to Clause IB.32, the Employer will award the Contract to the Bidder whose bid has been determined to be substantial to the Bidding Documents and who has offered the lowest evaluated Bid Price, provided such bidder has been determined to be qualified to satisfactorily perform the contract in accordance with the provisions of Clause IB.29 (Post-qualification).

In the light of above criteria, the Bid of M/s PM Control was evaluated and determined to be **Substantially Non-Responsive** due to the following reasons;

- 3.1 M/s PM Control is neither designing nor manufacturing Governor System but purchasing the equipment from M/s L&S (USA) while installation & commissioning has been proposed through M/s Descon Engg., Pakistan, a steel fabricator, who does not possess the required experience in the retrofitting of Governing System of hydropower plants. This is a major deficiency on the part of PM Control which cannot be ignored.
- 3.2 M/s PM Control System, Singapore and the Sub-contractor M/s Descon, Pakistan do not possess the specific international experience of Designing, Manufacturing, Supplying and Commissioning of Digital Governing Systems of Hydropower Plants which is the primary requirement for Up-gradation / Retrofitting Work as per Tender conditions.

Another conspicuous deviation of PM Control is Non-acceptance of the Employer's rights by providing **Limitation of Liability** in their Bid as under:

Tender Condition / Requirement

The total liability of PM Control System Pvt. Ltd. for any and all claims whether in contract, strict liability, tort (including negligence), indemnity, warranty or any other type of action shall not exceed the contract price.

Bidder's Deviation

In no event shall PM Control System Pvt. Ltd. be liable to the Purchaser for any special, incidental, indirect, punitive, or consequential damage whatsoever whether in contract, strict liability tort (including negligence) including, but not limited to, a loss of use, loss of seals, loss of revenue, loss of profits, loss of product, loss of contracts, economic loss, or claims from Purchasers, resulting from PM Control System Pvt. Ltd. Performance or non-performance of its obligations under the Contract or purchase order".

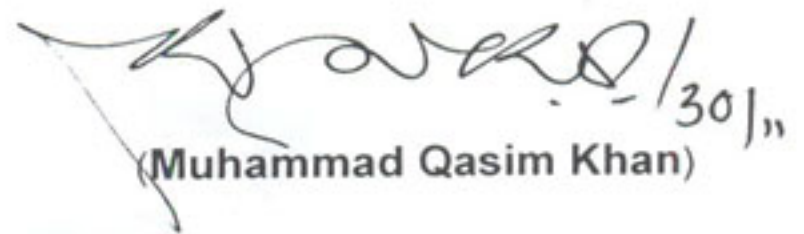
It is evident from the above that PM Control has totally refused to accept the rights of employer(WAPDA) and fulfillment of its obligation for successful completion / performance of the contract which is a noticeable material deviation under the **IB.Clause 24.3(ii)** of the Bidding Document thus rendering their Bid Non-responsive.

TI Pakistan has objected the method of loading of Bids by WAPDA for longer completion time, even if agreed to be calculated by a different method stated in the above referred cannot effect PM Control's **Non-responsive Bid on Technical and Commercial grounds.**

It is concluded from the above that WAPDA Tarbela had a free and fair open competition through ICB and subsequently completed Evaluation Process according to the criteria prescribed by PEC. The Bidders who did not fulfill the required qualification were declared as Non-responsive and there was no malicious intention behind any of the action on part of WAPDA as apprehended by M/s PM Control, Singapore and being pursued by TI Pakistan.

- 7) Regarding the posting of Evaluation Report on PPRA Website and completion of the Contract Award process within the due timeframe, necessary instructions have been issued to all the formations for future compliance.
- 8) M/s GE (USA) is not only the original manufacturer of the existing System but also world's renowned manufacturer / supplier of the latest versions of such equipment and meets all the prescribed criteria. As such recommendation for award of Contract to M/s GE (USA) was purely on merit and in the best interest of work.

PM Control, Singapore is persistently misguiding higher offices and agencies by twisting the facts and concealing the truth. The above reply adequately clarifies these misconceptions. It is also to be assured that WAPDA's team is committed to harness the abundantly available cheap source of hydropower and in the said process all the Rules of Law and Standard Procedures are followed strictly. Nevertheless, purchase of quality equipment from genuine manufacturers/suppliers is also ensured.


(Muhammad Qasim Khan)

D.O.No.PI-1(102)/2011
GOVERNMENT OF PAKISTAN
MINISTRY OF WATER AND POWER

JOINT SECRETARY

DATED 01ST DECEMBER, 2011

Syed Adil Gilani

Adviser
Transparency International Pakistan
Islamabad

Subject: Violation of PPRA Ordinance 2002 and Public Procurement Rules, 2004 in Privatizing 9 Power Stations generating 4679 MW

Dear Sir,

This has reference to your letter to the Federal Minister for Water & Power dated 2nd November 2011 on the subject cited above whereby you have objected on the amount of fees charged for registration and providing of Pre-qualification Documents (PQDsd) to bidders with regards to the outsourcing of Management, Operation, Maintenance and Rehabilitation of public sector power stations.

2. It is clarified that the cost of PQDs and registration fee has been duly approved by the Government of Pakistan under Policy for Power Generation projects 2002. Keeping in view, the capital intensive requirements of power sector and in order to avoid frivolous parties such charges are not exorbitant

With best Regards,

Yours Sincerely,



(Muhammad Zargham Eshaq Khan)

CC:

1. Chairman, Public Accounts Committee, Islamabad
2. Federal Minister of Water & Power, Islamabad
3. Federal Minister of Finance, Islamabad
4. Auditor General Pakistan, Islamabad
5. Chairman WAPDA, Lahore
6. Chairman, SECP, Islamabad
7. Registrar, Supreme Court of Pakistan, Islamabad
8. Managing Director, PPRA, Islamabad