



# TRANSPARENCY INTERNATIONAL-PAKISTAN

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30<sup>th</sup> March 2016

TL16/3003/1A

Managing Director,  
Karachi Water & Sewerage Board,  
Karachi.

Sub: Illegal Award of Unsolicited Contract of Rs. 25.5 Billion Karachi Water Supply Project, known as K-1V, to the Frontier Works Organization (FWO).

Dear Sir,

Transparency International Pakistan refers to the orders given by the Chief Minister on 23<sup>rd</sup> March, 2016 to award 'Unsolicited Contract of Rs 25.5 billion Karachi Water Supply Project, known as K-1V, to the Frontier Works Organization (FWO)', exempting application of SPPRA Rules in **National Interest**, under Section 21 (2) of Sindh Public Procurement Act 2009 (Amended in 2013).

The observations of Transparency International Pakistan were sent to the CM and copied to you on 15.2.2016.

The excuse taken by the CM to award this contract through Direct Contracting is that he has declared Karachi Water Crises and Law and Order as Emergency.

TI Pakistan observations;

1. Section 21 (2) of Sindh Public Procurement Act 2009 (Amended in 2013) is applicable only for National Interest, and Water Crises in Karachi is as bad as Electric Crises, which are due to in efficient measure by government.
2. The Project is delayed due to KWSB's own inefficient working, as the Consultancy Contract was awarded over 1-1/4 years ago.
3. Supreme Court of Pakistan has rejected the excuse of Electric Crises in RPP cases, and cancelled all RPP Contracts which were awarded on Direct Contracting basis, and the Ministers and officers who committed the illegal act are now facing 12 references in NAB Court.
4. The Act in many cases has been declared illegal by the Supreme Court of Pakistan viz. in CP 53 of 2007 and CP 83 of 2012 in case of Services Tribunal Act 1973. Even Sindh Emergency Procurement Act 2014, Sindh Act No 11 of 2014, giving exemption from SPPRA for 1 year, has not been used as in APC Case Supreme Court had declared award of unsolicited Contract as illegal.
5. How can GoS and FWO make an agreement on fixed cost of Rs. 25 billion, based on PC-I prepared in 2012. There is no parallel example of such contract.
6. It is feared that this project may cost more than Rs. 35 billion and FWO will use its connections to get extra cost from KWSB.
7. FWO has no experience of pumping station, intake and cross drainage structures, etc. which will cost about 50% of the project, and are highly technical works.
8. M/s FWO itself being a procuring agency, are bound to award sub-contracts under procedures defined in PPRA Rules.





9. The 50% funds are provided by Federal Government, which are to be spent under PPRA Rules.
10. Funds are also being provided to Green Line Metro by Federal Government, and all tendering in that project are also being awarded under PPRA.

In the Islamabad High Court's Judgment, Para 29, the award of unsolicited contracts under Prime Minister's directive, to another armed forces contracting company National Logistic Cell worth over Rs. 5 Billion, which were declared illegal. 'Quoted below is the Para 29';

*29. In view of the above discussion, Writ Petition Nos.3387, 3724/2012 and 582/2013 are allowed. I declare that assigning of work to Respondent No. 5 i.e NLC is illegal, unconstitutional, besides the PPRA Ordinance 2002 and PPRA Rules 2004, dictums laid down by the august Supreme Court, offensive to the universally accepted principle of fairness, honesty, transparency, openness and is result of colourable exercise of authority, irrelevant considerations, a naked corruption, polluted mannerism, offensive to public ex-chequer and an infringement to constitutionally guaranteed fundamental rights. It is also declared that assigning of work to NLC is glaring example of discrimination, favouritism, nepotism, ulterior motives and stinking approach to advance personal agenda*

*The assigning of work to NLC is declared to be cancelled with the direction that NLC shall return all amount received vide cheque Nos.B836966, B850167 and B853844 for execution of the projects within one week of the receipt of the order.*

*The procuring agency i.e Pak PWD may initiate the procedure afresh strictly in accordance with the PPRA Ordinance, 2002 and PPRA Rules, 2004 and by following the dictums laid down on the point of Public Procurement by the Hon'ble Supreme Court of Pakistan and may complete its process within one month.*

*It is further directed that copies of this judgment be sent to Chairman NAB for initiating proceedings against all those persons involved in big scam, including the then Prime Minister, his Principal Secretary, Secretary Ministry of Housing & Works and all the official of Pak PWD who abetted, aided and executed the illegal orders issued on behalf of the then Prime Minister and officials of NLC, who remained involved in obtaining assigning of work of development projects.*

In another famous RPP case in HRC 7734-G/09 on 30 March 2012, the Supreme Court of Pakistan declared all RPP unsolicited Contracts as illegal and void, and NAB was directed to file references against all responsible.

On the submission of Shahid Hamid that RPP to M/s Walters Power was awarded under Direct Procurement, Rule 42 (c) (v) in case of an emergency, the SC Judgment at S. No. 34 & 35, has declared that Rule 42 (c) is not applicable in RPP Contracts awarded in 2006 and 2009 and this Judgment has upheld perpetuity of PPRA Ordinance 2002 and PPRA 2004.

*35. A perusal of the above rule suggests that the provision for direct procurement without following procedure of fair competition was not applicable in the case of unsolicited proposal for RPPs.*


The Supreme Court in the same Judgement has also stated that;

*Suffice it to say, that since the ECC enjoys Constitutional status, one of its functions is to review from time to time the energy requirements, its effects and production and investment. Essentially, ECC is bound to act in accordance with the law of the land and the Rules. Thus, in presence of PEPPRA Rules, it was incumbent upon the Minister and the Secretary, Water and Power as well as other functionaries not to have put up such a case before the ECC in violation of the PEPPRA rules. In the summary dated 17.3.2009, it has not been mentioned that without following PEPPRA rules, unsolicited projects cannot be allowed.*

The Managing Director is requested to read and act on the Islamabad High Court and Supreme Court of Pakistan Judgments, due to which two ex PMs, and three Ex Ministers are facing NAB References for committing Corruption charges under NAO 1999, Article 9.

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 action under rules to immediate address this major act of contempt of court, in order to have good governance in Pakistan;

1. Chief Justice, Sindh High Court, Karachi
2. DG, NAB, Karachi.
3. Chief Secretary Sindh, Karachi.
4. MD, SPPRA, Karachi.
5. MD, PPRA, Islamabad.