



**TRANSPARENCY
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18th July, 2016

TL16/1807/7A

Qamar Zaman Chaudhry ,
Chairman,
NAB,
Islamabad.

Sub: Allegation of Collusion in the Award of Karachi- Lahore Motorway Project to M/s China Railway 20 Bureau & ZKB of Pakistan at a Cost of Rs 148.654bn Causing Loss of Rs 14 Billion Reference of Your Letter dated 15/6/2016.

Dear Sir,

Transparency International Pakistan request the Chairman to take cognizes of the allegation of Collusion in the Award of Karachi- Lahore Motorway Project to M/s China Railway 20 Bureau & ZKB of Pakistan at a Cost of Rs 148.654bn Causing Loss of Rs 14 Billion.


TIP has examined the clarification dated 15-06-2016 given by NHA on the allegation of Collusion of the Award of the Motorway Project which may have caused a loss of over Rs 14 Billion to the exchequer, and the detailed examination of the clarification given by NHA in form of chart, reveals that NHA is trying to manipulate the Public Procurement Rules 2004 and PEC Standard Bidding Documents for larger works, which are mandatory for NHA to abide with while processing any tender.

The chart is reproduced with the TI-Pakistan's comments on the NHA clarifications, in the 3rd column, which proves that the allegations of collusive bidding by NHA prima facie are true.

TI-Pakistan requests the Chairman, NAB to hold an inquiry into this alleged mis-procurement, and take action against the officers and the beneficiaries, in accordance with NAO 1999, and recover the alleged loss of Rs 14 Billion from the beneficiaries and also process administrative and criminal action under NAO 1999 against the officers responsible for indulging into this mis-procurement.

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. Chairman, Prime Minister's Inspection Commission, Islamabad.
3. Registrar, Supreme Court of Pakistan, Islamabad.
4. Managing Director, PPRA, Islamabad.

	TI-P objections dated 29-4-2016	NHA reply dated 15-6-2016	TI-P comments 18 July 2016
1	M/s China Railways 20 Bureau has never completed one single PKR 91 Billion project, and does not pas the qualifying criteria, similar to FWO.	China Railway 20 Bureau Group has executed similar work of Rs. 91 Billion and fulfills the respective Prequalification Criteria. As per laid down procedure in bidding documents, the documents provided by the Contractor, duly endorsed by Ministry of Foreign Affairs of China & countersigned by Counselor (CA) Embassy of Pakistan, Beijing were accepted. On the basis of these documents CR20G were pre-qualified. The other pre-qualified firms also submitted documents with similar authentication / endorsement which were accepted.	The pre-qualified company is M/s China Railways 20 Bureau, where as NHA has mis-stated that China Railway 20 Bureau Group fulfills the requirement. This is done in order to include the experience of the Group Companies , which not allowed under evaluation criteria.
2	M/s China Railway 20 Bureau & ZKB has misrepresented their experience to NHA by using the experience of their mother company, and included in its experience the project of the mother company China Railway Construction Corporation Limited.	As replied for Sr. No 1 above.	NHA has recommended the evaluation of Group instead on individual company, i.e, M/s China Railway 20 Bureau . This is an illegal act.
3	In the pre-bidding process, bidders were clearly told not to reduce quantities or the level of profile (thicknesses) of the road, and also not to compromise on minimum material requirements. But M/s China Railway 20 Bureau & ZKB have submitted an undertaking that they will increase quantities during the progress of the project. (which entitles the bidder to	This is an EPC Contract which is not based on the quantities and rates as done usually in item rate contracts. EPC contracts are lump sum and fixed price contracts. In this case bids were invited on the basis of an outline Design provided by NHA but a preliminary level design was required to be prepared and submitted by the bidders along with the bids. The bidders were allowed to suggest economical	The quantities of Embankment filling, Granular Sub-Base, Asphalt Base, Aggregate Base, Asphalt Wearing Course are based on the design. In the broad parameter of NHA which the thickness of the four items are controlled by the designed route of the road, as well as finished top level, and thickness of Granular Sub-Base, Asphalt Base, Aggregate Base, Asphalt Wearing

	extra payment on increased quantities).	design, meeting broad parameters set by NHA in the Employer's Requirements. During the bid evaluation process NHA carried out Technical Compliance Study of all four (04) bids through a third party (consultant). The results of study revealed that all four bidders submitted the bids based on their own Preliminary Design and non-binding quantities, but all bidders technically complied the Employer's Requirements. Hence, the observation regarding reduction in quantities is not relevant in this particular EPC Contract.	<p>Course based on the material specified to be used, by the Design Engineer, which cannot be changed by any EPC Bidder.</p> <p>A sketch of road structure is enclosed for understanding of NHA about the road structure parameter. Annex-A.</p> <p>The reduction in the quantities of formation of Embankment, changed by EPC contractor if not allowed as per Tendered Documents, and NHA clarification is false.</p> <p>Another mis- statement is from the fact that for the intelligent transportation system causing Rs. 10 Billion the contractor has not quoted any prices (Drawn below, and the item is deleted by the bidder, which is a non responsive act. .</p> <table border="1" data-bbox="1464 948 2069 1203"> <thead> <tr> <th data-bbox="1464 948 1559 1078">Pay Item</th> <th data-bbox="1559 948 1715 1078">Item Description</th> <th data-bbox="1715 948 1816 1078">Unit</th> <th data-bbox="1816 948 1995 1078">Quantities as per NHA requirements</th> <th data-bbox="1995 948 2033 1078"></th> <th data-bbox="2033 948 2069 1078"></th> </tr> </thead> <tbody> <tr> <td data-bbox="1464 1078 1559 1203">Bill No. 9</td> <td data-bbox="1559 1078 1715 1203">Intelligent Transportation System</td> <td colspan="4" data-bbox="1715 1078 2069 1203"> Not Quoted -The bid should have been rejected on this score. </td> </tr> </tbody> </table>	Pay Item	Item Description	Unit	Quantities as per NHA requirements			Bill No. 9	Intelligent Transportation System	Not Quoted -The bid should have been rejected on this score.			
Pay Item	Item Description	Unit	Quantities as per NHA requirements												
Bill No. 9	Intelligent Transportation System	Not Quoted -The bid should have been rejected on this score.													
4	M/s. FWO has been awarded many unsolicited projects in past by NHA, but in this case under NHA pressure FWO has to issue the following press release to	NHA carry out its procurements in fair and transparent manner though open competitive bidding processes.	NHA has given again a false statement, that NHA has always carried out fair and transparent process , as if they have never awarded contract to FWO without inviting tender.												

<p>justify that under PPRA Rules unsolicited Contracts are illegal. Annex-B.</p> <p><i>“It is clarified that FWO does not have any reservation on tendering process of NHA because FWO did not participate in the bidding process due to none fulfilling the pre-requisites. However after the opening of bid, FWO offered unsolicited proposal which NHA could not entertain due to PAPRA rules and procedures</i></p>	<p>Accepting unsolicited bid of FWO would have been a blatant violation of PPRA rule-16, sub rule-3.</p> <p>Pressurizing FWO by NHA is baseless allegation and depicts not only the biased and irresponsible approach of drafter of this letter but also the ignorance about basic procurement principles of PPRA. Pursuance of the same by TI-Pakistan is not understood.</p>	<p>Examples are;</p> <p>a. In 2010 NHA awarded the contract, without inviting tender, to FWO/ NLC worth Rs. 55 Billion were questioned by Public Account Committee (Annexure B).</p> <p>b. In 2012, NHA was questioned by Special Audit for awarding Rs. Hundreds million rupee Contracts to Loyua, NEPAS ect without inviting Tenders. (Annexure C).</p> <p>c. In 2016, the parliamentary panel based on the Audit Report of Ministry of Communication observed that FWO was awarded contract without inviting tender. In tender by NHA involving Emergency clause which should be stopped (Annexure D).</p> <p>These comments oN NHA clarificationS of TIP proves the collusion of NHA & China bidder, that NHA has not awarded tender to NHA for the reason best known to NHA and FWO.</p> <p>FWO has made a strange press statement that it cannot be awarded illegal un- solicited contract under PPRA Rules, in support of NHA , whereas FWO has again taken an unsolicited contract worth Rs. 24 Billion from Karachi Water & Sewerage Board without inviting tender in June ,</p>
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			2016.
5	<p>M/s FWO has a proven track record of successfully delivering Projects for the Government of Pakistan. To this end FWO has completed the (i) Karakorum Highway, which is one of the most difficult highway projects in the history of Pakistan (ii) Coastal Highway (800 Km in length). Currently, is executing the overlay of 375 KM long Motorway M-2 from Islamabad to Lahore costing Rs. 40 Billion and the expansion of the M9 motorway at a cost of Rs. 36 Billion.</p>	<p>In accordance with Prequalification Document, eligibility and qualification criteria, every applicant was required to have a similar work experience of Rs.91 Billion. M/ s FWO failed to fulfill the said criteria, hence FWO was declared disqualified in the PQ process like several other firms who also could not fulfill different PQ criteria.</p> <p>It may be noted that inspite of all the projects mentioned by TI-Pakistan, FWO did not fulfill the prescribed PQ criteria and any technically disqualified firm/ organization could not be considered prequalified merely based on the track record.</p>	Same as commented in Point 4 (above).
6	<p>It is capricious on behalf of NHA to award the project to a contractor (who has no prior experience on Rs 912 billion Road Contract) whereas FWO (which is a disciplined military operated institution and has proven expertise and capabilities) has offered 134 Billion PKR for the same project and thus causing a loss of Rs. 14 Billion to the national exchequer.</p>	<p>Replies at Sr. No 4 and 5 above may please be referred. Quoting so called loss of Rs.14 Billion everywhere seems an attempt to grab attention which has no connection with reality.</p>	NHA has not refuted the loss of Rs. 14 Billion to exchequer.

7	<p>Defective Bid Security</p> <p>Four bidders submitted bids (both technical and financial) on August 10, 2015 in single stage two envelope system. According to the provision of the bid as per Instructions to Bidders Clause 15.1 of the bid documents it was mandatory for all bidder participating in JV to submit the Bid Security in the name of Joint Venture. The said clause states:</p> <p>"Each Bidder shall furnish, as part of his Bid, a Bid Security of an amount not less than Rs. 500 million in Pak Rupees or an equivalent amount in any freely convertible currency. In case of a joint venture. Bid security shall be submitted with name of proposed JV accordingly". Clause 9.1(e) clearly states that a bid security furnished in accordance with Clause 15 of the Instructions to Bidders shall be a part of the bid.</p> <p>However, in violation of this mandatory clause China Railway 20 Bureau ZKB has submitted Bid Security in two parts with two different names (70% of the bid security amount is submitted in the company's own name i.e. China Railway 20 Bureau ZKB and not in the</p>	<p>The purpose of bid security in the bidding process is to ensure earnestness of the bidder during the bid validity period, so that a bidder (especially if lowest evaluated as well) should not withdraw its bid during bid validity period and if he does so his bid security would be forfeited as a penalty.</p> <p>The bid of M/s CR20G-ZKB KLM JV, was accompanied with the total required amount of bid security, and was accepted due to following reasons:</p> <ol style="list-style-type: none"> a. Amount of security is full as per requirement i.e. Rs. 500 Million. b. The Bid Security is in the shape of Bank Guarantee. c. Both parts of Bid Security are encashable by the Employer, if required. d. Both parts of Bid Security have been confirmed by the respective Banks. <p>The purpose is to safeguard the interest of state which was fully protected. IB Clause 15.1 read in conjunction with IB Clause 15.4 and IB Clause 24 does not determine the bid as non-responsive.</p>	<p>The bid security was not in accordance with tender document which has been accepted by NHA.</p> <p>According to <u>PPRA Rules the bid security should be in the form given in the document</u>, and even according to PEC Rules the bid not given in accordance with the tender documents, i.e, jointly by the joint venture, the tender should be rejected being non-responsive.</p> <p>There is no legal ground that NHA should have accepted this because bid security is a major issue and the joint venture should have been formed, and taken the liabilities together jointly, as well as severely.</p> <p>The NHA has committed a major violation by not rejecting the bid of this contractor.</p>
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	<p>name of the joint venture) which is clear violation of mandatory clause.</p> <p>Any deviation / violation from the instructions to bidder clause 15.4 of the Instructions to Bidders, which stipulates that any bid not accompanied by the proper bid security is non-responsive. Financial bid of such bidder should have been returned unopened. But in utter disregard of the bidding criteria, NHA proceeded to technically evaluate China Railway 20 Bureau ZKB.</p>		
8	<p><u>Tampered and Lowered Quantities Submitted by China Railway</u></p> <p>Following is a table reflecting how China Railway 20 Bureau ZKB has tampered, tweaked and lowered its bid by reducing quantities and work materials. Such a reduction should have led to the rejection of China Railway 20 Bureau ZKB's bid for being totally non-responsive and fictitious.</p>	<p>Please refer to comprehensive reply given at Sr. No 3.</p>	<p>The quantities reduced by the contractor as well as not quoting the bill of quantity No. 9 Intelligent Transportation System which is estimated cost of Rs 10 Billion in the approved estimated in is clear violation of tender documents and the bid should have been rejected.</p> <p>This means that Intelligent Transportation System will not be included in Contract, or NHA will pay additional cost to contractor for providing the Intelligent Transportation System</p>

Point 8 of TIP -STATEMENT SHOWING LOWERED QUANTITY BY CR-20 ZKB JV

Pay Item	Item Description	Unit	Quantity as per NHA's Requirement	CR20-ZKBJV Quantities	Difference in Quantity	*Price Quoted by CR20-ZKBJV	PRICE that effect the Total Bid
108r	Formation of Embankment from Borrow Excavation in Common Material	CM	51,859,057	37,859,057	14,000,000	742.48	10,394,720,000.00
201	Granular Sub-base	CM	1,996,186	1,800,790	195,396	2,592.70	506,603,209.20
203a	Asphalt Base Course Plant Mix (Class A)	CM	736,043	678,457	57,586	23,724.45	1,366,196,177.70
202	Aggregate Base Course	CM	3,793,478	3,639,323	154,155	4,354.32	671,240,199.60
305a	Asphalt Wearing Course Plant Mix (Class A)	CM	704,551	694,974	9,577	24,679.48	236,355,379.96
Bill No 9	INTELLIGENT TRANSPORTATION SYSTEM	Not Quoted		— The bid should have been rejected on this score alone.			10,000,000,000.00
							23,175,114,966.46

9	<p>The Project Quantity as per Employer's Preliminary / Concept Design were much higher than those quoted by M/s China Railway 20 Bureau & ZKB, and BOQ 9 Item of estimated cost of Rs 10 Billion was not quoted. This bid of M/s China Railway 20 Bureau & ZKB, is a non responsive bid. And all other bidders would have quoted at least Rs. 10 Billion on an average for this bill No 9, but have been knocked out due to the nepotism and favoritism that</p>	<p>Please refer to comprehensive reply given at Sr. No 3.</p> <p>The nepotism with Chinese Firm is not understood. The baseless allegations and the language used appears to be the reflection of personal grudge and frustration of losing contractors being conveyed through their paid assignees.</p>	<p>Same as commented in Point 8 (above).</p>
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	<p><u>NHA staff have for M/s China Railway 20 Bureau & ZKB. This disclosure of confidential information by the NHA staff in favour of China Railway 20 Bureau ZKB is clearly a corrupt and fraudulent practice whereby the individuals from NHA and the contractor have clearly colluded which if remains unchecked will no doubt cause loss to the national exchequer.</u></p>		
10	<p>The Bid of M/s China Railway 20 Bureau & ZKB can not be made responsive in view Tender Clause 24.1 (c)(vii) and Clause 24.3 of the Instructions to Bidders on the basis of illegal Bid Security and no quoting Bill No9 of about Rs 10 billion.</p>	<p>The clause-15.4 of Instructions to Bidders is as under:</p> <p><i>“Any bid not accompanied by an acceptable Bid security shall be considered by the Employer as non-responsive, pursuant to clause-24.”</i></p> <p><i>In order to deliberate the meaning and spirit of clause IB-24 (Preliminary Examination & Determination of Responsiveness of Bids), same IS reproduced below:</i></p> <p><u>"IB.24 Preliminary Examination & Determination of Responsiveness of Bids:</u></p> <p><i>24.1 Prior to detailed evaluation pursuant to Clause IB.26, the Employer . will determine the</i></p>	<p>Bid Security format cannot be changed. Pakistan Engineering Council (PEC) IB.15 Bid Security-15.3 clearly states that; <i>Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer as non-responsive.</i></p> <p>The bid security was not as per the bidding document, as a joint venture company, but is given by two separate companies, and the bid should have been rejected (Annexure E).</p>

		<p><i>responsiveness of the Bids as follows:</i></p> <p><i>(a) If all data as per Bidder's own Checklist have been provided?</i></p> <p><i>(b) the Employer will examine the Bids to determine whether;</i></p> <p><i>(i) the Bid is complete and does not deviate from the scope, including re-submission of Prequalification data as per IB 13.4.</i></p> <p><i>(ii) any computational errors have been made,</i></p> <p><i>(iii) required sureties have been furnished,</i></p> <p><i>(iv) the documents have been properly signed,</i></p> <p><i>(v) the Bid is valid till required period,</i></p> <p><i>(vi) the Bid prices are firm during currency of contract if it is a fixed price bid,</i></p> <p><i>(vii) completion period offered is within specified limits,</i></p> <p><i>(viii) the Bidder is eligible to Bid and possesses the requisite experience,</i></p> <p><i>(ix) the Bid does not deviate from basic technical requirements; and</i></p> <p><i>(x) the Bids are generally in order and dully filled in K, L & M components as per IB-9.</i></p>	
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		<p>(b) <i>A bid is likely not to be considered, if;</i></p> <ul style="list-style-type: none">(i) <i>it is unsigned,</i>(ii) <i>its validity is less than specified,</i>(iii) <i>it is submitted for incomplete scope of work,</i>(iv) <i>it indicates completion period later than specified,</i>(v) <i>it indicates that Works and materials to be supplied do not meet eligibility requirements,</i>(vi) <i>it indicates that Bid prices do not include the amount of income tax, and</i>(vii) <i>Alteration in Form of Bid as per IB.17.3.</i> <p>(c) <i>A bid will not be considered, if;</i></p> <ul style="list-style-type: none">(i) <i>it is not accompanied with bid security,</i>(ii) <i>it is submitted by a Bidder who has participated in more than one Bid,</i>(iii) <i>it is received after the deadline for submission of Bids,</i>(iv) <i>it is submitted through fax, telex, telegram or email,</i>	
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(v) it indicates that prices quoted are not firm during currency of the contract whereas the Bidders are required to quote fixed price(s),

(vi) the Bidder refuses to accept arithmetic correction,

(vii) it is materially and substantially different from the Conditions/ Specifications of the Bidding Documents depending on the material deviations made.

It is after review and determination of the responsiveness as per above that further action on technical evaluation will be taken."

In fact, IB-24 (i.e. Preliminary Examination and Determination of Responsive of Bid) is basic guidance to Employer for preliminary examination and determination of responsiveness of any bid. **IB-24.1(c)(i)**, clearly provides that prior to detailed evaluation, a bid will not be considered: "if it is not accompanied with bid security".

Conclusion:

The bid of Mjs CR20G-ZKB KLM JV, accompanied with total required amount of bid security was acceptable to the Employer due to

		<p>following reasons:</p> <p>a. Amount of security is full as per requirements i.e. Rs. 500 Million.</p> <p>b. It is in the shape of Bank Guarantee.</p> <p>c. Both parts are en-cashable by the Employer, if required.</p> <p>d. Both parts of Bid Security have been confirmed by respective Banks.</p> <p>IB Clause 15.1 read in conjunction with IB Clause 15.4 and IB Clause 24 does not determine the bid as non-responsive.</p>	
11	<p>Another PPRA Violation is M/s China Railway 20 Bureau ZKB's bid was actually Rs. 159 Billion. During the bidding process NHA staff took a discount from China Railway 20 Bureau ZKB. This discount was taken without actually looking into the item prices that China Railway 20 Bureau ZKB had given in its bid. This discount has not been reflected on the technical and financial evaluation sheet. Further, none of the other</p>	<p>The rationalization / adjustment of price was carried out in accordance with IB Clause 32.2. The adjustment of cost viz- a-viz preliminary design of bidder was discussed with CR20G-ZKB KLM JV <u>only when JV had already been established as "Lowest Evaluated Bidder"</u>. As a result of technical discussions, bidder rationalized its bid towards lower side. Thus NHA saved more than Rs. 10 Billion.</p> <p>There is not link between Undertaking and reduction in price through technical discussions.</p>	<p>The allegation of negotiation for the price with the lowest bidder so that he is declared as the lowest bidder of over Rs. 10 Billion has been accepted by NHA.</p> <p>This is a clear cut violation of PPRA Rules, which says that Rule 40</p> <p>40. Limitation on negotiations.- <i>Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest</i></p>

	<p>bidders were taken on board and allowed to offer a discount. NHA staff only allowed China Railway 20 Bureau ZKB to give a discount and that too secretly and without giving an opportunity to the rest of the bidders. This discount when juxtaposed with the undertaking given by China Railway 20 Bureau ZKB leaves no doubt that the bid is polluted and requires intervention as a matter of public importance. It would have been more cost effective for NHA to award the Project to FWO, which without any negotiation instantly saves and reduces cost by Rs. 24 Billion</p>	<p>Moreover, undertaking was sought from all the technically qualified bidders and not only from CR20G-ZKB KLM JV well before opening of Financial Bids.</p>	<p><i>evaluated bid or with any other bidder:</i></p> <p><i>Provided that the extent of negotiation permissible shall be subject to the regulations issued by the Authority.</i></p> <p>And also the PEC SBD Clause IB 31.2 clearly states, <i>No Negotiation with the bidder having evaluated as lowest responsive or any other bidder shall be permitted, however, Employer may have clarification meetings to get clarify any item in the bid evaluation report.</i></p> <p>Negotiations are only based on clarification on item but not to increase or decrease the prices quoted by the bidder. Acceptance of this violation is another proof of collusion (Annexure F).</p>
12	<p>According to PPPRA Rules no price negotiations are allowed.</p>	<p>No price negotiation was carried out rather it was the rationalization/ adjustment of price through technical discussion was in accordance with IB Clause 32.2. As a matter of fact EPC mode of procurement and its modalities are new and different than typical procurement processes of quantity based construction contracts, however, PPRRA Rules does not impose any restrictions on the technical discussions. In EPC bidding, bidders submit its preliminary design along with bid,</p>	<p>Same as commented in Point 11 (above).</p>

		<p>which is in variance to conventional quantity based flexible price contracts.</p> <p>If Employer, during evaluation process, is not mandated with technical discussion on preliminary design and corresponding adjustments in cost of lowest evaluated bidder then margin of bid evaluation would be minimal and spirit of bid evaluation at Employer's end would be compromised.</p>	
13	<p>A very high political personality is behind this Chinese Group and NHA has bulldozed the PPRA Rules under pressure.</p>	<p>NHA abided by all the procurement rules during this procurement, however it would have been better that political personality could be indicated by name. The desire to award the project to a disqualified bidder (i.e. FWO) by violating PPRA rule-16, sub rule-3 is not understood.</p>	-----

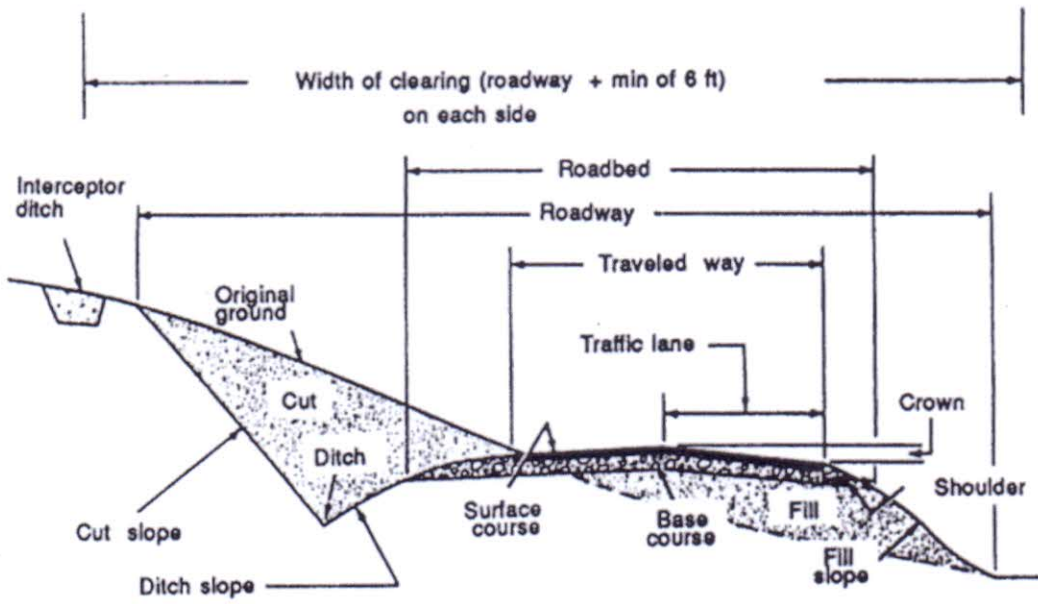
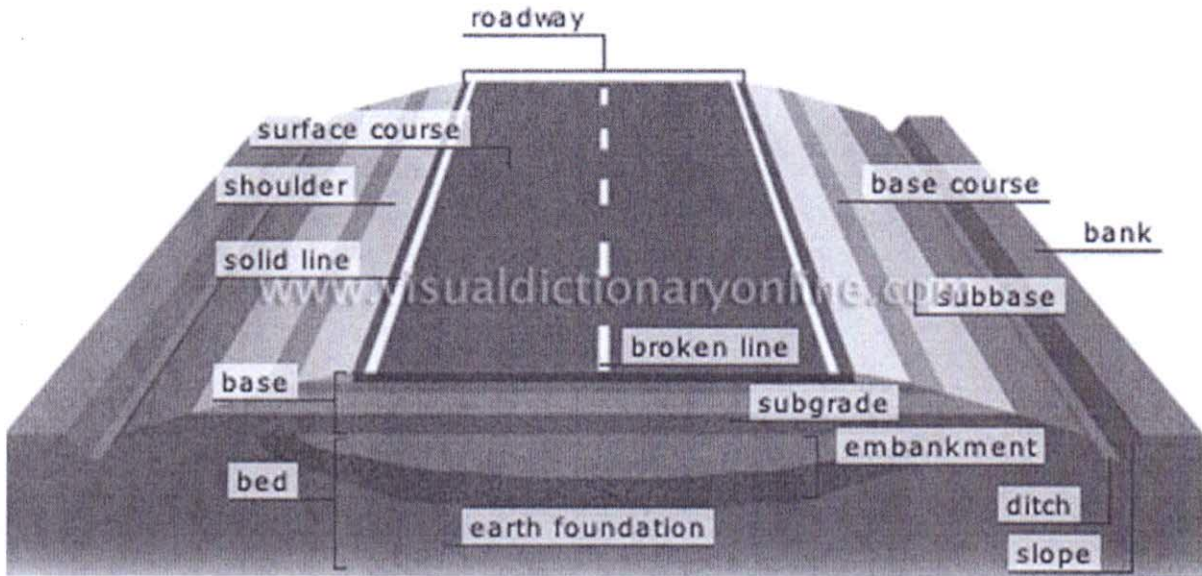


Figure 9-2. Road cross section and nomenclature



What PPRA rules? We'll eat as much as we like ...

Discussion in '[Pakistan Economy](#)' started by [sparklingway](#), Mar 17, 2010.

Source: <http://defence.pk/threads/what-ppra-rules-well-eat-as-much-as-we-like.50830/#ixzz4EY9IDAq7>

Military organisations, foreign firms get Rs100 bn deals without tenders; PAC takes stock of NHA violation of Public Procurement Rules today

By Rauf Klasra

ISLAMABAD: The National Highway Authority (NHA) has allegedly awarded lucrative contracts worth billions of rupees to select local and foreign organisations without inviting the mandatory public tenders and observing the laid down rules and procedures as per the Public Procurement Rules (PPR).

According to available details, contracts worth Rs55 billion were awarded to the Frontier Works Organisation/ National Logistic Cell, Rs40 billion to a Chinese firm and a Rs11 billion deal to an Italian firm without inviting any public and international tenders amid complaints that some of these doled out contracts were even sub-let to local contractors by the military-run company, reveal official papers to be taken up in the Public Accounts Committee (PAC) meeting here on Tuesday.

The documents show a total of 22 development projects worth over Rs100 billion have been awarded to only four parties — two run by the Pakistan military establishment and two foreign without inviting any national or international tenders. The lion's share has gone to the FWO which got 16 deals, while four went to the NLC and two were awarded to Chinese and Italian firms.

These multibillion rupee deals inked with these four parties are in contravention of the Public Procurement Rules, which were given a legal shape during Musharraf's regime to stop the use of discretionary powers of any official or the agency to grant multibillion rupee contracts without inviting public tenders.

One top source confirmed the NHA had started awarding these lucrative contracts to the FWO from 2001 onward when the then-military ruler Gen Pervez Musharraf had it conveyed to relevant government organisations to give contracts to the military-run construction firm without inviting any tenders. The Musharraf regime had then used the ruse that private contractors indulged in corrupt practices with the connivance of corrupt bureaucrats and also indulged in pre-planned litigation to delay execution of the development projects in order to claim cost overruns from government agencies.

The source claimed in some cases, complaints were made to the ministry of communication in the past, pointing out FWO bosses had been subletting their lucrative contracts after deducting their own profits from such deals.

An alleged tug of war between the-then minister for communication Shamim Siddiqi and the then-NHA chairman Gen Farrukh had ensued over such deals after both the sides exchanged strong worded letters amid serious charges and accusations.

Sources said these deals were simply negotiated across the table, in total violation of rules, and these powerful parties walked out of the NHA building after signing these lucrative deals without facing any competition.

Earlier, after taking note of awards of these contracts without the public tendering, the PAC had summoned NHA chairman Altaf Hussain to appear before the committee members along with official documents of these deals.

According to a copy of presentation to be made in the PAC meeting and obtained by The News from NHA sources, a Chinese firm was given contract of \$417 million and Rs4.4 billion to improve Khunjerb Section (KKH 335km). An Italian firm was also given a contract for widening of CRBC Sarai Gambila section (n 55-70km) worth Rs11.226 billion.

Talking to The News, one top official of the NHA, who refused to be identified, confirmed the award of contracts without open tendering. But, **he defended the award of these multibillion rupee contracts to the FWO/NLC and gave his own reasons and logics to justify violation of Public Procurement Rules . He said the Chinese company was given contracts without tendering, because it had arranged the loan of \$417 million from Chinese bank. Likewise, he pointed out the Italian company got Rs11 billion contract without open tendering to settle an old contract dispute with the NHA.**

When asked about the rest of contracts signed with the FWO/NLC without inviting public tenders, the NHA official said: We needed to understand the FWO had the capability to deliver in hostile terrains, remote areas not easily accessible to civil contractors or in areas facing adverse law and order situation. He said the failure of civil contractors to deliver had also compelled the NHA to mobilise the FWO/NLC to execute the balance of works. He also rejected the allegations that the FWO had sublet certain projects to private contractors after deducting their profit from the deals.

Following is the list of NHA projects given to FWO/NLC without inviting tenders to be presented before the PAC. Rehabilitation and improvement of Bund Road Lahore Rs551 million, Construction of Lyari-Ormara section of Makran coastal road (Rs3.9 billion), construction of Pasni-Gwadar Makran coastal road (Rs2.88 billion), improvement of N70 Khajuri bewata section Balochistan (Rs897 million), construction of Karachi Northern Bypass (Rs1.5 billion), construction of Lyari Expressway (Rs4.8 billion), rehabilitation and improvement of Torkham-Jalalabad (Rs2 billion), construction of Gwadar-Ratodero

project (Rs1.9 billion), construction of Gwadar-Pleri section (Rs2.4 billion), leftover works of Timergarh-Akhagram road (Rs501 million), leftover works of Dargai (Rs622 million), Jalkhad-Babusar top section of MNJC (Rs976 million), Babusar-Chillas section (Rs1.3 billion), improvement (Chinese firm) (Rs4.4 billion and \$417 million), construction of Pleri-Gabd section (Rs1.02 billion), rehabilitation of CRBC (Italian firm) (Rs11 billion), rehabilitation of earthquake damages in NWFP and AJK contract package (Rs2.3 billion), rehabilitation of earthquake damages part two (Rs922 million), rehabilitation of earthquake damages Kohala-Muzaffarabad section (Rs1.6 billion). Up-gradation, widening and construction of Surab-Basima-Nag-Pangur road (Rs17.4 billion), construction of additional carriageway Torkham-Jalalabad (Rs4.3 billion) and construction of leftover and additional works (Rs1.3 billion).

Pakistan Today

NHA awards contracts in violation of rules

Islamabad

JUNE 24, 2012 BY ONLINE

The National Highway Authority (NHA), violating the public procurement rules, awarded contracts amounting to Rs 674.415 million to various contractors, including FWO, without open tenders, resulting in losses to the national exchequer.

These irregularities were unearthed in a special audit report on the account of National Highway Authority (NHA) for the year 2011-12. In the report, it was exposed that Rs 68.623 million had been given to M/s AA associates for consultancy services for detailed design and construction supervision of a bridge linking Kandhkot Ghotki, Rs 10.200 million awarded to M/s Loya Associates for design update of a bridge over the River Chenab and its approach roads.

The audit report also revealed that Rs 151.934 million were awarded to NESPAK for design and construction supervision of additional carriageway Torkhum-Jalalabad Road, Rs 18.472 million were given to Engineering Associates for the design of geometric improvement of Multan Inner Ring Road.

M/s engineering associates was awarded Rs 86.249 million for construction supervision of the inner city Ring Road Multan and Rs 275 million were given to FWO for maintenance of the road from Jaglot to Skardu and Karakoram highway, the report revealed.

Official sources said that, according to the public procurement rules, any department should use open competitive bidding as the method of procurement for procurement of goods, services and works.

They said that any violation of this rule would be mis-procurement. Absence of open competition based on transparency deprives the entity of the advantage of competitive rates and denies a fair opportunity to other prospective bidders for their participation in the bidding process.

This violation occurred due to inadequate oversight mechanism for exercise of relevant internal controls.

The audit report recommended that matter be investigated and responsibility be fixed for violation of the rules and action initiated against those responsible for the lapse.

QAU facing water shortage: The water crisis has worsened in the Quaid-e-Azam University and its residential colonies where the Capital Development Authority (CDA) supplies water twice a week against the requirement of 1,000 gallons per day.

A couple of months ago, the civic agency provided water for two hours a day despite the

shortages, but the supply has been remarkably reduced during this week.

Talking to this news agency, a reliable source said that the university administration time and again lodged written and verbal complaints to the civic agency, but the managers of the CDA always turn a deaf ear towards the situation.

"The administration would take every possible step to end the crisis and the vice chancellor would personally visit the CDA chairman's office to request him for uninterrupted water supply," the source added.

The source said that over 2,000 male and female students residing in the hostels and 5,000 day scholars spent a specified time in the university. He added that besides this number the situation is worse in the four residential colonies.

To a question the source said that experts belonging to varsity's earth sciences department surveyed multiple areas within its jurisdiction but didn't find underground water anywhere. He said that the administration currently uses its own sources like water tankers of its horticulture cell to provide water in the hostels.

Importantly, the source informed this scribe that on the other hand water theft is on the rise in adjacent rural areas of QAU. "Presently each slum house can avail an illegal water connection from a 48-inch diameter supply line for just Rs. 5000," he added.

He said that the QAU administration repeatedly requested the CDA to provide water from the same supply line but of no avail.

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NHA told to award contracts to FWO as per PPRA rules

April 22, 2016
RECORDER REPORT



A parliamentary panel Thursday directed the National Highways Authority (NHA) to award contracts to Frontier Works Organisation (FWO) by following PPRA rules. While examining the audit reports of Ministry of Communication for the year 2002-03, Committee Convenor Syed Naveed Qamar observed that previous regimes had awarded contracts to FWO without calling tender by invoking the emergency clause-a provision in PPRA rules. He said that tender should be invited in each contract in future.

The audit observed that NHA code provides that the work should be awarded after calling transparent and open tenders to achieve most economical and competitive rates. Government of Pakistan, Ministry of Defence Rawalpindi dated December 1985 provides that no preferential treatment may be given to M/s FWO and such work may be awarded on competitive basis under the normal rules.

National Highways Authority awarded a work for additional carriageway Rahim Yar Khan-Tarinda Muhammad Pannah Project worth Rs 3.2 billion to M/s FWO without calling open and transparent tenders.

Audit was of the view that awarding of work to FWO without tendering should be referred to Finance for policy decision. The audit rejected the reply of management of NHA. The NHA officials contended that work was awarded to FWO on the basis of emergency and serious traffic blockage.

Audit further observed that FWO is normally awarded work under the cover of hard area and the law and order situation. In the instant case no such condition existed.

In another case, NHA awarded a contract for Lahore Bund Road Project to M/s FWO without calling open and transparent tenders. This resulted in an irregular award of work amounting to Rs 551.362 million.

The audit contended that the award of work is irregular. The NHA informed that in future all contracts will be awarded on competitive basis.

IB.31 Notification of Award

- 31.1 Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder in writing ("Letter of Acceptance") that his Bid has been accepted. This letter shall name the sum which the Employer will pay the Contractor in consideration of the execution and completion of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called the "Contract Price").
- 31.2 No Negotiation with the bidder having evaluated as lowest responsive or any other bidder shall be permitted, however, Employer may have clarification meetings to get clarify any item in the bid evaluation report.
- 31.3 The notification of award and its acceptance by the bidder will constitute the formation of the Contract, binding the Employer and the bidder till signing of the formal Contract Agreement.
- 31.3 Upon furnishing by the successful bidder of a Performance Security, the Employer will promptly notify the other bidders that their Bids have been unsuccessful and return their bid securities.

IB.32 Performance Security

- 32.1 The successful bidder shall furnish to the Employer a Performance Security in the form and the amount stipulated in the Bidding Data and the Conditions of Contract within a period of 28 days after the receipt of Letter of Acceptance.
- 32.2 Failure of the successful bidder to comply with the requirements of Sub-Clause IB.32.1 or Clauses IB.33 or IB.35 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.

IB.33 Signing of Contract Agreement

- 33.1 Within 14 days from the date of furnishing of acceptable Performance Security under the Conditions of Contract, the Employer will send the successful bidder the Contract Agreement in the form provided in the Bidding Documents, incorporating all agreements between the parties.
- 33.2 The formal Agreement between the Employer and the successful bidder shall be executed within 14 days of the receipt of the Contract Agreement by the successful bidder from the Employer.

ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS

38. Acceptance of bids.-

The bidder with the lowest evaluated bid, if not in conflict with any other law, rules, regulations or policy of the Federal Government, shall be awarded the procurement contract, within the original or extended period of bid validity.

39. Performance guarantee.-

Where needed and clearly expressed in the bidding documents, the procuring agency shall require the successful bidder to furnish a performance guarantee which shall not exceed ten per cent of the contract amount.

40. Limitation on negotiations.-

Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder:

Provided that the extent of negotiation permissible shall be subject to the regulations issued by the Authority.

41. Confidentiality.-

The procuring agency shall keep all information regarding the bid evaluation confidential until the time of the announcement of the evaluation report in accordance with the requirements of rule 35.

42. Alternative methods of procurements.-

A procuring agency may utilize the following alternative methods of procurement of goods, services and works, namely:-

(a) petty purchases.-

Procuring agencies may provide for petty purchases where the object of the procurement is below the financial limit of *twenty five thousand rupees. Such procurement shall be exempt from the requirements of bidding or quotation of prices:

**Amended vide Cabinet Division No. 5/37/2005-M-III/Admin (PPRA), dated 13-12-2006*

For the purpose of payments, the exchange rates used in bid preparation shall apply for the duration of the Contract.

IB.14 Bid Validity

- 14.1 Bids shall remain valid for the period stipulated in the Bidding Data after the Date of Bid Opening specified in Clause IB.23.
- 14.2 In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period which shall in no case be more than the original bid validity period. The request and the responses thereto shall be made in writing. A bidder may refuse the request without forfeiting his Bid Security. A bidder agreeing to the request will not be required or permitted to modify his bid, but will be required to extend the validity of his Bid Security for the period of the extension, and in compliance with Clause IB.15 in all respects.

IB.15 Bid Security

- 15.1 Each bidder shall furnish, as part of his bid, a Bid Security in the amount stipulated in the Bidding Data in Pak Rupees or an equivalent amount in a freely convertible currency.
- 15.2 The Bid Security shall be, at the option of the bidder, in the form of Deposit at Call or a Bank Guarantee issued by a Scheduled Bank in Pakistan or from a foreign bank duly counter guaranteed by a Scheduled Bank in Pakistan or an insurance company having atleast AA rating from PACRA/JCR in favour of the Employer valid for a period 28 days beyond the Bid Validity date.
- 15.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer as non-responsive.
- 15.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the period of Bid Validity.
- 15.5 The Bid Security of the successful bidder will be returned when the bidder has furnished the required Performance Security and signed the Contract Agreement.
- 15.6 The Bid Security may be forfeited:
 - (a) if the bidder withdraws his bid except as provided in Sub-Clause 22.1;
 - (b) if the bidder does not accept the correction of his Bid Price pursuant to Sub-Clause 27.2 hereof; or