



12th March 2015

Mr. Shahid Ashraf Tarar,
Chairman,
National Highway Authority,
NHA HQ, 27, Mauve Area, G-9/1,
Islamabad.

**Sub: News on unsolicited Award of Karachi Hyderabad Motorway M 9 Project on BOT
Basis to M/s FWO at Rs 36 Billion, preciously awarded as unsolicited Construction
Contract to M/s FO in 2013 at Rs 13 Billion**

Dear Sir,

Transparency International Pakistan refers to the news on the Award of 136 KM, 6-lane Karachi Hyderabad Motorway M 9 Project on BOT Basis to M/s FWO at Rs 36 Billion.

On 22-2-2013, TI Pakistan has objected on the unsolicited award of M-9 Construction and Consultancy Contracts to M/s FWO at Rs 13 Billion, without tender. **Annex-A**

On 8.3.2013, President Asif Ali Zardari laid the foundation stone of Karachi-Hyderabad M-9 Motorway in Hyderabad and it was reported that the project, which includes construction of 136 KM, 6-lane motorway with 20 bridges, will be completed in 2 years at a cost of 13 billion rupees.

However, the Public Procurement Regulatory Authority (PPRA) declared the grant against its regulations and 'recommended' that the contracts be awarded after openly inviting tenders to ensure fairness and transparency in the process,

The letter, written by PPRA official Dilshad Baber and addressed to cabinet division's Nazarul Usman, was in reference to cabinet division's letter sent to the PPRA two days earlier (No 5/1/2013, RA-III dated Feb 14, 2013). The letter stated "It is informed that according to rules 20 and 21 of the Public Procurement Rules, 2004, the principle method of procurement is open competitive bidding for procurement of goods, services and works. Direct tendering is allowed in terms of Rule 42 (c), subject to the fulfillment of conditions mentioned therein. Similarly, negotiated tendering is allowed in terms of Rule 42 (d), subject to fulfillment of conditions mentioned therein."

How can NHA Award a Contract to FWO on BOT without Tender, that too on Rs 36 Billion, which, was to be completed as construction contract in 2013 at only Rs 13 Billion.

NHA had also awarded this very contract on the basis of built, operate and transfer (BOT) to a Malaysian multinational company in January 2012 at a cost of Rs18.267 billion, and under a



concession agreement, the company was to recover the cost by collecting toll from the vehicles using the road for 25 years, which was also scrapped.

Kindly note that according to Supreme Court of Pakistan Judgment in RPP cases and Safe City Case, unsolicited Contracts were declared illegal and void.

Chairman is also advised to note that Islamabad High Court's Judgment, Para 29, the award of unsolicited contract under Prime Minister's directive, to NLC worth over Rs. 5 Billion 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 directive No.4218/M/PSPM/2012 dated 02.10.2012 issued by the Principal Secretary to the Prime Minister, Memorandum of Understanding between Secretary, Ministry of Housing & Works and NLC and all subsequent orders passed are hereby set aside, declared void, unprecedented, sham, rarity, based on cheating, deception, fraud and nullity in the eyes of law, therefore, same are set aside.

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.

Similarly copy of this judgment may also be sent to the Chief Election Commissioner, District Returning Officer of constituency NA-51, Gujjar Khan to appreciate as to



whether in the light of the observations made in the judgment, Raja Pervaiz Ashraf, can be believed as sagacious, righteous, honest, upright, trustworthy and Ameen.

The Chairman, NHA is requested to clarify why it has violated the Rules and awarded this Contract at 100% higher cost within 3 years, and that too without open competitive bidding to M/s FWO. And why NHA has involved a government company, when the policy of present government is to privatize all PSEs. And if the government is ready to finance, then why Construction Contract is not processed as per PPRA Rules.

And if the process is found to be illegal, the Chairman may, take action to initiate termination of this contract, and initiate tendering as per PPRA Rules, for the Construction Contract.

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, NAB, Islamabad.
3. Chairman, PMIC, Islamabad.
4. Registrar, Supreme Court of Pakistan, Islamabad.
5. Managing Director, PPRA, Islamabad.