



NATIONAL HIGHWAY AUTHORITY

Office of General Manager (P&CA)

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Ref: 2()/GM (P&CA)/NHA/16/985

15 June, 2016

Mr. Sohail Muzaffar

Chairman

Transparency International – Pakistan

5-C, 2nd Floor, Khayaban-e-Ittehad

Phase-VII, Defence Housing Authority

Karachi

(Tel: 021-35390408-9 Fax: 021-35390410)

Subject: **ALLEGATION OF COLLISION 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: Your letter No. Nil dated 29th April, 2016

In response to above mentioned letter, comprehensive replies to all the observations raised by your esteemed Organization are placed at **Annexure-I**. It is apprised that EPC contract and their bid evaluation process is considerably different than the conventional quantity based flexible price contracts, and needs to be seen in the same perspective. The uncommon intricacies of this procurement process are required to be kept in view while evaluating EPC (Engineering, Procurement and Construction) contracts.

2. NHA is all out to ensure that the procurement processes are completed in a transparent manner and would remain forthcoming to clarify any further query, please.


(PARVEZ IQBAL SULEHRI)
General Manager (P&CA)

Encl: as above

Copy for information to -

- Secretary to Prime Minister, Islamabad
- Chairman, NAB, Islamabad
- Chairman, PMIC, Islamabad
- DG, NAB, Islamabad
- Registrar, Supreme Court of Pakistan, Islamabad
- Managing Director, PPRA, Islamabad
- Member (Engg-Coord) NHA, Islamabad
- SO (Tech) to Chairman, NHA, Islamabad

Ref: (TI-Pakistan letter dated 29th April 2016)

Subject: Allegation of collision in the Award of Karachi Lahore Motorway Project to M/s China Railway 20 Bureau and ZKB of Pakistan at a cost of Rs. 148.654bn causing loss of Rs. 14 Billion

Sr. No.	TI-Pakistan Complaint	NHA Reply
1-	M/s China Railway 20 Bureau has never completed one single PKR 91 Billion project, and does not pass the qualifying criteria, similar to FWO.	<p>China Railway 20 Bureau Group has executed similar work of Rs. 91 Billion and fulfills the respective Prequalification Criteria.</p> <p>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.</p> <p>The other pre-qualified firms also submitted documents with similar authentication / endorsement which were accepted.</p>
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.
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 extra payment on increased quantities).	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 alongwith the bids. The bidders were allowed to suggest economical 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

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		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.
4-	<p>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 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>NHA carry out its procurements in fair and transparent manner though open competitive bidding processes.</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>
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>
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</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>

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	<p>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>	
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 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>	<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.</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>

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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>STATEMENT SHOWING LOWERD QUANTITY BY CR-20 ZKB JV</p> <table border="1" data-bbox="191 698 885 1093"> <thead> <tr> <th>Pay Item</th> <th>Item Description</th> <th>Unit</th> <th>Quantities as per NHA's Requirement</th> <th>CR20-ZKB JV Quantities</th> <th>Difference In Quantity</th> </tr> </thead> <tbody> <tr> <td>108r</td> <td>Formation of Embankment from Borrow Excavation in Common Material</td> <td>CM</td> <td>51,859,057</td> <td>37,859,057</td> <td>14,000,000</td> </tr> <tr> <td>201</td> <td>Granular Sub-base</td> <td>CM</td> <td>1,996,186</td> <td>1,800,790</td> <td>195,396</td> </tr> <tr> <td>203a</td> <td>Asphalt Base Course Plant Mix (Class A)</td> <td>CM</td> <td>736,043</td> <td>678,457</td> <td>57,586</td> </tr> <tr> <td>202</td> <td>Aggregate Base Course</td> <td>CM</td> <td>3,793,478</td> <td>3,639,323</td> <td>154,155</td> </tr> <tr> <td>305a</td> <td>Asphalt Wearing Course Plant Mix (Class A)</td> <td>CM</td> <td>704,551</td> <td>694,974</td> <td>9,577</td> </tr> <tr> <td>Bill No.9</td> <td>INTELLIGENT TRANSPORTATION SYSTEM</td> <td>Not Quoted</td> <td colspan="3">The bid should have been rejected on this score</td> </tr> </tbody> </table>	Pay Item	Item Description	Unit	Quantities as per NHA's Requirement	CR20-ZKB JV Quantities	Difference In Quantity	108r	Formation of Embankment from Borrow Excavation in Common Material	CM	51,859,057	37,859,057	14,000,000	201	Granular Sub-base	CM	1,996,186	1,800,790	195,396	203a	Asphalt Base Course Plant Mix (Class A)	CM	736,043	678,457	57,586	202	Aggregate Base Course	CM	3,793,478	3,639,323	154,155	305a	Asphalt Wearing Course Plant Mix (Class A)	CM	704,551	694,974	9,577	Bill No.9	INTELLIGENT TRANSPORTATION SYSTEM	Not Quoted	The bid should have been rejected on this score			<p>Please refer to comprehensive reply given at Sr. No 3.</p>
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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 <u>due to the nepotism and favoritism that 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>	<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>																																										
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 No. 9</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</i></p>																																										

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	of about Rs. 10 billion.	<p><i>considered by the Employer as non-responsive, pursuant to clause-24."</i></p> <p>In order to deliberate the meaning and spirit of clause IB-24 (Preliminary Examination & Determination of Responsiveness of Bids), same is reproduced below:</p> <p><u>IB.24 Preliminary Examination & Determination of Responsiveness of Bids:</u></p> <p>24.1 Prior to detailed evaluation pursuant to Clause IB.26, the Employer will determine the responsiveness of the Bids as follows:</p> <p>(a) If all data as per Bidder's own Checklist have been provided?</p> <p>(b) the Employer will examine the Bids to determine whether;</p> <p>(i) the Bid is complete and does not deviate from the scope, including re-submission of Prequalification date as per IB 13.4.</p> <p>(ii) any computational errors have been made,</p> <p>(iii) required sureties have been furnished,</p> <p>(iv) the documents have been properly signed,</p> <p>(v) the Bid is valid till required period,</p> <p>(vi) the Bid prices are firm during currency of contract if it is a fixed price bid,</p> <p>(vii) completion period offered is within specified limits,</p> <p>(viii) the Bidder is eligible to Bid and possesses the requisite experience,</p> <p>(ix) the Bid does not deviate from basic technical requirements; and</p> <p>(x) the Bids are generally in</p>

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		<p>order and dully filled in K, L & M components as per IB-9.</p> <p>(b) A bid is likely not to be considered, if;</p> <ul style="list-style-type: none"> (i) it is unsigned, (ii) its validity is less than specified, (iii) it is submitted for incomplete scope of work, (iv) it indicates completion period later than specified, (v) it indicates that Works and materials to be supplied do not meet . eligibility requirements, (vi) it indicates that Bid prices do not include the amount of income tax, and (vii) Alteration in Form of Bid as per IB.17.3. <p>(c) A bid will not be considered, if;</p> <ul style="list-style-type: none"> (i) it is not accompanied with bid security, (ii) it is submitted by a Bidder who has participated in more than one Bid, (iii) it is received after the deadline for submission of Bids, (iv) it is submitted through fax, telex, telegram or email, (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

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		<p style="text-align: center;"><i>material deviations made.</i></p> <p><u>It is after review and determination of the responsiveness as per above that further action on technical evaluation will be taken.</u>"</p> <p>Infact, 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".</p> <p><u>Conclusion:</u> The bid of M/s CR20G-ZKB KLM JV, accompanied with total required amount of bid security was acceptable to the Employer due to following reasons:</p> <ol style="list-style-type: none"> a. Amount of security is full as per requirements i.e. Rs. 500 Million. b. It is in the shape of Bank Guarantee. c. Both parts are en-cashable by the Employer, if required. d. Both parts of Bid Security have been confirmed by respective Banks. <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</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</p>

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	<p>evaluation sheet. Further, none of the other 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>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. Moreover, <i>undertaking</i> was sought from all the technically qualified bidders and not only from CR20G-ZKB KLM JV well before opening of Financial Bids.</p>
12-	<p>According to PPRA 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, PPRA Rules does not impose any restrictions on the technical discussions. In EPC bidding, bidders submit its preliminary design alongwith bid, which is in variance to conventional quantity based flexible price contracts. 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>