



28th April, 2023

TIP23/2804/1A

Mr. Muhammed Tahir Hassan,
Director General,
Pakistan Broadcasting Corporation (PBC),
Islamabad.

Subject: Complaint Against Allegations of Violation of Public Procurement Rules 2004, by Pakistan Broadcasting Corporation (PBC) in Tender Enquiry: ENG/PROC-4(255-B)/23- SUPPLY AND INSTALLATION OF ELECTRICAL, ELECTRONIC EQUIPMENT WITH ACCESSORIES ON DDP TURNKEY BASIS UNDER PSDP PROJECT TITLED "UPGRADATION OF STUDIOS & MASTER CONTROL ROOMS"

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Tender Enquiry: ENG/PROC-4(257-A)/23- SUPPLY AND INSTALLATION OF ELECTRICAL, ELECTRONIC, MECHANICAL EQUIPMENT & ESSENTIAL CIVIL WORK ON DDP TURNKEY BASIS UNDER PSDP PROJECT TITLED "ESTABLISHMENT OF SAUT UL QURAN FM NETWORK PHASE-II".

Dear Sir,

Transparency International Pakistan refers to the Ministry of Information and Broadcasting Letter No. 2(15)/2023-M-I (PBC) dated 18th April 2023 and received by TI Pakistan on 27th April 2023 (**Annex-A**) sent in response to TI Pakistan letter No. TIP23/0903/1A dated 9th March, on the subject above.

The Ministry of Information and Broadcasting has argued that PPRA Rules 2004, Rule No. 4 allows the procuring agency to give preference to govt. officials/state-owned organizations to safeguard the interests of the exchequer, which is a misconstrued interpretation of PPRA Rule 4, quoted below:

4. Principles of procurements. Procuring agencies, while engaging in procurements, shall ensure that the procurements are conducted in a fair and transparent manner, the object of procurement brings value for money to the agency and the procurement process is efficient and economical"

Rule 4 clearly and unequivocally states that the procurement process must be fair and transparent which means that the procuring agency has to go for open tender and cannot give preference to state-owned companies.

On 29th June 2021, the federal government notified the amended Public Procurement Regulatory Authority (PPRA) rules which allow the government to award contracts to the state-owned enterprises without floating public tenders, quoted below: (**Annex-B**):

Amended rule 42 (f): "A procuring agency may engage in direct contracting with state-owned entities such as professional, autonomous or semi-autonomous organizations or bodies of the federal or provincial governments for the procurement of such works and services, including consultancy services, which are time-sensitive and in the public interest"



It is to be noted that the amended rule 42 (f) allow direct contacts between the government entities only on the conditions that the organisation or the body is eligible to perform the services and accomplishes the work including consultancy services, exclusively through its own resources without involving the private sector as a partner or in the form of a joint venture or as a sub-contractor.

In the subject tender, it is clear that Pakistan Broadcasting Corporation will rely on the service of the private company and that the state owned companies cannot alone perform the work required under the subject tender.

Transparency International Pakistan requests the Director General, Pakistan Broadcasting Corporation (PBC) to review the allegations in the light of PPRA Rules 2004 and if found correct, issue directives to amend the bidding document to allow for a competitive, fair and transparent bidding and re-tender the said tenders in compliance with PPRA Rules 2004 to avoid mis-procurement under Rule 50.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption, and achieve against Zero tolerance against corruption

Regards

Advocate Daniyal Muzaffar,
Trustee/Legal Advisor
Transparency International Pakistan

Note:

This is to clarify that Transparency International Pakistan is not a complainant, it acts as a whistleblower and operate under Article 19-A, of the Constitution of Pakistan which gives the right to public to know how government is being run by public officers. Article 19-A makes the right to access of information pertaining to a public authority a fundamental right, Justice Syed Mansoor Ali Shah in his landmark judgment in case of Ataullah Malik v. Federation of Pakistan includes following order.

Right to information is another corrective tool which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19-A empowers the civil society of this country to seek information from public institutions and hold them answerable. PLD 2010 Lahore 605.

1. Principal Secretary to PM, PM House, Islamabad
2. Minister, Ministry of Information and Broadcasting, Islamabad
3. Secretary, Ministry of Information and Broadcasting, Islamabad
4. Chairman Public Accounts Committee, National Assembly, Islamabad
5. Chairman, NAB, Islamabad
6. Chairman, Prime Minister Inspection Commission, PMIC, Islamabad
7. Registrar Supreme Court of Pakistan, Islamabad
8. MD, PPRA, Islamabad

GOVERNMENT OF PAKISTAN
MINISTRY OF INFORMATION AND BROADCASTING

Annex-A

No. 2(15)/2023-M-I (PBC)

the Islamabad 18th April, 2023

Subject: COMPLAINT AGAINST ALLEGATION OF VIOLATION OF PUBLIC PROCUREMENT RULES, 2004, BY PAKISTAN BROADCASTING CORPORATION (PBC) IN TENDER ENQUIRY: ENG/PROC-4(255-B)/23-SUPPLY AND INSTALLATION OF ELECTRICAL, ELECTRONIC EQUIPMENT WITH ACCESSORIES ON DDP TURNKEY BASIS UNDER PSDP PROJECT TITLED "UPGRADATION OF STUDIOS & MASTER CONTROL ROOMS"

Reference TIP letter No. TIP 23/0903/IA, dated 09-03-2023 regarding the subject cited above.

2. Enclosed please find herewith a copy of reply received from PBC Headquarters Islamabad for necessary clarification on the subject matter.


(Muhammad Waqar Anwar)
Deputy Director (M-1)

Advocate Daniyal Muzaffar,
Trustee /Legal Advisor,
Transparency International Pakistan
Karachi

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**PAKISTAN BROADCASTING CORPORATION
HEADQUARTERS-ISLAMABAD
(PROCUREMENT CELL)**

No. ENG/PROC-4(Misc.)/23

Dated: 04-04-2023

Subject: **COMPLAINT AGAINST ALLEGATION OF VIOLATION OF PUBLIC PROCUREMENT RULES-2004 BY PAKISTAN BROADCASTING CORPORATION (PBC) IN TENDER INQUIRY: ENG/PROC-4(255-B)/23 - SUPPLY & INSTALLATION OF ELECTRICAL, ELECTRONIC EQUIPMENT WITH ACCESSORIES ON DDP TURNKEY BASIS UNDER PSDP PROJECT TITLED "UP-GRADATION OF STUDIOS AND MASTER CONTROL ROOMS"**

The undersigned is directed to refer to Ministry of Information & Broadcasting's letter vide No. M/o I&B U.O. No. 2(15)/2023-M.I (PBC) dated: 15-03-2023 enclosed with a copy of letter received from Transparency International dated 09-03-2023 on the subject matter and to submit clause-wise detailed report in annotated form attached herewith.

2. Submitted for kind perusal and onward submission to the quarters concerned, please.

Encl: As above.

Naeem Arshad Khero
Naeem Arshad Khero
Director (P&D)

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Mr. Muhammad Waqar Anwar
Deputy Director (M-1)
Ministry of Information and Broadcasting,
Islamabad.

Deputy Director (P&D)
Dy. No. 11
Dated 6-4-23

Tender No	Complaint Under Clause 3.12	Explanation
ENG/PROC-4(257-A)/23 14-02-2023 & ENG/PROC-4(255-B)/23 16-02-2023	<p><i>"The tenders are discriminatory and favoring state-owned entities; thus, discouraging competition and transparency and violating Public Procurement Rules-2004 (PPRA-2004)."</i></p>	<p>In clause 3.12, it has been stated that govt. officials/state-owned organizations participating in the bidding process will be given preference in order to safeguard the interests of the exchequer (PPRA rule No. 4) and saving PSDP funds from being lapsed. This condition is added keeping in view the prevailing economic conditions faced by the country with particular reference to drying up foreign currency, non issuance of LCs, ban on import of selective equipment etc. The bidding offer is open to all thereby providing level playing field to all interested vendors without any favor. The condition, as such, bars none from participating in the tendering process. Furthermore, framing of T&Cs is at the sole discretion of procuring agency what best suits to its requirement while complying with PPRA-2004. However, the interested vendors have right to negotiate on any of the conditions during and before the opening of bids.</p>
	<p>Complaint Under Clause 4.3 & 4.4</p> <p><i>"If the delivery of the equipment is late due to any conditions which come under the force majeure, then the contractor will have to submit a CDR of equal amount of the contract value to avoid the lapse of PSDP funds and to make the payment to the contractor in advance through AGPR."</i></p>	<p>Explanation</p> <p>This condition seems to have been misconstrued and misunderstood by the complainant. This is not a bid security value but Cash Deposit Receipt (CDR) equal to contract amount value. This condition may invoke in case late delivery of goods. Against CDR, the procuring agency may consider advance payment to the vendor through AGPR to avoid lapsing of public funds. The state-owned entities have been exempted from this condition because there is no risk involved in lapsing of public funds. Foregoing explanation in view, Rule No. 25 of PPRA does not apply here.</p>
	<p>Complaint Under Clause 1.2(a-c)</p> <p><i>(a) Offices of the company: if available in more than 15 different cities (15 marks)</i></p> <p><i>(b) Offices of the company: if available in more than 10 and less than 15 different cities (10 marks)</i></p>	<p>Explanation</p> <p>Any of the clauses or sub-clauses provided in Serial No. 1.2(a)-(c) of Technical Evaluation Criteria could have been amended or omitted had the aggrieved firm lodged its complaint or appeared or discussed with the procuring agency within the stipulated time as specified in the tender documents</p>

	<p><i>(c) Offices of the company: if available in more than 5 and less than 10 different cities (5 marks)</i></p>	<p>(clause 5 (i) & (ii)). It may however be noted that the above criteria were made part of the bidding documents to avoid prolonged breakdown in transmission system in cases where compact equipment i.e. transmitters, generators, UPS, AVR, Antenna, etc. are required. Interestingly, none of the five other participating firms had raised any complaints against the subject tenders. PPRA rule No. 36 allows the procuring agency to revise, modify or add any aspects of technical requirements or evaluation criteria upon receipt of grievances from the bidders.</p>
	<p><i>Explanation note of Annex-G "Technical Evaluation Criteria"</i></p>	<p>The note at the end of Annex-G of "Technical Evaluation Criteria" is related to eligibility criteria, not technical evaluation criteria of the firms. Nevertheless, the ambiguity in question could have been cleared had the complainant approached the procuring agency well on time as specified in tender documents. However, PBC will try to leave no room for any ambiguity in future tenders or tender documents.</p>


 Director (P&D)

Annex-B

Cabinet exempts state-owned entities from 'transparency rules'

The amendments were introduced after several govt entities sought exemptions from the PPRA rules

Shahbaz Rana July 08, 2021



The IMF has asked Pakistan to end state control of the rupee. PHOTO: FILE

ISLAMABAD:

The federal cabinet has amended the procurement rules to allow the government to award contracts to the state-owned enterprises

without floating public tenders, which may compromise transparency in public sector deals.

The federal government notified the amended Public Procurement Regulatory Authority (PPRA) rules on June 29 after approval from the cabinet, according to the notification.

According to the amended rule 42 (f), “A procuring agency may engage in direct contracting with state-owned entities such as professional, autonomous or semi-autonomous organizations or bodies of the federal or provincial governments for the procurement of such works and services, including consultancy services, which are time-sensitive and in the public interest”.

Only time-sensitive cases are allowed exemption, Managing Director of the PPRA Rizwan Malik said, adding that these cases would also be subjected to four major conditions to ensure efficiency and transparency.

He said the government bodies that would get contracts without competition would not be allowed to subcontract the work.

Sources said the major beneficiaries of this key amendment would be entities such as the National Logistic Cell, Frontier Works Organization and NESPAK.

Read: [PPRA bars CAA from deal with UK](#)

The amendments were introduced after several government entities sought exemptions from the PPRA rules in the name of national security and defence.

However, the government has not yet been able to waive off violations of the PPRA rules in the case of Rs17 billion Kartarpur projects that had been awarded in violation of the PPRA rules.

But the rules allow direct contacts between the government entities on the conditions that the organisation or the body is eligible to perform the services and accomplishes the work including consultancy services, exclusively through its own resources without involving the private sector as a partner or in the form of a joint venture or as a sub-contractor.

In case there are more than one organisations or body eligible to perform the works or render the services, the procuring agency shall hold competition amongst them through limited tendering (notifications) without any advertisements. However, they will be allowed a reasonable time for the

submission of their applications or proposals, according to the third condition for awarding a direct contract.

The procuring agency would devise a mechanism for determining price reasonability to ensure that the prices offered by the state-owned entities are reasonable for the award of the contract, according to the amended rules.

Malik said that the government has also set a spending limit under the force account to Rs200 million to provide more flexibility in spending to the government organization. The force account is defined as the execution of the small works and non-consultancy services through direct contracting with any state-owned entity.

In addition, according to the amendments, the procuring agency may use force account if the value of procurement does not exceed Rs200 million, subject to the conditions that the required works are small, scattered or remotely located for which qualified construction firms are unlikely to bid at reasonable prices; work is required to be carried out without disrupting ongoing operations; and urgent repairs, rehabilitation and remodelling works of national heritage requiring prompt attention to prevent further damages.

The amendments in the PPRA rules are part of conditions set for \$400 million loan by the World Bank.

In the past year, about 23 major amendments have been introduced in the PPRA rules of 2004, the managing director said.

The managing director stressed that objective of bringing these amendments is to relax the conditions of doing business and bringing efficiency and transparency in public procurements.

The sources said that the new parameters are also aimed at ending fraudulent and corrupt practices that plague the public procurement systems and are generally accepted. The corruption is so enormous that the contractors are now becoming members of the parliament by using black money, sources added.

The MD said maintained that internationally blacklisted companies will also be blacklisted in the country “but a chance will also be given to public sector companies for review petition”.

The procuring agency will be required to devise a comprehensive mechanism for blacklisting and debarment of bidders for a specified time. The bidders will be disqualified for 10 years on corrupt and fraudulent practices. If the bidder fails to execute the contract, he will be disqualified for three years.

The government's definition of the blacklisted company says: "Blacklisted means a bidder that is declared untrustworthy by the authority after establishing the fact that the bidder was found in any corrupt and fraudulent practices or declared incapable due to its established performance failure during the execution of the contract".

Read more: [*Cabinet mulls case of mis-declared import*](#)

On coercive practices like harming or giving threats to harm people, on collusive, corrupt and fraudulent practices a bidder can now be disqualified.

After procurements, it will be for the first time that the PPRA rules will also apply to the disposal of the public assets, Rizwan Malik said.

In rules, domestic procurements will be given preference while a standard bidding document would be uploaded on the website.

A bidder that is barred by one entity will be considered debarred by all the public sector procuring agencies in Pakistan.

The rules have also been amended to make room for timely announcement of the results of the bid.

Based on the procedure adopted for the respective procurement, the procuring agency shall announce the result of bid evaluation, in the form of a final evaluation report giving justification for acceptance or rejection of bids at least 15 days prior to the award of procurement contract: Provided that in the case where a technical proposal is to be evaluated separately, prior to the opening of the financial proposal, the technical evaluation report shall be announced before the opening of the financial proposal.

The government has omitted the rule that allows giving discounts on bids values.