



9<sup>th</sup> March, 2023

TTP23/0903/1A

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"**  
**&**  
**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 has received a complaint against the allegations of violation of Public Procurement Rules 2004 by Pakistan Broadcasting Corporation in Tender Enquiry: ENG/PROC-4(257-A)/23 dated 14.02.2023 and Tender Enquiry: ENG/PROC-4(255-B)/23, dated 16.02.2023.

The complainant has made following allegations that;

1. Pakistan Broadcasting Corporation Published Tender No. ENG/PROC-4(257-A)/23 dated 14.02.2023 and Tender No. ENG/PROC-4(255-B)/23, dated 16.02.2023.
2. The Tenders are discriminatory and favorable towards certain State-owned entities; thus, discouraging competition and transparency and violating the Public Procurement Rules, 2004.
3. The common Clause 3.12 of the Tenders evaluation criteria clearly favors State-owned entities in the tendering process. Clause 3.12 is quoted below: **(Annex-A)**.

***3.12 The firm/company supervised by Govt. officials/state owned organization will be preferred in order to avoid lapsing of PSDP funds. In such case funds could be transferred in advance being at no risk in the pattern of PWD.***

4. Furthermore, common Clause 4.3 of Section-II of Terms & Conditions of Contract also violates PPRA Rules 2004. Clause 4 is quoted below: **(Annex-B)**.

***4.3 "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."***

5. The Tenders require the bidders to submit the entire contract value as bid security which is in violation of PPRA Rule 25.
6. The common Clause 4.4 in violation of PPRA Rules 2004 excludes certain entities, state owned or supervised by government officials, from furnishing any bid security at all. Clause 4.4 is quoted below: **(Annex-C)**.



*"4.4 The bidders/participants who are state owned/supervised by Govt. officials (mentioned in their company MOU) may not Submit a CDR of equal amount of contract value in order to avoid lapse of PSDP funds (as PBC is operating with PWD)."*

7. The Technical Evaluation Criteria provided in Annex G of the Tenders are also illegal. Serial No. 1.2(a)-(c) pertain to category points for the number of offices the bidding company has throughout Pakistan. It is incoherent with the rest of the Criteria. For example, the experience of technical persons provided for in 1.1(a)-(c) is fundamental to the work required in the Tenders. However, the technical evaluation of a bidder based on the number of offices they have is declaratively evident of benefitting pre-decided bidders. Therefore, this criterion for technical evaluation is also illegal and is in violation of PPRA Rules 2004 (**Annex-D**).
8. The Technical Evaluation Criteria in the note at the end of Annex G states that the Bid Evaluation Committee may check other perimeters not provided for in the criteria if it deems fit, which is also violation of PPRA Rules 2004, (**Annex-E**).

#### **Transparency International Pakistan Comments**

Transparency International Pakistan has reviewed the allegations of the complainant, prima facie the allegations seem correct. Following are TI Pakistan comments;

1. Clause 3.12 is a violation of Rule 4, which clearly and unequivocally states that the procurement process must be fair and transparent. Rule 4 is 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"*

2. Clause 4.3 violates Rule 25 of PPRA Rules which states that no more than 5% of the estimated value of procurement may be required as bid security. Rule 25 is quoted below:

*25. Bid security.- The procuring agency may require the bidders to furnish a fixed amount of bid security not exceeding five percent of the estimated value of procurement determined by the procuring agency: Provided that in case where the procuring agency does not require the bid security, the bidder shall submit bid securing declaration on the format prescribed by the Authority in Standard Procurement Documents."*

3. The note at the end of Annex G that states about the Bid Evaluation Committee is a violation of Rules 30 and 36. The relevant portions of both Rules are reproduced below for ease of reference:

*30. Evaluation of bids.- (1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in sub-clause (iv) of clause (c) of Rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents...."*

*"36. Procedures of open competitive bidding.- Save as otherwise provided in these rules the following procedures shall be permissible for open competitive bidding, namely:-*

*(c) Two stage bidding procedure.-*

*First stage*

*(iv) the procuring agency may revise, delete, modify or add any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not in consistent with these rules:*




*Provided that such revisions, deletions, modifications or additions are communicated to all the bidders equally at the time of invitation to submit final bids, and that sufficient time is allowed to the bidders to prepare their revised bid:*

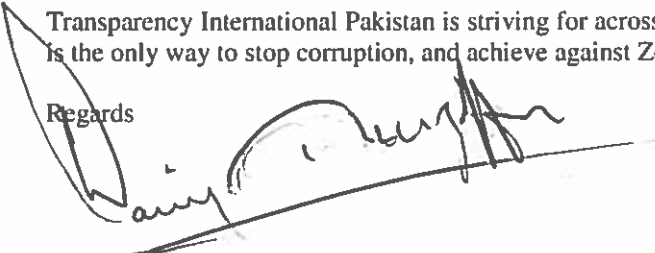
...”

**Transparency International Pakistan Recommendations**

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 documents to allow for a competitive, fair and transparent bidding and re-tender the said tenders in compliance with PPRA Rules 2004.

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

# Annex-A

- d. The bidder undertakes that he himself & his firm not involved in corrupt & fraudulent practices as described in PPRA rule 2004 clause 2 sub clause(f)
  - e. In case bidder deviates from any commitment made in his technical proposal/offer, then his bid security will be forfeited & may be debarred/cross debarred for reasonable time.
  - f. The bidder will not be liable to raise any objection on the terms & conditions of bid document as stated in **clause-5 below**.
- 3.6 In case of OEM intends to participate, it must be registered with relevant (FBR) taxation and registration authorities of Pakistan with registered offices.
  - 3.7 The equipment/brands that are already operating in PBC will be evaluated on the base of equipment's performance certificate obtained from the concerned unit through C (M&O) and responsiveness of supplier/bidders will be evaluated on the base of responsiveness with procurement cell as well as response to the end user/C (M&O).
  - 3.8 Prospective Bidder must provide Valid Documentary proof against serial Nos. 3.1 to 3.8 along with the bid. Non-Submission of any of above document will lead to consideration of a firm as NON-RESPONSIVE (As per rule # 13 PPRA Rules 2004) and Sub-sequent NON-CONSIDERATION for the evaluation.
  - 3.9 The bidders may quote the equipment in USD and/or PKR in their proposals whereas the final price/quotation will be locked @ USD rate on the time & date of agreement which will be converted into Pakistani rupees (which may be negotiable) for payment at the completion of task in accordance with the PPRA rule clause #30 (2). This will be negotiated at the time of agreement with the successful bidder keeping in view the volatility of dollar rate.
  - 3.10 In case any bidder quotes in both (USD & PKR), PBC will consider the lower rate (which may be negotiable) i.e. whichever shall be beneficial for PBC.
  - 3.11 Affidavit For Government Owned Legal Entities: In case the Bidder is a government owned legal enterprise or institution, such Bidder must establish that it is legally and financially autonomous and operating under commercial law. Bidder that is a government owned legal enterprise or institution shall submit their MOU & Article of Association to ascertain its legal standing.
  - 3.12 The firm/company supervised by Govt. officials/state owned organization will be preferred in order to avoid lapsing of PSDP funds. In such case funds could be transferred in advance being at no risk in the pattern of PWD.
4. **COST OF TENDERING**

The bidder shall bear all costs associated with the preparation and submission of its bid and the PBC will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
  5. **CLARIFICATIONS OF BIDDING DOCUMENTS**
    - 5.1 A prospective bidder requiring any clarification(s) regarding technical & commercial aspects of tender document may notify to DC (Procurement) PBC. The concerned officer from PBC Procurement cell will respond to any request for clarification, which should be received well before (approximate 05 working days or more) to the deadline for the submission of bids. Copies of PBC's response will be forwarded to all prospective bidders

### **TERMS AND CONDITIONS OF CONTRACT**

#### **1. PERFORMANCE GUARANTY ( PPRA clause 39)**

- 1.1 The successful bidder shall furnish to the PBC a performance guarantee (PPRA Rule clause 39) equivalent to 10% of the total ordered value, in the shape of CDR issued from any scheduled bank of Pakistan valid for the entire warranty period starting from the date of signing of contract and will remain valid till the issuance of Final Acceptance Certificate (FAC).
- 1.2 The performance guarantee shall be further extended accordingly if the delivery is delayed.
- 1.3 Failure of the successful bidder to furnish acceptable performance shall constitute sufficient grounds for the annulment of the award and forfeiture of the performance security.
- 1.4 The performance guaranty will be forfeited if:
  - a) If the successful bidder/ contractor becomes defaulter/insolvent or deviates from any other obligation and not able to deliver the equipment as a whole or partially and equipment is delivered but not able to install, commission and test the equipment as per PAT and consequently PAC is not issued by end-user.
  - b) In case the equipment is delivered, installed & commissioned, PAT & PAC issued then performance guaranty/security will be retained for the entire warranty period. The performance guaranty/security will be forfeited when the performance during the warranty period not satisfactory.
- 1.5 All the correspondence regarding release of performance guarantee shall be made with Deputy Controller (Procurement) PBC HQ.

#### **2. CONTRACTOR'S RESPONSIBILITIES**

- 2.1 The contractor shall supply the equipment in accordance with the contract & responsibility matrix.
- 2.2 The contractor shall not subcontract the whole of the works. The contractor shall not subcontract any part of the works without the consent of PBC/ purchaser.

#### **3. TRANSPORTATION / PACKING**

All types of transportation for delivery of equipment at final destination (as required by PBC) will be the responsibility of the contractor. Contractor shall ensure proper / international packing of equipment to avoid deterioration of equipment etc.

#### **4. TIME FOR COMPLETION/DELIVERY:**

- 4.1 The contractor shall supply, install, test and configure the equipment within 60 days or earlier from the date of signing of contract; however incumbent bidder must also specify the timelines in which he can execute the whole work. The timeline can be finalized by mutual consent of both parties.
- 4.2 If the contractor fails to execute the work within the agreed time, or unless the delay in completion is due to force majeure as mentioned in clause # 11 below of this tender document, the contractor's only liability to the PBC for such failure shall be to pay an amount equivalent to 0.167% of contract value per day but maximum to 10% of total contract value.

4.3 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.

4.4 The bidders/participants who are state owned/supervised by Govt. officials (mentioned in their company MOU) may not submit a CDR of equal amount of contract value in order to avoid lapse of PSDP funds (as PBC is operating with PWD).

## 5. WARRANTY/SERVICES:

### 5.1 GENERAL

Bidder warrants and guarantees to purchaser, its successors and assigns that the goods and services covered by the Contract will:

- (a) Conform to the applicable specifications and other descriptions;
- (b) Be sufficient and suitable for Purchaser/Buyer's intended purpose.
- (c) Be of good material and workmanship; and be free from defect & brand new. Seller's responsibility under this warranty shall include without limitation, all parts, labor and transportation cost in the event the goods must be returned to bidder for repair or replacement. The warranty means the warranty that OEM gives in his website and/or brochure for the equipment quoted.
- (d) The Purchaser/Buyer will notify the seller/bidder in writing of any claims arising under the warranty period and seller/bidder will repair/replace the defective store within 48 hours or earlier without any cost effect to purchaser.
- (e) The bidder, for technical assistance at the highest level shall provide high-level support/technical assistance on 24/7 bases during the warranty period.

### 5.2 WARRANTY REMEDIES

If any goods or services fail to conform to the warranties during the applicable warranty period, bidder/Seller will service, adjust or replace any non-conforming goods or re-perform non-conforming services at no charge to purchaser/Buyer as soon as possible upon written notice from purchaser. For goods installed by Seller/ bidder, on-site repair, limited to servicing, adjusting or replacing part(s), will be performed at no additional cost to Buyer/Purchaser. For the goods installed by Buyer/Purchaser, non-conforming goods shall be returned by Buyer to Seller, at Seller's cost, and repaired or replacement parts shall be shipped by Seller to Buyer, on D.D.R (Incoterms). The removed store/spare by the Buyer to be returned to Seller for repair or replacement and the installation by Buyer of replacement or repaired parts shall be at Seller's expense.

### 5.3 REMEDIES AND DAMAGES

In addition to Seller's obligations described in Section 5.1 if any goods are reasonably determined to fail to conform to the warranties set forth in this Contract, Seller shall reimburse Buyer for all reasonable losses, costs and damages caused by such nonconforming goods. Such costs and damages may include, without limitation, costs, expenses and losses of Buyer and/or its customers arising from production interruptions or slowdowns.

# Annex-D

Annex-G

## “TECHNICAL EVALUATION CRITERIA”

1. Experience				
Sr. No.	Description	Category Points	Total Points/ marks obtained	Documents Required
1	Company Profile of the Consultant/Firm	10		Company Profile documents
1.1 (a)	Experience of technical persons hired/attached with the participating bidder for Installation/Commissioning of tendered equipment: List of engineers/skilled persons with their qualification must be attached, if the experience of technical persons is more than 10 years	20	-	Copies of CVs of employed technical staff
1.1 (b)	If the experience of technical persons is more than 7 but less than or equal to 10 years	15	-	
1.1 (c)	If the experience of technical persons is more than 5 but less than or equal to 7 years	10		
1.2 (a)	Offices of the company: if more than 15 different cities	15	-	Office addresses with contact numbers
1.2 (b)	Offices of the company: if more than 10 less than 15 different cities	10	-	
1.2 (c)	Offices of the company: if more than 5 less then 10 different cities	5		
1.4 (a)	Participating bidder/firm did not delay the execution of work and no LD charges deducted in PBC in more than 3 consecutive contracts.	5		Report from P&D and Procurement
1.4 (b)	If more than 2 but less than or equal to 3	3		
1.4 (c)	If more than 1 but less than or equal to 2	2		
<b>Sub Total:</b>		<b>50</b>		
2. Financial Capability				
Sr. No.	Description	Category Points	Total Points	Documents Required
2.1 (a)	Participating bidder/ Firm's annual turnover, if greater than 60 million (it may vary as per budgeted cost of tender and qualification for the procurement goods)	10		Bank Statement of last two years
2.1 (b)	If greater than 50 million but less than or equal to 60 million	7		
2.1 (c)	If greater than 40 million but less than or equal to 30million	6		
<b>Sub Total:</b>		<b>10</b>		
3. Bidders attitude & response				
Sr. No.	Description	Category Points	Total Points/ marks obtained	Documents Required
3.1	Participating bidders if not involved in disputes & litigation with PBC on already agreed terms within two years period of procurements/consultancy and in case bidder is new in PBC than certificate from public sector	3		Report from P&D and Procurement

# Annex-E

	procuring Agency			
3.2	Participating bidder found responsive to the RFP and did not involve to prolong agreement signing by any means	3		
3.3	After Sales support	4		
<b>Sub Total:</b>		<b>10</b>		
<b>4. Operational Capability</b>				
Sr. No.	Description	Category Points	Total Points obtained	Documents Required
4.1(a)	Degree/ diploma in Engineering Professionals (electrical, electronics, telecom & mechanical) with at least 3 years relevant experience* each. If more than 10 qualified engineers and 5 DAE with more than 3 years' experience	15		Detailed CV's of professional staff are required
4.1(b)	If more than 7 qualified engineers and 3 DAE with more than 3 years' experience	10		
4.1(c)	If more than 5 qualified engineers and 2 DAE with more than 3 years' experience	5		
<b>Sub Total</b>		<b>15</b>		
<b>5 Performance</b>				
Sr. No	Description	Category Points	Total Points obtained	Documents Required
5	<b>Performance</b>			
5.1 (a)	If no fault observed in the Installation of the equipment (brand) in PBC/ public sector organization in Pakistan after the Installation of five years	8		M&O wing will provide in case of PBC being as Managing the operations of equipment. in case the equipment is used in PBC than the PBC,s report will be final and for other public sector organizations the certificate form that organization shall require to attached by bidder
5.1 (b)	If no fault observed in the installation of equipment in PBC after the Installation of three years	5		
5.1 (c)	If no fault observed in the installation of equipment in PBC after the installation of two years	3		
<b>Sub Total</b>		<b>8</b>		
5.4	<b>Extended Warranty Period</b>			
5.4(a)	More than two year but less than or equal to three year	7		Will be taken by BEC from the technical proposal of participating bidder
5.4 (b)	More than one year but less than or equal to two year	5		
5.4 9(c)	Equal to one year	4		
<b>Sub Total</b>			<b>7</b>	
<b>Total marks of technical selection criteria</b>			<b>100</b>	
<b>For Qualifying</b>			<b>70%</b>	

**Note: Bid Evaluation Committee may also check any other parameters, beside above mentioned criteria, which can determine firm eligibility.**