

21<sup>st</sup> March 2022

TL22/0321/1A

Managing Director,  
Public Procurement Regulatory Authority,  
1<sup>st</sup> Floor FBC Building,  
Sector G-5/2,  
Islamabad

**Subject: Allegation of Corruption as pointed out by the Auditor General of Pakistan in AGP Audit Report for 2019-2020 and 2020-2021, in the Award of Four Contracts for Mohmand Dam Project and Diامر Basha Dam Project, worth over US \$6 Billion, in violation of PPRA Rules 20004.**

Dear Sir,

Transparency International Pakistan refers to its letter No. TIP2020/0529/1A dated 30<sup>th</sup> May 2020, addressed to MD PPRA on the subject cited above (**Annex-A**).

In the subject letter, Transparency International Pakistan has raised 7 questions. Despite the passage of 2 years, no response has been furnished by Public Procurement Regulatory Authority. TI Pakistan questions are copied below:

1. W A PDA is the largest employer of Engineers, and according to regulations 9, evaluation Committee of three members from WAPDA is to be formed. And only on non-availability of in-house expertise the procuring agency may engage outside appropriate sources. But this is not the case when WAPDA has hundreds of in-house experts.
2. Why PPRA allowed its officer to join WAPDA Evaluation Committee, when PPRA Ordinance does not permit it.
3. In presence of PPRA Letter PPRA No.F.3(7)/DD-II/PPRA/2010 dated 13 April 2010 and also Minutes of 6<sup>th</sup> Board Meeting of dated 12 February 2008, why PPRA acted against its own Law, and became a party with WAPDA and per formed line clearance functions for awarding of contracts". PPRA Board decision dated 12 February 2008 is quoted below:

*"Given the absence of enforcement framework under the PPRA Ordinance 2002, PPRA should not entertain into adjudication activities as it might ex pose PPRA to Court challenges".*

4. All the four contracts were awarded on single bid basis, without determine the competitive rates. Is it not violation of PPRA Rules? In PPRA Code, on Question No 12, PPRA reply is Whenever a procuring agency is confronted with such a situation whereby the rate quoted by the single bidder cannot be compared so as to declare it as the lowest rate or otherwise it may make a prudent decision. While making a decision, the following factors may be kept in view:-



- a) The comparison of price of the goods, works or services if procured during the current financial year.
  - b) Market price of the goods, works and services to be procured.
  - c) In case abnormal increase in prices is observed, the procuring agency may like to re-advertise the procurement opportunity, if time permits.
  - d) Re-advertisement would be a preferred option. Direct contracting could also be used provided it meets the prescribed condition for direct contracting.
5. Increasing the cost of two Contracts awarded to NESPAK Jvs over the evaluated cost by Rs 7.29 and Rs 2.3 Billion. Is it not against PPRA Rules and Regulations?
6. According to PPRA Rules, is it not violation of Rules that two JVs participated in two Dams Bidding, CGGC JV and Power China JV. In Mohmand Dam Power China JV was declared as non-responsive, and CGGC JV, and in DIAMER Bhasha Dam, CGGC JV were declared as non-responsive and Power China JV awarded the Contract.
7. Does awarding of Contract by WAPDA to its sister company NESPAK is a Conflict of Interest?

Attention of MD PPRA is also drawn to the finding of Auditor General of Pakistan report 2019-2020 and 2020-2021 in which all the four projects of WAPDA namely; Contract for Consultancy Services for Construction Design, Construction Supervision and Construction Management of Mohmand Dam Project, Contract for Consultancy Services for Construction Design, Construction Supervision and Construction Management of Diamer Bhasha Dam Project, Contract for Construction of Mohmand Dam and Contract for Construction of Diamer Bhasha Dam Project have been declared in violation of PPRA rules with recommendations to take action (Annex-C & Annex-D).

**Quote**

**AGP Audit MOWR 2020-21. 1.5.2, Irregular award of contract for procurement of consultancy services for Diamer Basha Dam Project - Rs. 27,182.09 million**

Audit held that initial process for selection was deliberately delayed to change the mode of procurement from QCBS to QBS and criteria for Pre-Requisite for Local Lead Firm was changed for eliminating competition and giving undue favour to NESPAK as lead firm. No short listing or pre-qualification of consultants was carried out for a project of such scale and complexity through the mechanism of EOI.

Audit contended that similar events had occurred in case of award of consultancy contract of Mohmand Dam Hydropower Project where QCBS method was changed with QBS method in pretext of 9/11 events and cost was also increased from Rs.3,599.80 million to Rs.9,981.84 million abnormally. It appears that the same process was repeated in DBDP only to bring local consultants as lead partner. Therefore, award of consultancy agreement needs to be investigated in detail.



Unquote

TI Pakistan once again requests the Managing Director to examine the complaint forwarded through TI Pakistan's Letter No. No. TIP2020/0529/1A dated 30th May 2020, (Annex-A) in light of TI Pakistan's comments, questions and suggests and furnish response to TI Pakistan's questions on the alleged irregularities in tendering process, and PPRA's own indulgence in the tendering award process, and additional fee being paid to NESPAK of Rs. Over 9 Billion, against its Board decision taken in the 6<sup>th</sup> PPRA Board Meeting held on 12 February 2008 quoted below:

*"Given the absence of enforcement framework under the PPRA Ordinance 2002, PPRA should not entertain into adjudication activities as it might expose PPRA to Court challenges"*

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

With Regards,

  
Ms. Yasmeen Lari

Sitara-e-Imtiaz, Hilal-i-Imtiaz  
Chairperson  
Transparency International Pakistan

  
Justice (R) Nasira Iqbal,

Sitara-e-Imtiaz  
Vice-Chairperson  
Transparency International Pakistan

**Copies forwarded for the information with request to take action under their mandate,**

1. PSPM, Prime Minister House, Islamabad
2. Auditor General Pakistan, Islamabad
3. Registrar, Supreme Court of Pakistan

**Note:** The information is being requested by TI Pakistan under Article 19-A of the Constitution of the Islamic Republic of Pakistan 1973, which empowers the civil society to seek information and hold accountable public institutions.

Refer to the Lahore High Court Order by Jus. Syed Mansoor Ali Shah in Attaullah Khan Malik vs The Federation of Pakistan (2010 PLD Lahore 605) in which the following observation is given; "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 19A empowers the civil society of this country to seek information from public institutions and hold them answerable. Article 19A, therefore, enthruses fresh life into Public Interest Litigation."



30<sup>th</sup> May, 2020

TIP2010/0529/1A

Managing Director  
Public Procurement Regulatory Authority,  
1st Floor FBC Building,  
Sector G-5/2  
Islamabad

**Sub: Complaint of allegations that WAPDA has awarded Four Contracts,  
irregularly in violation of PPRA Rules 2004 , worth over US \$ 6 Billion**

Dear Sir,

Transparency International Pakistan has received a complaint alleging that WAPDA has awarded Four Contracts, in violation of PPRA Rules 2004 , which contracts are worth over US \$ 6 Billion and the Complainant has pointed out following illegalities/irregularities in support of its allegation.

The complainant has stated that since last two years WAPDA does not have a Permanent Member and out of three Members, there is no permanent Member of Water and Power, yet during these two years four contracts have been awarded in violation of PPRA Rules.

WAPDA and NESPAK are two organizations of Ministry of Water and Power and Secretary MOW&P is also the Chairman of NESPAK. Secretary MOW&P is also the Board Member of PPRA and therefore awarding contracts to NESPAK amounts to Conflict of Interest.

**1<sup>st</sup> Contract: Contract for Consultancy Services for Construction Design, Construction Supervision and Construction Management of Mohmand Dam Project.**

1. Consultancy Services for the subject project was initially invited in June 2017 under Quality and Cost Based Selection (QCBS) with the ratio of 80% for Quality and 20% for Cost to award the Contract for the above services. More than one Bid were received, and after Technical Evaluation financial cost proposals were opened in the presence of bidders, in which the consortium of M/s NESPAK and M/s SMEC International submitted a bid of **Rs. 4.34 Billion** which was the lowest bid. But the contract was not awarded and the tender was discharged by WAPDA for unexplained reasons.
2. WAPDA re-advertised by revising few RFP provisions which were in violation of PPRA Rules 32, seeking fresh proposals based on Quality Based Selection (QBS). Resultantly, proposal of only one consultant was received. Other Consultants of Pakistan abstained from participation to submit the proposals on QBS system having manipulated provisions; as it was obvious that WAPDA is bent upon to award the Consultancy Contract to a targeted Consultant at an abnormally higher price,



3. The 2<sup>nd</sup> tender was invited in Dec, 2018 on Quality Based Selection (QBS) method, and only one consortium of M/s NESPAK and M/s SMEC International submitted a bid on 14 Feb 2019; and the Evaluated cost of the bid was declared on PPRA Website to be **Rs 7.68 Billion**.
  4. The Contract was reportedly awarded on 21 May 2019 and news report published on 22 May 2019 stated "Pakistan Water and Power Development Authority (WAPDA) signed a contract worth **Rs9.98 billion** with Joint Venture namely Mohmand Dam Consultants Group (MDCG) for consultancy services for construction design, construction supervision and contract management of Mohmand Dam Hydropower Project.
  5. Additional fee approved by WAPDA was about 30% over the evaluated bid price was Rs 2.3 Billion.
  6. And additional fee of Rs.5.75 Billion, approved by WAPDA over original First bidding price of Rs 4,23 Billion and such additional fee works out to be 136% .
  7. Needless to point out that according to PPRA Rules 2004, save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder.
  8. **In last 20 years not a single Supervision Consultancy Contract was awarded by WAPDA on QCB Method.**
  9. On 12 March 2019 M/s Society for Advancement of Contracts and Arbitration vide letter No. Ref: SACA/ 53-1/27 also raised serious objections on WAPDA for violation of country law to favour one party.
  10. In May 2019, a complaint was filed with NAB against the award of this contract, and also a Writ Petition was filed before the Honorable Lahore High Court on May 25, praying the Court to issue a stay order against the award of the said contract.
  11. WAPDA filed a CMA in Supreme Court in which it was stated that it is clear from the cavalier attitude of the petitioner that somebody, if not he, is trying to create hindrance which will affect the smooth and timely construction of Mohmand Dam. It also speaks volumes about the modus operandi of the fourth generation warfare being used against the construction of a project of immense National importance.
  12. The Evaluation Committee constituted by WAPDA, included an Officer of the Regulator, Public Procurement Regulatory Authority, as such the whole process became irregular as never an officer of regulator are inducted as a decision maker in the matter in which the regulator itself is supposed to regulate and monitor compliances.
  13. Extra fee of Rs 2.3 Billion is being paid by WAPDA, which is a loss to the exchequer.
- 2<sup>nd</sup> Contract: Contract for Consultancy Services for Construction Design, Construction Supervision and Construction Administration of DIAMER Bhasha Dam Project.**
1. Tender for Consultancy Services for Construction Design, Construction Supervision and Construction Administration of DIAMER Bhasha Dam Project was invited in 2019.



2. Due to Quality Based Selection (QBS) method used by WAPDA , only one bid from consortia of M/s NESPAK was received on 22 Dec, 2019.
3. According to the Evaluation Report, the evaluated bid price advertised on PPRA website by WAPDA was Rs 19.819 Billion.
4. However, it was reported in press that on 21 May 2020 WAPDA has awarded the consultancy contract of the project to Diamer Bhasha Consultants Group (DBCG), led by NESPAK, worth Rs. 27.182 billion (\$168.8 million).
5. As a PPRA officer was included in the Evaluation Committee of Mohmand DAM, the PPRA officer did not object to QBS Method in this Tender although same QBS Method was again used in this Project.
6. Additional fee approved by WAPDA over the evaluated bid price was Rs 19.819 Billion is Rs 7.291 Billion, which means extra fee given to consortia is about 37% although according to PPRA Rules 2004, Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder.
7. Extra fee of Rs 7.291 Billion which is being paid by WAPDA, which is a loss to the National Exchequer.

**3<sup>rd</sup> Contract: Contract for Construction of Mohmand Dam Project.**

1. In June 2018, two Bids for Construction of Mohmand Dam Project were received.
2. Technical Evaluation was carried out of Bids from Power China Int/FWO and China Gezhouba Group Company (CGGC)/Descon.
3. Consultants M/s NESPAK JV, declared Power China Int/FWO JV non responsive, as it failed in the experience category.
4. Gezhouba Group Company (CGGC)/Descon were declared responsive , and the financial bid was opened, and Contract was awarded at Rs 184 Billion on 26 March 2019.
5. NESPAK JV, later on were also awarded Consultancy Contract for Supervision on 21 May 2019.

**4<sup>th</sup> Contract: Contract for Construction of DIAMER Bhasha Dam Project.**

1. Diamer Bhasha Dam Project Invitation of Prequalification of Contractors was advertised in April 2018. Five bidders submitted their documents on 12th Sept 2018. The bidders were Ozaltin - Ozkar – Yenigun/FWO JV, China Gezhouba/ Descon JV, CRCC16 /Ghulam Rasool Co JV, Power China/Habib Rafique Ltd JV and DAEWOO E&C, Korea, but WAPDA cancelled the pre-qualification process without assigning any reason.
2. In June 2019 WAPDA invited Tender from all interested companies.
3. WAPDA 26 March 2019 had already awarded Mohmand Dam Contract to Gezhouba Group Company (CGGC)/Descon.



4. On 20th August 2019 only two Bids were received from China Gazebo Group Company / GRC JV and Power China/FWO JV.
5. Both China Gazebo Group Company and Power China changed the local partners, from Descon to Ghulam Rasool & Company and Habib Rafiq to FWO, respectively.
6. NESPAK JV evaluated the Technical Proposals . and declared China Gazebo Group Company as non responsive, and evaluated Power China who were declared non responsive in Mohmand Dam few months ago, as responsive.
7. The Contract was awarded at Rs 441 Billion to Power China JV on 13 May 2020.
8. NESPAK JV, later on were also awarded Consultancy Contract for Supervision on 21 May 2020.

The Complaint has been examined at Transparency International-Pakistan and the **Observations and comments of Transparency International Pakistan on the complaint are as under:**

1. PPRA is a regulator for procurement for all Federal Government procurement within and Outside Pakistan.
2. According to Rule 40, 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".
3. Regulation No 9, Selection Committee. The procuring agency shall appoint Committee for short listing and selection of consultant. The Committee shall comprise of at least three competent relevant persons to evaluate the consultants as per evaluation criteria. In case of non-availability of in-house expertise the procuring agency may engage outside appropriate sources.
4. Regulation No 10. Extent of Negotiations. The Committee of the procuring agency may negotiate with the highest ranked bidder regarding methodology, work plan, staffing and special conditions of the contract..  
  
Provided that negotiations shall not seek changes in the rates quoted by the bidder in accordance with restriction imposed on financial negotiations under Rule 40 of the Public Procurement Rules, 2004.
5. PPRA letter No.F.3(7)/DD-II/PPRA/2010 dated 13 April 2010, to all Secretaries, included in Code of PPRA, has declared line clearance by PPRA is not provided in PPRA Law.

**Quote from PPRA No.F.3(7)/DD-II/PPRA/2010 dated 13 April 2010**

Para 2. Ministries seek more comfort by attempting to involve PPRA in line clearing functions in award of contracts. This is neither provided in law, rules or policy laid down by the Board.



Para 3. Since conception PPRA's role has been unambiguous, initial Assessment Report by the WB set the following in stone:  
"Creating a small, professionally staffed, independent regulatory agency to develop the procurement framework, with functions which are mainly confined to policy, documentation, development of rules, etc. **and not to include line clearance functions for awarding of contracts**".

Para 4. This was periodically reiterated by the Board including the last direction contained in the 6<sup>th</sup> Board meeting dated 12th February, 2008.

Para 5. Requesting / directing PPRA to be a part of line functions is in conflict with PPRA's raison d'etre, policy, practice, level playing field, balance of stakeholder interest, grievance handling, neutrality, transparency and fairness.

6. In the 6<sup>th</sup> PPRA Board Meeting held on 12 Feb 2008 following decision was approved.

Given the absence of enforcement framework under the PPRA Ordinance 2002, PPRA should not entertain into adjudication activities as it might expose PPRA to Court challenges.

#### Transparency International Pakistan questions & suggestions.

1. WAPDA is the largest employer of Engineers, and according to regulations 9, evaluation Committee of three members from WAPDA is to be formed. And only on non-availability of in-house expertise the procuring agency may engage outside appropriate sources. But this is not the case when WAPDA has hundreds of in-house experts.
2. Why PPRA allowed its officer to join WAPDA Evaluation Committee, when PPRA Ordinance does not permit it.
3. In presence of PPRA Letter PPRA No.F.3(7)/DD-II/PPRA/2010 dated 13 April 2010 and also Minutes of 6<sup>th</sup> Board Meeting of 6<sup>th</sup> dated 12 February 2008, why PPRA acted against its own Law, and became a party with WAPDA and performed line clearance functions for awarding of contracts".
4. All the four contracts were awarded on single bid basis, without determine the competitive rates. Is it not violation of PPRA Rules?. In PPRA Code, on Question No 12, PPRA reply is Whenever a procuring agency is confronted with such a situation whereby the rate quoted by the single bidder cannot be compared so as to declare it as the lowest rate or otherwise it may make a prudent decision. While making a decision, the following factors may be kept in view:-
  - a. The comparison of price of the goods, works or services if procured during the current financial year.
  - b. Market price of the goods, works and services to be procured.
  - c. In case abnormal increase in prices is observed, the procuring agency may like to re-advertise the procurement opportunity, if time permits.
  - iii. Re-advertisement would be a preferred option. Direct contracting could also be used provided it meets the prescribed condition for direct contracting.





## TRANSPARENCY INTERNATIONAL-PAKISTAN

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5. Increasing the cost of two Contracts awarded to NESPAK Jvs over the evaluated cost by Rs 7.291 and Rs 2.3 Billion. Is it not against PPRA Rules and Regulations?
6. According to PPRA Rules, is it not violation of Rules that two JVs participated in two Dams Bidding, CGGC JV and Power China JV. In Mohmand Dam Power China JV was declared as non responsive, and CGGC JV, and in **DIAMER Bhasha Dam**, CGGC JV were declared as non responsive and Power China JV awarded the Contract/
7. Does awarding of Contract by WAPDA to its sister concern NESPAK is a Conflict of Interest ?

Transparency International Pakistan requests the Managing Director, to examine the complaint received at TI Pakistan. being forwarded with its comments, questions & suggestions to check and inquire on the alleged ambiguities of tendered processes, and PPRA own indulgence in the tendering award process, and additional fee being paid to NESPAK of Rs over 9 Billion, and your response on it.

TI Pakistan is striving to have Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

With Regards,

Sohail Muzaffar  
Chairman  
Transparency International Pakistan .

### **Copies forwarded for the information and for action under rules to:**

1. Register, Supreme Court of Pakistan, Islamabad