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TL2026/0427/1A

Director General (DG)
Pakistan Airports Authority
Islamabad

Subject: Complaint Against Allegations of Violation of PPRA Rules 2004, Misuse of PPRA Rule 42(f) by Pakistan Airports Authority in the Award of Rs. 20 billion PAA E-Gate Project

Dear Sir,

Transparency International Pakistan has received a complaint against allegations of violation of PPRA Rules 2004, misuse of PPRA Rule 42(f) by Pakistan Airports Authority in the Award of Rs. 20 billion PAA E-Gate Project.

The complainant has made the following allegations:

1. PAA has awarded approximately Rs 20 billion contract without inviting open bidding in violation of PPRA Rules 2004.
2. The contract was awarded under PPRA Rule 42 (f). However, according to PPRA, this rule is applicable only to the State Owned Entities (SOEs), subject to sub condition: ii) ***the organization or the body shall accomplish the work or the services including consultancy services, exclusively through its own resources without involving private sector as a partner or in the form of a joint venture or as a sub-contractor*** **(Annex-A)**
3. It is to be noted that the E-Gate technology as well as equipment is not available with any SOE.
4. Limited bidding is however mandatory under sub rule iii) in case there are more than one organizations or bodies 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, giving reasonable time for submission of their applications or proposals;
5. The compliance of sub rule iv is also mandatory (iv***) the procuring agency shall devise a mechanism for determining price reasonability to ensure that the prices offered by the state owned entities are reasonable for award of the contract.***
6. PAA is also mandated to ensure that the Evaluation Report and Contract Agreement shall be posted to PPRA website under Rule 35 and Rule 48. However, in the current procurement, both documents are missing from the website in violation of Rule 35 and 48.
7. Additionally, declaring names of beneficial owners is also mandatory under PPRA regulations and SECP requirements.
8. Performance bond guarantee of 10% Rs 2 billion is also mandatory,
9. PAA has awarded the contract to a preselected group at 100% more than the market prices.
10. According to Integrity Pact Rule amount equivalent to 10 times the loss i.e. Rs 100 billion shall be imposed on the contractor **(Annex-B)**

Transparency International Pakistan Comments

Transparency International Pakistan has reviewed the allegations of the complaint, prima facie, the allegations seem correct and due to the violations of PPRA Rules, 35, 42, and 47 the procurement is deemed to be a mis-procurement under Rule 50. Following are TI Pakistan's comments:

1. In clear contravention, PAA has applied Rule 42(f) despite the fact that the executing firm Pakistani firm lacks in-house technology, expertise, and resources to independently manufacture and deliver the project, amounting to a clear violation of PPRA Rule 42(f), which explicitly prohibits subcontracting and third-party execution and will lead towards misuse of public Funds.

   i. PAA must determine as to why the tenders invited earlier for the e-gate were cancelled twice by PAA.

   ii. PAA has violated the posting of tender inquiries and evaluation reports on PPRA website as mandated under Rule 35 and 47, quoted below:

35. Announcement of evaluation reports.-

Based on the procedure adopted for the respective procurement, the procuring agency shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of procurement contract

47. Public access and transparency.-

As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public:

Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring agency is convinced that such disclosure shall be against the public interest, it can withhold only such information from public disclosure subject to the prior approval of the Authority.

2. The PAA is further required to provide copies of contract agreements to NAB under NAO 33 B, which it has failed to provide and determined why NAO condition 33 B is not complied with by PAA.

3. PAA appears to be completely bypassing the compliance of NAO 1999 and PPRA Ordinance 2002, since its inception.

4. Rs 100 billion penalty under Rule 7, Integrity impact is applicable.

Transparency International Pakistan Recommendations

Transparency International Pakistan requests the DG PAA to look into the serious allegations of the complaint and issue directives to invite the tender through open competition in compliance with PPRA Rules to avoid mis-procurement under 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 Zero tolerance against corruption.

Regards,

Advocate Daniyal Muzaffar,
Trustee/Legal Advisor
Transparency International Pakistan

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

1. Dr. Tauqir Shah, Advisor to Prime Minister, Islamabad
2. Secretary, Ministry of Defence, Islamabad.
3. MD, PPRA, Islamabad
4. Chairman, Prime Minister Inspection Commission (PMIC), Islamabad.
5. Chairman, NAB, Islamabad
6. DG, FIA, Islamabad
7. Registrar, Supreme Court of Pakistan, Islamabad.
8. **Chairman, Senate Standing Committee on Defence, Islamabad**

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, and a three member bench in case of Mukhtar Ahmad Ali vs the Registrar, Supreme Court of Pakistan, Islamabad, headed by Chief Justice Qazi Faez Isa in the landmark judgment on 16 October 2023, in CP No. 3532/2023, has declared that

> "What previously may have been on a need-to-know basis Article 19A of the Constitution has transformed it to a right-to-know, and the Access to information is no longer a discretion granted through occasional benevolence, <u>but is now a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution"</u>

Annex-A

to influence their participation in a procurement process, or affect execution of a contract;

3.2 The Employer's will reject a proposal for award of contract if it determines that bidders recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or other integrated violation for the contract;

3.3 In further pursuance to the above Policy/Regulatory framework, the bidder, suppliers and contractor shall permit The Employer's or its representative and to inspect their accounts, records and other documents relating to Proposal submission and contract performance and to have them audited by the auditors.

ITB.4 Eligibility

4.1. **Mandatory Requirements:**

The bidder must meet the following requirements at the time of submission of proposal and thereafter:

a. A company duly registered under the laws of Pakistan.

b. Duly notified Stated owned enterprise (SOE) by the Government of Pakistan through gazette notification for award of contract under PPRA rule 42(f).

c. Must be on Active Taxpayer List of the Federal Board of Revenue and provincial revenue authority/ board where applicable.

d. Must not be in the list of debarred/ blacklisted firms on the websites of PEC and Federal / Provincial Procurement Regulatory Authorities and have not been declared debarred / blacklisted by a

government agency.

4.2 shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

ITB.5 Cost of Proposal & Site Visit

Cost of Proposal

5.1 The bidder shall bear all costs associated with the preparation and submission of its proposal and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.

Site Visit

5.2 The bidder is advised to visit and examine the Sites of Works and its surroundings and obtain for themselves on their own responsibility all information that may be necessary for preparing the Proposal and entering into a contract for construction of the Works. All cost in this respect shall be at the bidder's own expense.

5.3 The bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the bidder, their personnel and agents, will release and indemnify the Employer, his personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of such inspection.

B. PROPOSAL DOCUMENTS

ITB.6 Contents of Proposal Documents

6.1 The Proposal Documents are those stated below and should be read in conjunction with any Addenda issued in accordance with Clause ITB.8.

Annex-B

(Integrity Pact)

DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY THE SUPPLIERS OF GOODS, SERVICES & WORKS IN CONTRACTS WORTH RS. 10.00 MILLION OR MORE

Contract No.________________________
Dated ______________________
Contract Value: ______________
Contract Title: ________________

....[name of Contractor] hereby declares that it has not obtained or induced

the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan (GoP) or any administrative subdivision or agency thereof or any other entity owned or controlled by GoP through any corrupt business practice.

Without limiting the generality of the foregoing,(name of Contractor] represents and warrants that 1t has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP, except that which has been expressly declared pursuant hereto.

(name of Contractor] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoP and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[name of Contractor) accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration , representation and warranty. It agrees that any contract ,right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoP under any law, contract or other instrument, be voidable at the option of GoP.

Notwithstanding any rights and remedies exercised by GoP in this regard,[name of Contractor] agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten time the sum of any commission, gratification, bribe, finder's fee or kickback given by [name of Supplier] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP.

Signature:	Signature:..............................
Signed by	Signed by..............
For on behalf of the Employer	For on behalf of the Contractor
[Seal]	**[Seal]**