

No.F.1(90/DD-II/PPRA/2009  
GOVERNMENT OF PAKISTAN  
**PUBLIC PROCUREMENT REGULATORY AUTHORITY**  
(CABINET DIVISION)

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Islamabad, the September 17, 2009.

From : Naeem Ahmed,  
Deputy Director – II,

To : Syed Adil Gilani,  
Chairman,  
Transparency International-Pakistan,  
5-C, 2<sup>nd</sup> Floor,  
Khayaban-e-Ittehad, Phase-VII,  
Defence Housing Authority,  
Karachi.

Subject: IMPLEMENTATION OF PUBLIC PROCUREMENT RULES, 2004 IN  
DHA, ISLAMABAD.

Please refer to Transparency International-Pakistan's letter No. nil,  
dated 1<sup>st</sup> September, 2009 on the above subject.

2. Your complaint was forwarded to Defence Housing Authority for  
disposal under Rule-48 of Public Procurement Rules, 2004. Procuring Agency has  
given a detailed reply to the observations made by Transparency International-  
Pakistan and the same is being enclosed for your kind perusal.

( NAEEM AHMED )

Defence Housing Authority Islamabad,  
Defence Mall, Defence Avenue, Phase-I  
Islamabad- 44000  
DHA/211/16/Legal

12 Sept, 2009

To: Mr. Naeem Ahmed  
Deputy Director-II,  
Public Procurement Regulatory Authority  
Cabinet Division, Govt of Pakistan  
Islamabad

Subject: IMPLEMENTATION OF PUBLIC PROCUREMENT RULES, 2004 IN  
DHA, ISLAMABAD.

Further to our letter No. DHA/211/16/Legal dated 18 August 2009 (copy attached) and your letter No.F.1(90)/DD-II PPRA2009 dated 2<sup>nd</sup> Sept, 2009 ref:

1. With reference to the above letters it is once again submitted that DHA Islamabad is a body corporate established under Ordinance No. II of 2005 promulgated from time to time.
2. The TIP is demanding copies of contracts of public procurements from DHA Islamabad made with other parties under Rule No. 47, of Public Procurement Rules 2004 made under Public Procurement Regulatory Authority Ordinance 2002. Whereas DHA Islamabad has time and again informed TIP vide above referred letters that DHA Islamabad does not come into ambit of Public Procurement Regulatory Authority Ordinance 2002 and rules made hereunder. Rule 3 of Public Procurement Rules 2004 is as follows:-

"3. Scope and applicability:- Save as otherwise provided, these rules shall apply to all procurements made by all procuring agencies of the Federal Government whether within or outside Pakistan".

TIP has been informed that DHA Islamabad is not a procuring agency of Federal Government. DHA Islamabad raises funds from its members and through schemes and projects planned by the Authority under its Ordinance. No grants, financial support or budgetary allocation whatsoever is provided by the Federal Government.

Dy. Secy. 448  
Date: 17-9-09

3. Disregarding clear legal position TIP is illegally pressing DHA Islamabad to provide copies of contracts pertaining to procurement, although TIP has been sufficiently explained vide letter dated 22 June 2009 (copy attached) the legal position of the issue in hand.

4. TIP has also placed press clipping "Dawn September 7,2009" on its website. Wherein they have equalized **Defence Purchase Division** and Defence Housing Authorities. TIP Ohas not been able to appreciate that Defence Purchase Division is a Government Organization whereas Defence Housing Authority Islamabad is a body corporate which is not financed by Government.

5. Thanks.

  
Lt. Col  
Secy  
(Moazzam Iqbal)

23 (57)

Defence Housing Authority Islamabad  
Defence Mall, Defence Avenue, Ph-I  
Islamabad - 44000  
Tel : (051) 111-555-400  
DHAI/211/ 16 /Legal  
22 June 2009

To: Mr. Syed Adil Gilani  
Chairman,  
Transparency International,  
Pakistan

Subject: Violation of Procurement Laws National Corruption Perception Survey (NCPS) 2009

With reference to your letter number nil dated 11 June 2009, in response of our letter number DHAI/211/Legal dated 8 June 2009.

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1. DHA Islamabad has still an affirmative view that DHA Islamabad is not a procuring agency of Federal Government or any Provincial Government. DHA Islamabad raises funds from its members and through schemes and projects planned by the authority under its Ordinance 2007. No grants, financial support or budgetary allocation whatsoever is provided by the Federal or any Provincial Government.
2. In response to our letter dated 8 Jun 2009, you have referred a legal opinion of M/S Liaquat Merchant & Associates given to NBP, which is not relevant for DHA Islamabad. Para 2, 3 and 10 of Legal opinion attached with your letter are re-produced as follow:-

"2. The word "public procurement" under the Ordinance, means the acquisition of goods, services or construction of any works financed wholly or partly out of the Public Fund, unless excluded otherwise by the Federal Government".

"3. The word "public fund" means the Federal Consolidated Fund and the Public account of the Federation and includes funds of enterprises which are owned or controlled by the Federal Government".

"10..... Further, Section 9 of the NBP Ordinance stipulates that the Federal Government shall be a share holder of the Bank and shall

purchase at par not less than 25% of the shares issued by the Bank from time to time.....".

3. From the bare perusal of above referred para 2, 3 and 10 of the legal opinion, it is revealed that NBP is controlled by the Federal Government and NBP has public fund for regulating public procurement of goods, services and works in the public sector which are also owned or controlled by the Federal Government. Whereas DHA Islamabad does not receive public funds. Section 9 of DHA Islamabad Ordinance is re-produced as under:-

"9. Powers of the Executive board to raise funds. - The Executive Board may raise funds, from local and foreign lending agencies, for the purpose of generating its working capital in such manner as it may think proper, through loans or levy of any charges as may be prescribed by rules."

Similarly Section 15 of DHA Islamabad Ordinance is also re-produced for your perusal:-

"15. Authority Fund. -(1) There shall be a fund to be known as the Defence Housing Authority, Islamabad Fund" which shall vest in the Authority and to which shall be credited all moneys received by the Authority."

(2) The fund shall be kept in a scheduled bank or Financial Institution and shall be utilized and regulated in such manner, as may be prescribed.

(3) The funds may be invested in any banking financial or non banking financial institutions after the approval of Executive Board.

It is crystal clear that NBP is fully controlled by the Federal Government and DHA Islamabad is administrated by its Governing Board. It is further stated that since no public funds are allotted to DHA Islamabad. Therefore its audit is not done by Auditor General of Pakistan.

4. Procuring agency has been defined by M/s Liaquat Merchant and Associate which has the same meaning as provided in PPRA Ordinance 2004. No interpretation of procuring agency is given in the opinion letter.

In view of afore said, it is evident that PPRA Ordinance 2002 and rules framed there under are not applicable to DHA Islamabad. Therefore, action under rule 47 of PPRA Ordinance 2002 is not necessary for DHA Islamabad.

6. Assuring you of all our support.

  
Lt Col  
Secy  
(Moazzam Iqbal)

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
Defence Housing Authority Islamabad  
Defence Mall, Defence Avenue, Phase-I  
Islamabad- 44000  
DHA/211/16/Legal  
18 August, 2009

To: Mr. Muhammad Saleemullah  
Director-I,  
Public Procurement Regulatory Authority  
Cabinet Division, Govt of Pakistan  
Islamabad

Subject: Violation of Public Procurement Rules-2004 on Pre-qualification by Various Procuring Agencies

Your letter no. F.No.2(3)/DD-III/PPRA/Trans-Inter/07 dated 23 July 2009 refers.

1. With reference to above referred letter it may be stated that DHA Islamabad is a body corporate established under Ordinance No. II of 2005 promulgated from time to time.
2. DHA Islamabad is not a procuring agency of Federal or Provincial Government. DHA Islamabad raises funds from its members and through schemes and projects planned by the authority under its Ordinance. No grants, financial support or budgetary allocation whatsoever is provided by the Federal or any Provincial Government.
3. As such DHA Islamabad does not come within the ambit of Section 47 of Public Procurement Rules 2004 and is not bound to post its contracts and evaluation reports on its website under Public Procurement Ordinance 2002. The observations made by Transparency International Pakistan are not within the ambit of Public Procurement Rules-2004.
4. Thanks.

  
L.L. Col  
Secy  
(Moazzam Iqbal)