



proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and

(ix) the bid found to be the lowest evaluated bid shall be accepted.

Note: The Regulation made by PC in contravention to the provisions of Public Procurement Rules 2004, under S.R.O 63 (1)/2007 for hiring of Financial Advisors, on 19th January 2007, appears to be an effort to bypass PPRA 2002, after TI Pakistan objected on PC procedures for appointment of Financial Adviser in 2005.

Rule of Law shall be supreme in Pakistan. The ultimate goal of Public Procurement Rules 2004 is to make corruption a "high risk" and "low return" undertaking.

Transparency International Pakistan, again request PC to note and act on the S.R.O.432 (1)/2004 on 8th June 2004, notifying "Public Procurement Rules, 2004, under which the provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules concerning public procurements.

With Regards,



Syed Adil Gilani
Chairman,

Copy forwarded for the information of;

1. Chairman Public Accounts Committee, National Assembly, Islamabad.
2. Auditor General Pakistan, Islamabad
3. Chairman, NAB, Islamabad.
4. Managing Director PPRA, Islamabad
5. Director General, FIA, Islamabad



3rd April, 2005

Mr. M. Mansoor Zubair,
Director General (I & T),
Ministry of Privatization,
5-A, Constitution Avenue, EAC Building,
Islamabad

Sub: Violation of Public Procurement Rules, 2004
Prequalification of Firms to act as Financial Advisor

Dear Sir,

The Expression of Interest for Prequalification advertised on the on 1st April for the above Project in is lacking Transparency and violating the Ministry of Finance S.R.O.432 (I)/ 2004 on 8th June 2004, notifying "Public Procurement Rules, 2004". The Rules are available on the PPRA website www.ppra.org.pk and www.transparency.org.pk.

2. These procedures, made mandatory by the Government of Pakistan, are taken from the Transparent Procurement Procedures recommended by Transparency International Pakistan and prescribed by the National Accountability Bureau (NAB) in the National Accountability Strategy (NACS) 2002 and followed by NAB (Advertisement attached).

3. Public Procurement Rules, 2004 have eliminated all discretions in procurement process, and the Rule No. 16 has made it mandatory on Privatization Ministry to provide prequalification Documents to applicants which is not being given to applicants by Privatization Ministry on this Project. The cost of process fee Rs 50,000 is also against the Rule No.16 as only cost of printing the documents is to be charged.

This document shall include information on the detailed evaluation criteria, bid award method, signing of Integrity Pact, rights of bidders for complain on evaluation report prior to award and many other requirements, to applicants.

The detailed evaluation criteria is required to be prepared and included in the Prequalification Documents on how the applicants will be evaluated for relevant experience and past performance; capabilities with respect to personnel, equipment, and plant; financial position; appropriate managerial capability; and any other factor that a procuring agency may deem relevant, not inconsistent with these rules.

4. The current assignment is for the services, which under the Public Procurement Rules, 2004 falls within the following process;

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



- (b) **single stage – two envelope procedure.**- (i) The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (ii) the envelopes shall be marked as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked “TECHNICAL PROPOSAL” shall be opened;
- (iv) the envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the procuring agency without being opened;
- (v) the procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which do not conform to the specified requirements;
- (vi) during the technical evaluation no amendments in the technical proposal shall be permitted;
- (vii) the financial proposals of bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;
- (viii) after the evaluation and approval of the technical proposal the procuring agency, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposal of bids found technically non-responsive shall be returned unopened to the respective bidders; and
- (ix) **the bid found to be the lowest evaluated bid shall be accepted.**

5. This is to be noted that Bids are to be evaluated in accordance with the prescribed evaluation criteria only (Rule quoted below), which principle is applicable on prequalification also.

“29. Evaluation criteria.- Procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated. Such evaluation criteria shall form an integral part of the bidding documents. Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.

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 clause (iv) of sub-



rule (3) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.”

6. This is also important to note that according to S.R.O.432 (I)/ 2004 on 8th June 2004, notifying “Public Procurement Rules, 2004, the provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules concerning public procurements.
7. The above information is forwarded for Privatization Ministry to abide by the Ministry of Finance Notification S.R.O.432 (I)/ 2004 for the purpose of avoiding the **mis-procurement charge** under Rule No 50, and to re- invite the prequalification notice by preparing the required Prequalification Documents to be given to applicants under the prescribed procedures.

With regards,

Syed Adil Gilani,
Secretary General &
Procurement Specialist,
Transparency International Pakistan
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CC. Dr. Abdul Hafeez Shaikh, Minister for Privatization. The procedure adopted in this case appears to be tailor made for appointment of a chosen party, as it is not possible to award a Contract in 30 days under the Public Procurement Rules, which makes it mandatory for providing minimum 30 working days for International bidders to submit bids, and 15 mandatory days for objections on the evaluation report by bidders. TI Pakistan is sure that this Expression of Interest is an oversight of rules by ignorant officers.

CC. Managing Director PPRA for information please.
CC. Chairman, National Accountability Bureau for information please.