



12th May 2010

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Sub: Allegation of Violation of Public Procurement Rules 2004 by Pakistan Railways in the
Tender for Procurement of 150 Locomotives

Dear Sir,

Transparency International Pakistan has noted with concern the news report published in Dawn dated 6 May 2010, in which following allegations are levied.

"For the first time, the Railways Ministry is set to finalize a deal for the procurement of 150 locomotives within three months or so by putting on the back burner all rules of the Public Procurement Regulatory Authority (PPRA), norms of International Competitive Bidding (ICB) besides the fact that the transaction may cause a loss of at least Rs40 billion to the national exchequer. An American company in February this year offered to supply 150 locomotives at the price that was 235 per cent more than the latest purchases made by Pakistan Railways from a Chinese firm in December last year, a senior officer of the Railways Ministry told Dawn on Wednesday. The Railways Ministry on May 2 invited bids for procurement of 150 locomotives and the specifications given in the tender documents made it clear the whole process had been one-company specific, said the officer who sought anonymity". Quoting minutes of the Railways Board Executive Committee meeting of March 2, the officer said an all-out effort was made to bypass the Planning Commission and procure these 150 locomotives directly from General Electric without any proper PC-I and confining the International Competitive Bidding (ICB) only to the US bidder.

Pakistan Railways are bound to conduct all procurements in accordance with Public Procurement Rules 2004, and any violation of rules amounts to declaring the process as mis-procurement.

Following allegations are being made, which needs your examination and clarifications;

1. Only US made Locomotives are specified. This is not allowed under Rules No. 10, which states "Specifications shall allow the widest possible competition and shall not favour any single contractor or supplier nor put others at a disadvantage. Specifications shall be generic and shall not include references to brand names, model numbers, catalogue numbers or similar classifications".
2. Tender Notice was published in only one local paper. This is against Rule No. 12(2) which states "All procurement opportunities over two million rupees should be advertised on the Authority's website as well as in other print media or newspapers having wide circulation.



3. The advertisement in the newspapers shall principally appear in at least two national dailies, one in English and the other in Urdu.
4. Cost of tender documents was Rs 500,000. This is against Rule No. 23 (5) which states, The procuring agency shall provide a set of bidding documents to any supplier or contractor, on request and subject to payment of price, if any. Explanation:- For the purpose of this sub-rule price means the cost of printing and providing the documents only.
5. PC-1 was not prepared or approved. This is a violation of Rule No. 11, which states, Approval mechanism. All procuring agencies shall provide clear authorization and delegation of powers for different categories of procurement and shall only initiate procurements once approval of the competent authorities concerned has been accorded.
6. According to Rule No 50 any unauthorized breach of these rules shall amount to mis-procurement.

TIP would like to inform that Public Procurement Rules 2004 are mandatory on Pakistan Railways, and we quote Supreme Court order given on 28th April 2010, in the case of award of multibillion dollar LNG contract to GDF-Suez, in which the SC has announced "that it is the duty of the Court to ensure the application of Public Procurement Rules 2004."

In case this press report is proved to be true, then under PPRA Rule 2(f), it is a collusive practices designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition, and Rule 7 "Integrity Pact", the Contractor may have to pay ten times the loss to GoP.

2(f) "corrupt and fraudulent practices" includes the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official or the supplier or contractor in the procurement process or in contract execution to the detriment of the procuring agencies; or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition and any request for, or solicitation of anything of value by any public official in the course of the exercise of his duty;

TI Pakistan request for your clarification on the complaint.

Your sincerely,


Syed Aftab Gilani,
Chairman.

Copies forwarded for the information of:

1. Chairman, Public Accounts Committee, Islamabad.
2. Auditor General Pakistan, Islamabad.
3. Registrar Supreme Court of Pakistan, Islamabad
4. MD, PPRA, Islamabad
5. Chairman, NAB, Islamabad.