



14th May 2010

Mr. Sami ul Haq Khilji
Secretary / Chairman Railways
Block D Pak. Secretariat
Government of Pakistan,
Islamabad.

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 received reply of its letter date 13th May 2010 from S. Shahid Ahmed, General Manager (M&S) reference No. M&S/ 150/D.E. Loco. Dated 13th May 2010.

Serial comments of TI Pakistan are given below:

PR: The letter of 5th May by PPRA as mentioned by you has not been received in this office. Therefore the contention that PPRA has advised G.M. in Pakistan Railways that tender notice cannot be country specific is not tenable.

TIP: Copy of the PPRA letter to MD Pakistan Railway Carriage Factory dated 5 May 2010 is enclosed. For 8 days, from 5 May to 13 May 2010 the Secretary MOR was ignorant of PPRA directive is bad governance.

PR: This is clearly against Rule 42 of PPRA describing alternate method of procurement. Also the Rule 2 (f) quoted by you in PPRA Rules is only part of the definition and deals with the corrupt and fraudulent practices and not with widest possible competitive bidding. It seems that you wanted to refer to Rule 10 which is not applicable in this case. The correct position of relevant rules are given below. Rule 10 which is for general purpose goods only whereas Railways is procuring locomotives under Rule 42 (d) (ii). The specifications of tender document would clearly show that these are not meant for only one supplier. To illustrate this point; two acceptable separate specifications of two different independent manufacturers of USA are given below:

- "10.1 The prime mover shall be one of the following diesel engines.
- (i) General Electric - 7 FDL
 - (ii) General Motors / Electro Motive Division Model 645"

One hopes that the above would clarify that it is not restricted to one single supplier and does not put other US origin supplier at a disadvantage.

TIP: Rule 42 is not applicable in this procurement. Reasons are described in next question of PR. Rule 2(f) is applicable in this particular situation as it pertains to 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. Rule 10 is applicable in this and each and every procurement by all procuring agencies. Rule 10 is quoted below for clarity.

"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. However if the procuring agency is convinced that the use of or a reference to a brand name or a catalogue number is essential to complete an otherwise incomplete specification, such use or reference shall be qualified with the words "or equivalent".



Under Rule No 10, PR can not name one country only as supplier, nor PR can specify only two brand names GE and GM Prime Movers without writing " or Equivalent". as even in the USA at least four other reputable manufacturer exist, viz. American Locomotive Company (Alec), Baldwin-Lima Locomotive Works (BLW), Fairbanks-Morse (FM) and Green Goats.

PR: Since Railways is procuring locomotives of specific US origin locomotives only under replacement programme Rule 10 is not therefore attracted. It is also protected under Rule 42 (c) (iii). It may not be out of place to mention that Rule 42 (d) though authorize the procurement agencies to even procure the supplies through negotiated tendering without prior publication of a procurement notification even then Pakistan Railways have chosen to go to the press to get most competitive prices.

TIP: Rule 42(d), is not applicable in this procurement as it is a Rs 40 Billion procurement of 150 locomotives, which are manufactured by hundreds of firm all over the World. PR understanding of Rule 42 is wrong. PR has not tied up for ever with GE. With this logic PIA shall always buy Boeing Aircrafts, under replacement programme. .

PR: As regards the sovereign guarantee that would be a subsequent step after the scope and size of the project is finalized. Approval of loan agreement always comes after the ascertainment of total price and financial commitments.

- (b) The above notwithstanding, it is on the specific advice of Ministry of Finance to ascertain the competitive price that Ministry of Railways have issued the tender.
- (c) Through this tender the Ministry of Railways will have current market price which would help them to make a sound viable proposal or otherwise. In any case the tender clearly states it is subject to approval of loan by Ministry of Finance and Government of Pakistan.
- (d) The procurement is to be made under a tied loan offer by the US EXIM Bank which provides a great opportunity to a cash strapped Railway to update its locomotive fleet so essentially required for Railways operations particularly on the freight side.
- (e) It may not be out of place to mention that competent authority to approve this project in the spirit of PPRA Rule 11 is the Minister/ Secretary Railways which have initiated the proceedings.

TIP: Each and every manufacturer of locomotives of such huge quantity will arrange loan, even EXIM Bank Loans, which are never tied Loans. Had it been a grant or state loan, then only donor agencies conditions would have prevailed over PPRA Rules. According to Rule No 11 PR should have obtained all governments approval prior to initiating the tendering process..

Transparency International Pakistan would like to advise PR that it is on your own interest to comply with the PPRA Public Procurement Rules 2004 to avoid mis-procurement allegations in this and all tenders..

Your sincerely,


Syed Asif 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.

**GOVERNMENT OF PAKISTAN
PUBLIC PROCUREMENT REGULATORY AUTHORITY
(CABINET DIVISION)**

No 01/06/00-M&IMP/PPRA/2010

Islamabad, the 09 May, 2010

OFFICE MEMORANDUM

Subject: PUBLIC PROCUREMENT RULES, 2004, APPLICATION OF

The undersigned is directed to refer to the advertisement for Pakistan Railways, received through "Mail" on 01-05-2010 ref No DR/150/proc/07/05/2010 regarding procurement in Miscellaneous sector and to state that the advertisement is valid in conformity with the following provisions of the Public Procurement Rules, 2004 as notified by the Ministry of Finance, Government of Pakistan vide S.R.O. No. 432/1/2004 dated 08 July, 2004.

- Rule 23 (5) requiring that the price of bidding documents shall be added up to cost of printing and providing. - The quoted price for bidding documents is higher than printing and providing tender documents.
- Rule 24 (1) Procuring agencies shall allow all prospective bidders to participate in procuring procedure without regard to nationality, except in cases in which any procuring agency specifically limits procurement to national bidders only or prohibit participation of bidders from a particular country in accordance with the policy of Federal Government. The name of country of origin has been mentioned in tender notice referred above.

2. It is requested that concerned department (M&IMP) may kindly be directed to strictly comply with Public Procurement Rules, 2004 and also to take necessary corrective measures under intimation to this Authority, if any compliance is found to be in non-compliance.

3. A complete copy of the text of the rules along with its contacts at PPRRA website www.pprra.org.pk.

(Jami Ahmad Rathore)
Deputy Director - (M & IMP)
Ph: 051-9224822
Fax: 051-9219149

MANAGING DIRECTOR,
Pakistan Railways,
Carriage Factory, Admin Building,
Sector I-11,
ISLAMABAD

CC:

DIRECTOR PROCUREMENT, Procurement Directorate, Pakistan Railways, P.R.
Carriage Factory Admin. Building, Sector I-11, ISLAMABAD