



17th April, 2013

Mr. Arif Azim,
Secretary / Chairman Railways
Block D Pak. Secretariat
Government of Pakistan,
Islamabad.

Sub: Allegations of violation of Public Procurement Rules 2004 by Pakistan Railways in the tender for procurement of 150 Locomotives from US firm only and Import of 75 locomotives at US \$ 105.843 million from China on unsolicited basis

Dear Sir,

Kindly refer your letter dated 16th April 2013 on the above subject.

At the out set, in response to your objection on TI Pakistan's role as a whistle blower, this is to inform you that TI Pakistan is performing this function as allowed under the Constitution of Pakistan Article 19-A.

Article 19-A of the constitution makes the right to access of information pertaining to a public authority a fundamental right. Justice Syed Mansoor Ali Shah in his landmark judgment *Ataullah Malik v. Federation of Pakistan* laid down the following:

"Right to information is another corrective tool which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19-A empowers the civil society of this country to seek information from public institutions and hold them answerable". PLD 2010 Lahore 605

TIP, accordingly, vide its letter dated 20th February 2013, had informed the Prime Minister of Pakistan about the violations committed by Pakistan Railways in the alleged illegal award on Contract of 75 Railway Engines at US \$ 105.843 million under the mis-concept that Exim bank China loan is a state to state agreement and therefore is a treaty. On August 2012, the Supreme Court of Pakistan had declared a similar unsolicited Contract for security equipment, awarded to another Chinese company in 2009, at US \$ 127.179 million, on the same pretext that China Exim bank is financing the contract.

Transparency International Pakistan again quotes another similar case of Safe City, where the unsolicited contract of US \$ 127.179 million was awarded by Ministry of Interior to a Chinese Firm in December 2010 and US\$ 68 million were disbursed, and the Cabinet in its meeting held on 14th March 2012, had endorsed the decision to grant waiver of PPRA Rules by the Prime Minister to the Ministry of Interior. The Supreme Court of Pakistan on 23 August 2012 has declared the Contract as illegal, in the Constitutional Petition No.91 Of 2011 & CMA No.2624 of 2011 and Constitutional Petition No.57 of 2012. The honorable court has also declared that the Contract dated 29.12.2009 is illegal and invalid



having been executed in violation of the mandatory provisions of the Public Procurement Rules, 2004, as the exemption therefrom purportedly granted under Rule 42 (c)(v) ibid was based on extraneous and irrelevant reasons and therefore of no legal effect. The Supreme Court while striking down the Islamabad Safe City Project's contract has mentioned in its judgment that 'the entire exercise appears to be farcical. It is a classic case of pleading the law to defeat the law.'

On the role of Exim bank China, paragraph 48 & 50 of the judgment is quoted below;
http://www.supremecourt.gov.pk/web/user_files/File/Const.P.91of2011Dt-23-8-2012.pdf

*" The Loan Agreement dated 17.12.2010 also does not attract Rule 5 ibid as the **Export-Import Bank of China** [Exim] is not an international financial institution. The latter term has not been defined in the Rules of 2004 or the Ordinance, 2002 whereunder the same were framed and therefore must be given its ordinary meaning as used in common parlance. The term refers to an International Organization and not a commercial bank based abroad. Reference is perhaps being made to the World Bank, the Asian Development Bank, International Monetary Fund and International Finance Corporation, etc. Even otherwise, it has not been disputed by the learned counsels for the respondents that the concessional loan facility would have been made available to any other Chinese company and was not specific to the respondent-M/s Hauwei Technology Company Limited."*

It is not TI Pakistan, but Chairman Railways himself, who has admitted in the Supreme Court of Pakistan about corruption in purchase of these very 75 Engines, on 10 Novemebr,2011;

"PR chief admits corruption in purchase of locomotives ISLAMABAD: 11 November 2011 The Pakistan Railways (PR) chairman conceded before a two-member Supreme Court bench on Thursday that rules and regulations were violated in purchase of 75 locomotives, which caused huge losses to the national exchequer. The bench comprising Chief Justice Iftikhar Muhammad Chaudhry and Justice Mian Shakirullah Jan."

http://www.dailytimes.com.pk/default.asp?page=2011%5C11%5C11%5Cstory_11-11-2011_pgl_4

This is also to point out to the Chairman Railways, that Mr Raja Pervez Ashraf ,the ex Prime Minster of Pakistan has been disqualified from contesting election for member of parliament by returning officer on 7 April 2013, for approving unsolicited contracts by violating PPRA rules. The RO orders were upheld by the Election Tribunal, comprising Justice Rauf Ahmad Sheikh and Justice Mamoon Rashid of the Lahore High Court (LHC) Rawalpindi Bench, on 15th April 2013. The Islamabad High Court Judgement is quoted below:

On Monday 8 April 2013 a division bench of the Islamabad High Court (IHC) dismissed the intra-court appeal of former prime minister Raja Pervez Ashraf against the cancellation of two unsolicited contracts awarded to NLC of two road projects worth over Rs 9 billion. The court had declared that assigning work to NLC was illegal and unconstitutional, offensive to the universally accepted principle of fairness, honesty, transparency, openness and was a result of colourable exercise of authority, irrelevant considerations, naked corruption, polluted mannerism, offensive to public exchequer and an infringement of constitutionally guaranteed fundamental



rights. It was also declared that assigning work to NLC was a glaring example of discrimination, favoritism, nepotism, ulterior motives and “stinking approach” to advance a personal agenda. Referring the matter to NAB for an investigation, the court also recommended that electoral authorities consider “whether in the light of the observations made in the judgment Raja Pervez Ashraf can be believed as sagacious, righteous, honest, upright, trustworthy and Ameen.”

It may be noted that on April 7, the returning officer for NA-51 rejected the nomination papers of Mr Ashraf after a complainant cited the judgment of the IHC and a Supreme Court order in the rental power project (RPP) case

In the end, TI Pakistan is enclosing a letter written to by PPRA to Railways on 5 May 2010, while objecting on condition of tender of 150 Engine only from USA. This letter confirms why since last 3 years, Pakistan Railways has not been able to procure even these 150 Engines.

Your sincerely,

Syed Adil Gilani,
Advisor,

Copies forwarded for the information of ;

1. PSPM, PM House, Islamabad,
2. Chairman, NAB, Islamabad.
3. Auditor General Pakistan, Islamabad.
4. Registrar Supreme Court of Pakistan, Islamabad,
5. MD, PPRA, Islamabad

GOVERNMENT OF PAKISTAN
PUBLIC PROCUREMENT REGULATORY AUTHORITY
(CABINET DIVISION)

<><><>

No 01(05)/DD-M&IMP/PPRA/2010

Islamabad: the 5th May, 2010

OFFICE MEMORANDUM

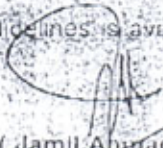
Subject: PUBLIC PROCUREMENT RULES, 2004 - APPLICATION OF

The undersigned is directed to refer to the advertisement of Pakistan Railways, received through "Mail" on 01-05-2010 ref No DP/150 Locomotives/2010 regarding procurement in Miscellaneous sector and to state that the advertisement does not comply 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 8th June, 2004.

- Rule 23 (5) requiring that the price of bidding documents shall be limited upto 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 decides to limit such participation to national bidders only or prohibit participation of bidders of some nationalities 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/organization may kindly be directed to strictly comply with Public Procurement Rules, 2004, and also to take necessary corrective measures under intimation to this Authority. Non-compliance would amount to misprocurement.

3. A complete copy of the text of the rules and guidelines is available at PPRA website www.ppra.org.pk.


(Jamil Ahmad Rathore)
Deputy Director - (M & IMP),
Ph: 051-9224822
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MANAGING DIRECTOR,
Pakistan Railways,
Carriage Factory, Admin Building,
Sector I-11,
ISLAMABAD

CC:

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