



30<sup>th</sup> 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-Tender for Procurement of 150 Locomotives-News Report that Pakistan Railways is Going Ahead with this Illegal Procurement

Dear Sir,

Transparency International Pakistan refers to its letters dated 2<sup>nd</sup> May 2010, 27 May 2010, and 28 May 2010, and PPRA letters to Pakistan Railways dated 5<sup>th</sup> May 2010 and 27<sup>th</sup> May 2010, where Pakistan Railways was informed that Pakistan Railways is violating Public Procurement Rules 2004 in the process of Procurement of 150 Locomotives from a single country. PR has not taken any action to address the violations, and in News International of 30<sup>th</sup> May 2010, it is reported that you are proceeding ahead to complete the tendering of this procurement, and will be holding pre bid meeting on 31 May 2010, and tender will be opened on 7<sup>th</sup> June 2010. (copy attached).

TI Pakistan has reported to you on 14 May 2010 that on Bidder M/s General Motors/ Electromotive Division (EMD) USA has sent its complaint to Pakistan Railways, making allegations that their company is being restricted to USA EXIM Bank Loan, whereas they can arrange Canadian EXIM Bank Loan which are on better terms than USA Bank, and that by making the specification only for one company, as GM do not manufacture any more Engine No. to be 645F as it is of outdated and obsolete technology. Moreover, Pakistan Railways has made it mandatory to have Electronic Fuel Injection EFI with Engine, and that 645F Engines have never been equipped with EFI.

Your reply given earlier to TIP on 13 May 2010 in this allegation is reproduced below.

***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 refer to the Rule No 2 (f),

***(a) “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;***

Pakistan Railways has also violated Rule No 48 by not conducting inquiry. Please note that Pakistan Railways shall have commenced the inquiry through the Grievance Redressal Committee formed by PR under its letter no 53-3/2003-S/48 dated 2<sup>nd</sup> March 2010, complete the inquiry within 15 days, and should have sent the report for the final decision of the Secretary Railways, which is mandatory requirement under the PPRA Regulations.

### **TI Pakistan Recommendations**

In the circumstances of various violations by PR of Rules and when PPRA on 27<sup>th</sup> May 2010 has also declared the said procurement as mis-procurement under Rule No 50, actions to recover ten times the loss that would have been incurred to GoP, under Rule No 7 “Integrity Pact” may be initiated under the charge of Collusive Practice **designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition**, against the single manufacturer for whom the whole procurement process has been tailor made and Pakistan Railways.

Copy of the prescribed Integrity Pact is enclosed for ready reference

Your sincerely,

Syed Adil 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.



## Integrity Pact

### **DECLARATION OF FEES, COMMISSIONS AND BROKERAGE ETC. PAYABLE BY THE SUPPLIERS/CONTRACTORS OF GOODS, SERVICES & WORKS**

\_\_\_\_\_ [the Seller/Supplier/Contractor] hereby declares its intention not to obtain or induce the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan or any administrative subdivision or agency thereof or any other entity owned or controlled by it (GoP) through any corrupt business practice.

Without limiting the generality of the foregoing, [the Seller/Supplier/Contractor] represents and warrants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or including the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP, except that which has been expressly declared pursuant hereto.

[The Seller/Supplier/Contractor] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoP and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[The Seller/Supplier/Contractor] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to GoP under any law, contract or other instrument, be voidable at the option of GoP.

Notwithstanding any rights and remedies exercised by GoP in this regard, [the Seller/Supplier/Contractor] agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [the Seller/Supplier/Contractor] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP.



## INTERNATIONAL THE NEWS

### US offers \$400m to put Railways on track

Sunday, May 30, 2010

By Ahmad Noorani & Aftab Maken

ISLAMABAD: The US has offered a \$400 million Export-Import Bank loan for immediate purchase of 150 locomotives by the Pakistan Railways (PR), which is may come to a halt because of massive engine failures.

Railway officials say Pakistan Railways has written a letter to the federal government seeking permission to accept the loan as they find themselves in a desperate situation after failure of the Chinese locomotives and refusal of the Chinese company to honour the warranty on already purchased engines, now rotting in junkyards in Karachi and Lahore.

The PR sources say the US Export-Import Bank has written a Letter of Intent (LoI) to Pakistan Railways offering 85 percent of the total amount of purchase of 150 locomotives. This financial facility will amount to \$400 million, leaving behind 15 per cent to be arranged by the Railways. For an organisation in loss and with no funds, even this 15 per cent local portion amounting to almost \$60 million is a very big amount, according to its officials. Pakistan Railways will need the approval of the Finance and Economic Affairs Division to go ahead to avail this financial facility and get the American locomotives as soon as possible to save the railways from disaster.

The PR has already floated international tenders for these 150 engines and the Chinese company has been disqualified because of its previous performance but the need to get the engines is so urgent that only built-up engines available in the US or Europe can meet the demand in a few weeks or months.

According to Railway sources, a pre-bid conference regarding this tender is being held on May 31 in Islamabad and bids for the said tender will be opened on June 7.

Railways technical experts say that out of these new American locomotives, seven to eight will be used for goods trains. These experts say that if one freight engine runs daily for a year, it gives railways a profit of Rs1 billion. They say that as soon as the railway will get these locomotives the chances of survival of railways would start appearing.

Some intriguing lobbying within the Railways is also being observed to block this tender on behalf of the Chinese company, which was paid 15 per cent advance money for supplying 75 locomotives it has already failed to deliver.

The announcement of purchase of 150 American standard locomotives by Pakistan Railways through a tender infuriated these lobbyists and in 2009 a full-fledged campaign against the Railways was started.

Among these lobbyists are said to be some railway officials who have allegedly benefited from the Chinese company. According to documentary evidences available with The News, one such bureaucrat, during his previous assignment, in his capacity of secretary, changed the rules of allotment of plots to government servants in Islamabad and managed to get a category-I plot completely in violation of rules. The said rules after allotment to this corrupt bureaucrat were reversed and old rules were restored within months. The PR officials, who fear complete collapse of railways in coming months, say that intervention only of the prime minister can ensure swift completion of the process so that the railways can get the engines quickly to put it back on the rails, literally.