



TRANSPARENCY INTERNATIONAL-PAKISTAN

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Advisory Committee

16th March, 2012

Mr. W. James McNerney, Jr.
Chairman, President and Chief Executive Officer,
The Boeing Company
100 North Riverside
Chicago, Illinois 60606

Sub: Award of contract of 5 Boeing 777-300 ERs at \$ 1.5 Billion on Unsolicited proposals and discriminatory conditions in the Tender for procurement of 39 Narrow Body aircraft

Dear Sir,

The Boeing Company has not replied to TIP's letters dated 23/2/2012 and 27/2/2012, on acquisition of 5 Boeing 777-300ER aircrafts by Pakistan International Airlines, against the PPRA Ordinance 2002 and Public Procurement Rules 2004. This is to remind you that Boeing Company and PIA are signatories of the MoU dated 15-11-2011, and according to Para 5 of the MoU Boeing is duty bound to abide with the PPRA Ordinance 2002 and Public Procurement Rules 2004.

"5. Subject to Boeing qualifying for a tender floated as per Government of Pakistan (GoP) PPRA rules and execution of a Definitive Agreement, Boeing will work with PIA to obtain U.S Export-Import (Eximbank) financing support, in the form of a loan guarantee, for the purchase of new B777-300ER (777-200LR) aircraft by PIA.

In processing the procurement of 5 Boeing 777-300ER aircrafts, PIA has violated following Rules of Public Procurement Rules 2004.

1. Rule No 8. PIA has not posted this procurement plan on PPRA website, which is required under PPRA vide directive No 2(21) DD (M & IMP)/PPRA/IMP. Rules /09 dated 18 June 2009 (**Annex-A**).

2. Rule No. 7. PIA has violated if it has not signed Integrity Pact with Boeing Company, which includes commitment not to bribe and Boeing Company agree to pay ten times the loss to the government if corruption is detected during tendering or in the contract implementation process, including accepting 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.

3. Rule No 49. PIA has failed to provide the copies of the evaluation report and Contract to TI Pakistan, as the Evaluation report and contract agreement are public documents and shall be given to any one asking for them.

By not posting the Contract Awarded to Boeing on PPRA website, PIA has also violated PPRA Statuary Notification Order No 1170(I)/2009 dated 9 July 2009 (**Annex-B**).

This procurement has also become controversial due to the conflicting statements of Chairman PIA, Federal Defence Minister, Chaudhry Ahmad Mukhtar and Managing Director, PIA, Nadeem Yousafzai, which remains unanswered as PIA nor Boeing has responded to TIP on this issues also.

1. 14/2/2012: Federal Defence Minister, Chaudhry Ahmad Mukhtar on acquisition of Boeing 777 aircraft for Pakistan International said these aircraft would enhance performance of the national flag carrier. **"Each aircraft is not only US\$ 150 million cheaper in price than our old aircraft but also consumes less fuel."**



2. 14/2/2012: Managing Director, PIA, Nadeem Yousafzai briefing the media said that PIA was able to successfully negotiate the deal with Boeing company at a price 13.5 percent lower than the price of aircraft delivered in 2008. Custom Invoice of Boeing Company for one 777-240 ER Aircraft dated 13/2/2004, the price of Boeing 777-200ER was only US \$ 121.002 million/each . Does this means Boeing has sold each 777-300ER at US \$ 104 Million to PIA?

3. 24/2/2012: Pakistan International Airlines (PIA) Managing Director Nadeem Khan Yousufzai on Friday informed the Senate Defence Committee that it would purchase aircraft from Boeing without government of Pakistan's guarantee. Actual price is \$190 million but due to our good past reputation, the company will provide us at \$150 million and termed it a good deal. He said that the PIA will purchase five Boeing 777-300 ERs by third and fourth quarters of 2013.

The major question need to be clarified is that according to Federal Defence Minister, Chaudhry Ahmad Mukhtar Each aircraft is US\$ 150 million cheaper in price than Boeing old aircraft, and according to Managing Director Nadeem Khan Yousufzai the actual price of Boeing 777-300ER is \$190 million but due to PIA's good past reputation, the company will provide at \$150 million and termed it a good deal. This means that in 2002 PIA had paid \$ 300 for each Boeing 777-300?


According to Rule 50, all such procurements which are in violations of Rules are deemed to be treated as mis- procurement, and requires action to be taken against officials of PIA and Boeing Company under Rule 2(f), corrupt & fraudulent practices", for collusive practice. This act of violation of PPRA Ordinance 2002 and Public Procurement Rules 2004 by Boeing Company is also to be examined by the US government under the US Foreign Corrupt Practices Act of 1977.

This is to inform Boeing that the Supreme Court of Pakistan in the order of suo motu case No.5 of 2010 for the GDF Suez supply of LNG, dated April 28, 2010 also stated "**Here we may observe that it is the duty of the Court to ensure that the Public Procurement Regulatory Authority Ordinance, 2002 read with the Public Procurement Rules, 2004 are adhered to strictly to exhibit transparency. It is a universally recognized principle that such type of transactions must be made in a transparent manner for the satisfaction of the people, who are the virtual owners of the national exchequer, which is being invested in these projects.**"

We request the Chairman Boeing Company to provide copies of the Evaluation Report and the Contract Agreements of 5 Boeing 777-300ER of 2012 and 2003 procurements of 8 Boeing 777 to TIP, under Rule 48 and Article 19-A of the constitution of Pakistan.

TI Pakistan is striving for implementation of Rule of Law.

Regards,


Syed Adil Gilani
Adviser

Copy forwarded for the information and action under the law to;

1. Chairman Public Accounts Committee, Islamabad,
2. USA Ambassador, Islamabad
3. Chairman, NAB, Islamabad
4. Registrar, Supreme Court of Pakistan, Islamabad
5. MD, PPRA, Islamabad
6. Denis J. McInerney, Chief, Fraud Section FCPA.Fraud@usdoj.gov



No. 2 (21) DD (M & IMP)/PPRA/IMP. Rules/09
GOVERNMENT OF PAKISTAN
PUBLIC PROCUREMENT REGULATORY AUTHORITY
(CABINET DIVISION)
FBC BUILDING, SECTOR G-5/2

Hafeez ur Rehman
Managing Director
Tel: 051-9224824
Fax: 051-9224823

Islamabad, the 18th June, 2009

Subject: **Implementation of Public Procurement Rules, 2004**

My dear

The Public Procurement Regulatory Authority (PPRA) has been mandated to ensure transparency, economy, efficiency, and accountability of the public sector procuring agencies through proper implementation and monitoring of PP Rules-2004. Since implementation of these rules the rate of violations leading to non-transparent procurement has decreased substantially. However, some areas still require extra attention of the procuring agencies for achieving desired goals set for PP Rules, 2004.

2. These Rules require all procuring agencies to devise a mechanism, for annual **planning** in detail for all proposed procurements with the object to realistically determine the requirements of the procuring agency, within its available resources, delivery time, completion date and benefits that are likely to accrue to the procuring agency and shall proceed accordingly. The annual requirements thus determined are also required be advertised in advance on the Authority's website. Unfortunately response from procuring agencies in placing their annual proposed procurements on Authority's website since implementation of the Rules in 2004 has remained very poor.

3. In view of the foregoing, it would be appreciated that the organizations under the administrative control of your Ministry are directed to ensure strict compliance of Rules-8 & 9 of PP Rules, 2004 and furnish their proposed annual requirements of the financial year 2009 -10 for placing on Authority's website, at the earliest.

With best regards,

Yours sincerely

Sd/-
Hafeez ur Rehman

All Federal Secretaries

ANNEX-15

A

M - 302
REGISTERED No. _____
L.7646

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ISLAMABAD, THURSDAY, DECEMBER 31, 2009

PART II

Statutory Notification (S.R.O.)

GOVERNMENT OF PAKISTAN

CABINET SECRETARIAT

(Cabinet Division)

NOTIFICATION

Islamabad, the 9th July, 2009

S.R.O.1170(I)/2009.— In exercise of the powers conferred by section 27 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Public Procurement Regulatory Authority is pleased to make the following regulations, namely:-

1. **Short title and commencement:-** (1) The regulations may be called the Public Procurement Regulations, 2009.

(2) They shall come into force at once.

2. **Posting of contract awards on PPRA's Website:-** All procuring agencies whether within or outside Pakistan shall post Contract Awards over fifty million rupees on PPRA's website on the proformas as set out in Annexure-I and Annexure-II to these regulations.

Provided that where any information is related to the award of a contract is of proprietary nature or where the procuring agency is convinced that such disclosure of information shall be against the public interest, it can withhold only such information from uploading on PPRA's website subject to the prior approval of the Public Procurement Regulatory Authority.

[No.2/1/2008/PPRA-RA-III.]