



# TRANSPARENCY INTERNATIONAL-PAKISTAN

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**Advisory Committee**

28 May, 2012

Air Chief Marshal(Retd) Rao Qamar Suleman,  
Chairman & Managing Director,  
Pakistan International Airlines,  
Quaid-e-Azam International Airport,  
Karachi 75200

Sub: Award of contract of 5 Boeing 777-300 ERs on Unsolicited proposals is  
violation of Public Procurement Rules 2004

Dear Sirs,

In continuation of Transparency International Pakistan's three letters dated 21/2/2012, 23/2/2012, and 27 /2/2012 on the subject matter, TIP refers to the statement published in newspapers on 27th May 2012 that PIA has signed a purchase agreement with Boeing Company for acquisition of five Boeing 777 aircraft and PIA Chairman, Air Chief Marshal(Retd) Rao Qamar Suleman said this at the 55th Annual General Meeting (AGM) Saturday.

Kindly note that PIA is not authorised to sign agreement with Boeing Company without inviting Open Tenders as per Public Procurement Rules 2004.

Following procedural requirements are to be followed by PIA, and are mandatory to be observed by the new Chairman & Managing Director in this case also;

1. Ministry of Defence vide MOD letter u.o.no. P1.2/2/D-18/2009 dated 31 January 2011 issued directives that PPRA Rules must be observed in letter & spirit while making procurements. Violations of those rules will be viewed seriously and Head of Department/Organization will be held responsible for the same. (Annex-A).
2. In accordance with MOU Signed between PIA and 15-11-2011, paragraph 5 also confirms that Tenders as per PPRA Rules will be invited;  
*"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".*
3. PIA followed PPRA Rules and invited Tenders opened on 23 January 2012 as per PPRA Rules, for 39 narrow body aircrafts, and both Airbus A 340 and Boeing 777-300 were considered, but why in case of Wide Body B777-300ER PIA has been insisting on violating the Rules?.

TI-P would refer to the Supreme Court of Pakistan's Judgment given in the Rental Power Plants Case on 30<sup>th</sup> March 2012, where it had stated that. "...with a

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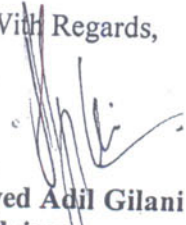
view to achieving the goal of transparency in awarding contract or in making procurement, open competition is pre-requisite under the PPRA Rules". The Honorable Court also stated that "the competition to establish transparency between the interested parties is in fact the theme of the PEPPA Ordinance as well as the Rules framed thereunder (Public Procurement Rules 2004)". And ordered in paragraph 84 (iii) The contracts of all the RPPs – solicited and unsolicited, signed off or operational, right from BHIKKI & SHARAQPUR upto PIRANGHAIB, NAUDERO-I & NAUDERO-II were entered into in contravention of law/PPRA Rules, which, besides suffering from other irregularities, violated the principle of transparency and fair and open competition, therefore, the same are declared to be non-transparent, illegal and void ab initio. Consequently, the contracts of RPPs are ordered to be rescinded forthwith and all the persons responsible for the same are liable to be dealt with for civil and criminal action in accordance with law;

4. TIP also request the Chairman/MD to know that the RPP Contracts awarded without inviting tenders in 2006 have also been declared illegal by the Supreme Court, and the Supreme Court Judgment ruling on the use of PPRA Rule 42 (c) Direct Contracting is given in paragraph 35. *"A perusal of the above rule suggests that the provision for direct procurement without following procedure of fair competition was not applicable in the case of unsolicited proposal for RPPs."*

TIP is of the view that according to the PPRA Ordinance 2002, Public Procurement Rules 2004 and Supreme Court Judgment in RPP' cases dated 30 March 2012, if the Contract is awarded to Boeing Company for acquisition of five Boeing 777 aircraft, the Contract may be declared as illegal anytime, and legal action initiated against the violators which includes PIA and Boeing Company.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With Regards,

  
Syed Adil Gilani  
Adviser

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

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