

March 04, 2024

TIP24/0304/1A

The Vice Chancellor,
University of Sargodha,
Sargodha, Punjab

**Subject: Complaint against Allegation of Violation of Punjab PPRA Rules 2014,
“Framework Contract (01 Year) for Supply and Replacement of Tyres for Transport Fleet
of the University”, Opening on March 11, 2024**

Dear Sir,

Transparency International Pakistan has received a complaint from M/s Rafique & Company against the violation of Punjab PPRA Rules 2014, framework contract (01 year) for supply and replacement of tyres for transport fleet of the university (**Annex-A**)

The complainant has made the following allegations/objections:

That,

1. The University of Sargodha (UoS) issued a tender notice entitled "Framework Contract (01 Year) for Supply and Replacement of Tyres for Transport Fleet of the University," scheduled for opening on March 11, 2024. However, the same tender was previously opened on January 11, 2024, and won by M/s Rafique & Company as the lowest bidder but the purchases order was not issued.
2. The University of Sargodha has scrapped 11th January 2024 tender, and the same tender is now re-floated with difficult and discriminatory conditions in violation of Punjab PPRA Rules 2014.
3. Against the common practice within tyre trade, UoS has required participating firms to submit a sole distributor/dealer/supplier joint venture letter from the tyre manufacturer for the year 2024. It is impractical to renew or issue dealership certificates on such a frequent basis. Typically, once a dealer is nominated, they are considered as such until the manufacturer revokes their status.
4. UoS requires safety standards of only ETRTO & JATMA standards tires which is discriminatory and unjust. Excluding other globally recognized standards such as TRA
5. The estimated cost for the subject tender is less than around 11.14 million rupees. However, the university requires from the bidders that the Income Tax return filing status for the last F/Y should be over Rs. 40-60 Million and the firms have an average annual sale of at least 40-60 million rupees over the past three years.

Transparency International Pakistan Comments

Transparency International Pakistan has reviewed the allegations of the complaint, prima facie the allegations seem correct. Following are TI Pakistan comments;



1. As per Punjab PPRA Rules 2014, Rule 40, no procuring agency shall favor any contractor or supplier through conditions that put others at a disadvantage, quoted below:

Punjab PPRA Rule 34. Discriminatory and difficult conditions.- "Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or which is difficult to meet"


2. The cost of the work is approx. PKR 11 Million, however the procuring agency requires bidder to have average sale of over PKR 40-60 Million or above which is not justifiable and is against the Punjab PPRA Rules.

TI Pakistan's Recommendations

Transparency International Pakistan requests the Vice Chancellor, University of Sargodha to examine the complaint in light of Punjab PPRA Rules 2014 and if found correct, issue directives to re-tender the procurement in compliance with Punjab PPRA Rules 2014 to avoid mis-procurement under Rule 50.

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

Regards


(Advocate Daniyal Muzaffar)
Trustee/Legal Advisor
Transparency International Pakistan

Copies forwarded for the information with request to take action under their mandate to:

1. Chief Minister, Government of Punjab, Lahore
2. Chief Secretary, Government of Punjab, Lahore
3. MD, Punjab Public Procurement Regulatory Authority, Lahore
4. Registrar, Lahore High Court, Lahore

Note:

This is to clarify that Transparency International Pakistan is not a complainant, it acts as a whistleblower and operate under Article 19-A, of the Constitution of Pakistan which gives the right to public to know how government is being run by public officers. Article 19-A makes the right to access of information pertaining to a public authority a fundamental right, and a three member bench in case of Mukhtar Ahmad Ali vs the Registrar, Supreme Court of Pakistan, Islamabad, headed by Chief Justice Qazi Faez Isa in the landmark judgment on 16 October 2023, in CP No. 3532/2023, has declared that

"What previously may have been on a need-to-know basis Article 19A of the Constitution has transformed it to a right-to-know, and the Access to information is no longer a discretion granted through occasional benevolence, but is now a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution"

The Chairman,
TIP.,
Karachi.

The M.D.,
PPRA,
3rd Floor, Al-Falah Building,
Mall Road,
Lahore.

UNDER PROTEST.

The Vice Chancellor,
University of Sargodha,
Sargodha.

Subject: Misuse, Misapplication, Violation of PPRA Rules No:- 4, 16, 22, 31, 38 etc and violation of Article 25 of Constitution of Pakistan for colossal loss of millions of rupees to public exchequer with collusion of bidders in Framework Contract (01 Year) for Supply and replacement of Tyres for transport fleet of the University of Sargodha-Sargodha.
Due for opening on: 11-03-2024.

Respectfully sir,

That the University of Sargodha (UOS) has advertised new tender notice, which is due for opening on dated:- 11-03-2024. Whereas, we won last tender opened on Dated:- January 11, 2024 on single envelop basis and declared lowest (that save millions of rupees as per following comparative statement) also bids of other bidder were declared highest, and rejected due to multiple reasons as well as against the bidding documents and PPRA rules. We are waiting for our purchase order which is still awaited and we also filed an application under rule No:- 67 of PPRA Rules- Punjab before UOS-Sargodha and whereas no independent grievance committee is nominated till yet and our application is still pending. We offered tyres as per required specifications, full filed and accepted all requirements of the tender.

COMPARATIVE STATEMENT of UOS-Sargodha tender which was opened on Dated:- 11 Jan 2024 is which we won with marginal difference also bid of other bidders were rejected due to quoting multiple rates and brands etc.:-

Item No.	VEHICLE & TYRE SIZE	RATES QUOTED BY M/S RAFIQ & COMPANY.	RATES QUOTED BY M/S AYESHA + MARYAM	WIN BY RAFIQ & COMPANY
1.	BUS SIZE: 1000R20	Rs. 89,006/-	Rs. 1,70,000/-	RAFIQ & COMPANY
2.	MINI BUS & HIÑO ISUZU TRUCK SIZE: 7.50R16	Rs.69008/-	Rs. 85000/-	RAFIQ & COMPANY
3.	TOYOTA HIACE SIZE: 195R15	Rs.65003/-	Rs. 48000/-	
4.	TOYOTA HILUX, HYUNDAI VAN, SHAHZORE, MITSUBISHI SIZE: 195R14	Rs.63003/-	Rs. 47000/-	
5.	MASSEY TRACTOR 385 SIZE: 18.4/15-30	Rs.194009/-	Rs. 2,30,000/-	RAFIQ & COMPANY
6.	FIAT TRACTOR 640 SIZE: 16.9/14-30	Rs.157001/-	Rs. 238,000/-	RAFIQ & COMPANY
7.	FIAT TRACTOR 480 SIZE: 12.4/11-28	Rs.89009/-	Rs. 1,38,000/-	RAFIQ & COMPANY
8.	MASSEY/FIAT TRACTOR SIZE: 7.50-16	Rs.42008/-	Rs. 60,000/-	RAFIQ & COMPANY
9.	FIAT TRACTOR 480 SIZE: 600-16	Rs.33008/-	Rs. 45000/-	RAFIQ & COMPANY

10.	TOYOTA SIZE: 265/60R18	REVO	Rs.124007/-	Rs. 75000/-	
11.	SUZUKI SIZE: 185/80R14	APV	NQ	Rs. 43000/-	
12.	TOYOTA CAR SIZE: 185/70R14		Rs.47003/-	Rs. 35000/-	
13.	HONDA CIVIC & TOYOTA CAR SIZE: 195/65R15		Rs.54005/-	Rs. 38500/-	
14.	SUZUKI SIZE: 185/70R13	BALENO	Rs.24008/-	Rs. 35000/-	RAFIQ & COMPANY
15.	SUZUKI SIZE: 175/70R13	CULTUS	Rs.24008/-	Rs. 37005	RAFIQ & COMPANY
16.	SUZUKI SIZE: 165/70R13	WAGON-R	Rs.39002/-	Rs. 31000/-	
17.	SUZUKI RAVI & BOLAN SIZE: 165/70R12		Rs.24008/-	Rs. 32000/-	RAFIQ & COMPANY

Now as per the new tender of UOS-Sargodha advertisement following condition are against the law:-

1- Telegraphic / Telephonic / Postal requests will not be entertained for issuance of bid documents.

Whereas it is decided by PPRA as well NAB that all bidding documents should be available on the PPRA website in download form for participation and bidder use these documents for submission of bid and pay nominal printing fee. So please amend this condition according to law to enable all bidders to participate in this tender for wider and transparent and economical procurement.

UOS – Sargodha violated and misapply many PPRA rules as follows:-

As per Rule No:- 34 of PPRA-Punjab no procurement agency is allowed to introduce any condition in the bidding documents which create discrimination between bidders, difficult to meet, ambiguous, against the ordinary practices of tyre trade, immaterial and introduced in this tender just to benefit few vendors which is not only against the basis principal of procurement also fall against PPRA rules as well as against The Constitution of Pakistan specially Article 25 of the Constitution of Pakistan and also not required to achieve the object of this procurement, which is just to buy tyres.

Every single citizen of Pakistan has the equal opportunity to do business and it is Right to Business which has been backed with the Constitution of Pakistan and if any procurement agency introduces such conditions to favor any bidder will fall under Rule No:- 69. Rule No:- 34 is as follows:-

34. Discriminatory and difficult conditions. – Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or which is difficult to meet.

Explanation. - In ascertaining the discriminatory or difficult nature of any condition, reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

According to the following articles of Constitution of Pakistan all required conditions required for evaluation are illegal and ultra vires with law of the country:-

Art. 25. Equality of citizens.

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

18. Freedom of trade, business or profession-

Subject to such qualifications, if any, as may be prescribed by law, **every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:**

Provided that nothing in this Article shall prevent:-

- (a) the regulation of any trade or profession by a licensing system; or
- (b) the regulation of trade, commerce or industry in the interest of free competition therein; or
- (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

8. Laws inconsistent with or in derogation of fundamental rights to be void.

(1) **Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.**

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

According to the Higher Courts of the Pakistan:-

"More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "Subla Fundamento credit opus" - a foundation being removed, the superstructure falls. ***A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court.*** In such a case the legal maxim Nullus Commodum Capere Potest De Injuria Sua Propria applies. ***The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. Nor can a person claim any right arising out of his own wrong doing (Juri Ex Injuria Non Oritur).***"

The Hon'ble Supreme Court while dilating upon Section 24-A of the General Clauses Act, 1897 has been pleased to observe that the rule is founded on the premise that public functionaries must act fairly, equitably and reasonably without the element of **discrimination.**

When the legislature confers such powers on the executive it must be deemed to have assumed that the power would be, firstly, exercised in good faith, secondly, for the advancement of the objects of the legislation, and, thirdly in a reasonable manner.

So, any term and condition of the bidding documents if against the PPRA law & other laws fall under mis-procurement.

"misprocurement" means public procurement in contravention of any provision of the Act, rules, regulations, orders or instructions made thereunder or any other law in respect of, or relating to the public procurement;

Now UOS-Sargodha introduce following evaluation point system / firm evaluation criteria mentioned at page no:- 17 of the bidding documents only to favour their buddy and to buy goods over and above the actual price by kick out us through these types of conditions which is highly condemned able, which downloaded at PPRA website as follows:-

(These conditions are not beneficial for procurement of tyres in competition at actual market price; these conditions will be utilized only for the rejection of bids of others except their friend. Actually instead of technical evaluation of the bids on technical grounds, UOS apply non-technical conditions and misapply RULE no:- 16 of PPRA 2014 which is not applicable here).

ILLEGAL, DIFFICULT, DISCRIMINATIVE DESCRIPTION / REQUIREMENT OF UOS-SARGODHA.	Our Comments are as follows against the required inconsistent, illegal, discriminative, difficult requirement for evaluation.
<p>Participating firms must sole distributor /dealer/supplier joint venture letter from tyre manufacture for year 2024 (Authorization letter must be for year 2024). If bidder could not provide letter for year 2024 then will mark "O".</p>	<p>In tyre trade it is not a practice to always have a fresh letter from the tyre manufacturer and no such practice is practical to always have a fresh certificate. Also this certificate has no efficient role in the procurement of tyres. It is not possible to renew every year or issue every year or month dealership certificate. It is practice that once nominated a dealer etc then till considered as a dealer unless revoked by the tyre manufacturer so please amend or delete this condition.</p>
<p>Number of frame work contract (minimum 01 year) completed (acknowledgement letters / completion certificates, fresh attested from <u>issuance</u> authority) (Govt. / Semi Govt. / Authorities) Supply same type of tyres in the last 5 years.</p>	<p>Fresh attested from the authority is not possible normally as no department can attested their issued letters. If UOS-Sargodha has doubts on any document then it can reach the issuing authority for verification of these documents. So this condition must be deleted from the bidding documents.</p>
<p>Quoted tyre brand manufacturer registration / membership certificate regarding safety standards of ETRTO & JATMA.</p> <p>In case of non-provision, Bid will be technically rejected (as there is no compromise on safety standards)</p>	<p>The requirement for only ETRTO & JATMA standards tires in this tender is discriminatory and unjust. Excluding other globally recognized standards such as TRA, which is widely respected as a supreme body in the tire industry, is unnecessary and unfair. JATMA, ETRTO, and other bodies in the tire trade adhere to TRA standards, making this condition biased and aimed at favoring specific bidders. This condition only serves to inflate tire prices for the benefit of a select group, demonstrating clear favoritism and an attempt to enrich a particular party. We demand that this discriminatory condition be removed immediately to ensure a fair and transparent tender process.</p> <p>Secondly UOS mentioned their bidding documents as follows "... there is no compromise on safety standards)" mentioned standards i.e JATMA or ETRTO provides the tyre standards that are size's dimensions, ply rating inflation pressure and other specs whereas no guidance for safety standards are mentioned by these 2 organizations and also bidding documents are silent for the safety standards required by UOS. So, this condition is very uncommon, strange, incomplete and exceptional.</p>
<p>Import / purchase/ trade link record of quoted tyres (on firm name) in 2023 (L.C or transferred payment record)</p>	<p>The requirement for additional documents such as the trade link, especially for the procurement of small-sized</p>

	<p>tires in large quantities, is unjustified and malicious. No university typically requires such documents for tire procurement, especially for local purchases. This condition is superfluous, unnecessary, and appears to be designed to benefit their buddy party by inflating tire prices.</p> <p>This is an open tender whereas all reputable and experienced Pakistan based companies are allowed to quote who can be importer, dealer, supplier, general order supplier or any other, they cannot give LC or transferred payment record.</p> <p>We demand that this condition be immediately removed from the evaluation criteria to ensure a fair and transparent tender process.</p>
<p>After sale service, firm have the warranty service facilities in Punjab, Islamabad and KPK. (mentioned with address and phone numbers, at least 10 with firm authorization letter)</p> <p>Service center and workshop address in Sargodha.</p>	<p>UOS is floating this tender to be held at the in Sargodha. The delivery and replacement required is at Sargodha campus, nowhere else. We provide warranty for tyres as required by UOS.</p> <p>UOS every year consumes millions of rupees to their workshop for procurement of workshop spares and pay to the employees of the workshop.</p> <p>We never held this condition before from any university of Pakistan also there is no need to have service facilities in Punjab, Islamabad and KPK (<i>these provinces consist of 100 cities or maybe more, so it is difficult for anyone to have SERVICE WORKSHOPS in every city</i>) so please amend this illegal condition from the evaluation criteria for healthy competition.</p>
<p>Registration from S.E.C.P</p>	<p>It is known to all that <i>CONSTITUTION OF PAKISTAN</i> gives right to every citizen to do business, and there are different government bodies who register companies of different types i.e Sole Proprietor, Partnership, Private Limited and etc.</p> <p>SECP registers only public / private limited companies / corporations whereas other business types have different government bodies to register i.e Registrar of Firm and etc. So there will be different registrations.</p> <p>Please delete this condition as it discriminatory condition and just want to favour only one bidder.</p>
<p>Income Tax return filing status for the last F/Y. Over Rs. 40-60 Million.</p>	<p>The estimated cost for this tender is less than around 11.14 million rupees. Whereas the requirement is for 40 to 60 Million which is also discriminatory for open tender. The maximum requirement should be to max 12 million max so this condition may kindly be amend.</p>
<p>Average annual Sale of at least 03 years. Over 40-60 Million get 04 marks. Over 60-80 Million get 05 mark</p>	<p>The estimated cost for this tender is around 11.14 million rupees.</p>