



NATIONAL HIGHWAY AUTHORITY

Procurement & Contract Administration Section
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No. 2()/GM(P&CA)/NHA/2016/114

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✓ **Mr. Sohail Muzaffar**

Chairman

Transparency International-Pakistan

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Subject: **NEWS OF ALLEGATION OF ILLEGAL AWARD OF TWO CONTRACTS TO TWO 2ND LOWEST BIDDERS, N-50 PROJECT CALLED PACKAGE-I AT RS. 4.8 BILLION AND FOR N-70 ROAD UNDER PACKAGE-I AT RS 4.5 BILLION.**

Reference: Your letter No. Nil dated 12th January, 2016.

Reference is made to the news article printed in the daily DAWN on 4th January 2016, which is highly misleading and facts have been distorted to present a preconceived opinion. There is also need to distinguish between the "alleged irregularities" and "illegal award".

2. The six observations raised by your prestigious organization are hereby replied (**Annex-I**) and NHA will most willingly respond to any other question about the process which nevertheless remains economical and transparent.

3. NHA appreciates your engagement on the issue and reiterates its supports to all efforts for elimination of corruption from the country.

(**SHAHID ASHRAF TARAR**)

Secretary Communications / Chairman NHA

Copy for information:

- Chairman NAB, Islamabad.
- Chairman, PMIC, Islamabad.
- DG, NAB, Karachi
- Registrar, Supreme Court of Pakistan, Islamabad.
- Managing Director, PPRA, Islamabad.
- Member (Engg-Coord), NHA, Islamabad.
- General Manager (P&CA), NHA, Islamabad.

DEPARTMENTAL REPLY
OBSERVATION OF TRANSPARENCY INTERNATIONAL PAKISTAN

Sr. No.	Observation	Departmental Reply
1.	<p>NHA has prima facie committed mis-procurement by awarding the Contract to 2nd lowest bidders at higher costs.</p>	<p>The subject works are funded by the Asian Development Bank. ADB Procurement Guidelines Rules have been applied in the light of Rule 5 of PPRA which is reproduced as under:</p> <p>“International and inter-governmental commitments of the Federal Government: Whenever these rules are in conflict with an obligation or commitment of the Federal Government arising out of an international treaty or an agreement with a State or States, or any international financial institution the provisions of such international treaty or agreement shall prevail to the extent of such conflict.”</p> <p>The two projects ICB-N50 and ICB-N70 were advertised in the form of four lots (two for each project) on 19th December 2014. The advertisement unambiguously stipulates that a bidder may be awarded one or more contract packages if it submits the lowest evaluated substantially responsive bid(s) provided such bidder meets the aggregated qualification requirements for one or more contract packages. The same fact is stated in the bidding document, Section 3, Clause 1.2.</p> <p>Regarding N-50 road project, two separate bidders turned out to be lowest evaluated bidders, one in each contracts, and hence qualify for award of contracts. On the other hand on N-70 project, the award decision has been made following the least cost combination method specified in the ADB Standard Bidding Document used as per ADB Guidelines.</p>

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2.	<p>ADB, WB, FIDIC and all national as well as international rules does not permit disqualification of lowest bidder, after the bidder was allowed to participate in the tender, the tenders have been opened, and bid prices have been announced.</p>	<p>It is incorrect that ADB or any other agency does not permit disqualification of lowest bidder; Instruction to Bidders, Clause 39.1 of ADB Standard Bidding Document (SBD) reads; "the employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily." Moreover, Clause 1.2 of Section 3 states "if a Bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder's capacity to meet the following aggregated requirements as presented in the bid:</p> <ul style="list-style-type: none"> • Construction-Experience (value of similar contracts previously undertaken by the Bidder), • Financial Resources Requirements, • Equipment to be allocated, and • Personnel to be fielded <p>Further as explained in Sr. No. 1, the award decision has been made in total conformity with the provisions of bidding document by following the specified criteria of least cost combination to the Employer.</p>
3.	<p>In case the tender documents included any condition that financial status of bidders will be evaluated,</p>	<p>The evaluation has been done in accordance with already declared evaluation criteria, across the board for all the bidders. The relevant Clause 1.2 of Section 3 is reproduced as follows:</p>

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	<p>and the bidders who have attained passing scores after including the cost of the project in hand, the works of all bidders/JVs in hand should have been checked and evaluated.</p>	<p>“Works are grouped in multiple contracts and pursuant to ITB 36.4, the Employer will evaluate and compare Bids on the basis of a contract, or as a total of contracts in order to arrive at the least cost combination for the Employer by taking into account discounts offered by Bidders in case of award of multiple contracts.</p> <p>i) Lot-I, ii) Lot-II</p> <p>if a Bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder’s capacity to meet the following aggregated requirements as presented in the bid:</p> <ul style="list-style-type: none"> • Construction-Experience (value of similar contracts previously undertaken by the Bidder), • Financial Resources Requirements, • Equipment to be allocated, and • Personnel to be fielded
4.	<p>In case the lowest bidders fails for net worth under condition 3 above, the next responsive bidder may be awarded if it is near to lowest prices, and not if the tendered cost is above 25% of the lowest cost.</p>	<p>The Standard Bidding Documents and Procurement Guidelines of the ADB nowhere stipulate the threshold of 25% of the lowest cost.</p>

