

18.10.2018

Appellant absent. Learned counsel for appellant absent. Adjourn. To come up for preliminary hearing on 26.11.2018 before S.B

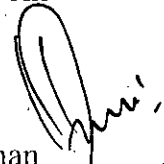
  
Member

26.11.2018

Counsel for the appellant present.

Learned counsel for the appellant requests for withdrawal of instant appeal on the instruction of his client.

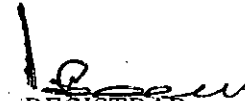

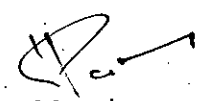

Request is accepted and the appeal is dismissed as withdrawn. File be consigned to the record room

  
Chairman

Announced:  
26.11.2018

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Case No. 849 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/07/2018	<p>The appeal of Mr. Rahmat Hakeem presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 2/7/18</p>
2-	23.07.2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23 /7 /18</u>:</p> <p style="text-align: right;"> MEMBER</p>
10.09.2018	10.09.2018	<p>Appellant absent. Learned counsel for the appellant absent. Adjourned. To come up for preliminary hearing on 10.09.2018 before S.B</p> <p style="text-align: right;"> Member</p> <p>Mr. Taimur Ali Khan, Advocate counsel for the appellant present and made a request for adjournment. Granted. Case to come up for preliminary hearing on 18.10.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 849 /2018

Rahmat Hakim


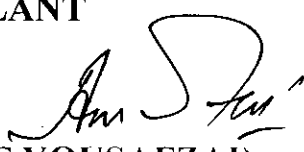

V/S

Govt: of KPK.

**INDEX**

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-05
2.	Copy of advertisement & comparative statement	A&A-1	06-07
3.	Copies of notification dated 05.11.2014, letter dated 11.03.2016, NIT dated 09.10.2015, letter dated 30.03.2016, letter dated 07.04.2016, letter 28.04.2016, letter dated 28.04.2016	B--H	08-16
4.	Copies of inquiry report of SE, PIT inquiry report, letter dated 15.06.2016	I--K	17-30
5.	Copies of charge sheet along statement of allegations and reply to charge sheet	L&M	31-39
6.	Copy of inquiry report	N	40-50
7.	Copies of show cause notice and reply to show cause notice	O&P	51-59
8.	Copies of order dated 01.03.2018, review petition and rejection order	Q--S	60-62
9.	Copy of additional security	T	63-64
10.	Vakalat Nama	-----	65

THROUGH:

  
APPPELLANT  
  
(M.ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT  
&  
  
TAIMUR ALL KHAN  
ADVOCATE HIGH COURT

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 849 /2018

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1107

Dated 02/07/2018

Mr. Rahmat Hakeem, Superintendent Engineer (OPS)  
C&W Circle, Bannu.

(Appellant)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary, Govt: of KPK, Civil Secretariat, Peshawar.
3. The Secretary C&W Department Govt: of KPK, Civil Secretariat, Peshawar.
4. The Chief Engineer (North) C&W Department KPK, Peshawar.

(Respondents)

-----  
APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.06.2018 WHEREBY THE REVIEW PETITION OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 01.03.2018 FOR NO GOOD GROUNDS.

Filed to-day

Registrar.

27/18.

**PRAYER:**

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER 05.06.2018 & 01.03.2018 MAY BE SET ASIDE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

## **RESPECTFULLY SHEWETH:**

### **FACTS:**

1. That the appellant was working as Executive Engineer Dir Upper gave advertisement for Rehabilitation and Construction of Kumrat Road and the offered bids of the participating contractors were evaluated on 08.03.2016 and M/S Pir Muhammad & Co was declared as the lowest bidder. **(Copies of advertisement and comparative statement are attached as Annexure-A & A-1).**
2. That according to Finance notification dated 05.11.2014, that in case the bid below the rates provided on market basis rate basis, the bidder shall deposit additional bank guarantee as prescribed to firm up their bids and this respect the appellant wrote a letter on 11.03.2016 to the lowest bidder i.e. Pir Muhammad & Co to submit additional security as per above notification, however the lowest bidder did not submitted the additional security within the specified period of 21days up to 29.03.2016 as per instruction of standard NIT condition issued on 09.10.2015, therefore the appellant forfeited the 2% cal deposit of the lowest bidder and directed to the second lowest bidder to deposit additional security on 30.03.2016, however Bank of Khyber informed the appellant on 07.04.2016 that CDR of the second lowest bidder was found fake and forged, therefore the appellant wrote a letter on 28.04.2016 to Chief Engineer North C&W Department Peshawar for blacklisting the contractor Almar Gul and then directed the third lowest bidder to deposit the additional security for the work on same day i.e 28.04.2016, in meanwhile the first lowest bidder M/S Pir Muhammad & CO complaint against the appellant to Chief Minister KPK on one hand and on other hand he also filed compliant to the Chief Engineer North C&W Deptt: that he has deposited the additional security well in time. **(Copies of notification dated 05.11.2014, letter dated 11.03.2016, NIT dated 09.10.2015, letter dated 30.03.2016, letter dated 07.04.2016, letter 28.04.2016, letter dated 28.04.2016 are attached as Annexure, B,C,D,E,F,G&H)**
3. That on the basis of the complaint of the M/S Pir Muhammad & CO the SE C&W Circle Swat on the direction of Chief Engineer conducted the inquiry against the appellant who wrongly presumed the time limit of 21 days as per standard NIT condition from 11.3.2016 instead of 08.03.2016 for depositing of additional Security and submitted his report on 02.06.2016 and on that complaint the PIT also conduct inquiry against the appellant, however the PIT also adopted the same

observation of inquiry conducted by SE C&W Circle Swat, however on the submission of the inquiry report by SE C&W Circle Swat, the Chief Engineer directed the appellant to go through the report and process the tender document accordingly on 15.06.2016. **(Copies of inquiry report of SE, PIT inquiry report, letter dated 15.06.2016 are attached as Annexure-I,J&K)**

4. That on the basis of above mention reason the appellant was served with charge sheet and statement of allegation which was duly replied by the appellant in which he denied all the allegations and give facts about the real situation. **(Copies of charge sheet along statement of allegations and reply to charge sheet are attached as Annexure-L&M)**
5. That inquiry was conducted against the appellant in which the charges were not proved against the appellant except the charge No. 1 & 2 in which the inquiry committee wrongly presume dated 11.03.2016 instead of 08.03.2016. It is pertinent to mention here that no proper opportunity of defense was provided to the appellant to defend the issue and give the real facts of the situation. **(copy of inquiry report is attached as Annexure-N)**
6. That show cause notice was issued to the appellant which was duly replied by the appellant in which he denied the entire allegation and give the real facts about the situation. **(Copies of show cause notice and reply to show cause notice are attached as Annexure-O&P)**
7. That on the basis of above baseless allegations, minor penalty of censure was imposed upon the appellant on 01.03.2018 against which he filed the review petition on 05.03.2018 which was rejected on 05.06.2018 without any solid reason. **(Copies of order dated 01.03.2018, review petition and rejection order are attached as Annexure-Q,R&S)**
8. That now the appellant comes to this august Tribunal for redressal of grievance on the following grounds amongst the others.

**GROUND:-**

- A. That the impugned order dated 05.06.2018 and 01.03.2018 are against the law fact, norms of justice and material on record therefore not tenable and liable to be set aside.

- 4
- B. That no proper inquiry was conducted against the appellant in which no proper opportunity of defense was provided to the appellant to defend himself, therefore the whole proceeding was in violation of law and rules.
- C. That bid opening dated was 08.03.2016 and not 11.03.2016 and the additional security fees as per instruction will be submitted within 21 days and after the expiry of 21 the lowest bidder i. Pir Muhammad & Co should submit additional security money on or before 29.03.2016, but the lowest bidder did not submit its additional security within the stipulated period, therefore, the appellant forfeited earnest money and directed the second lowest bidder to deposit additional security, which shows that the appellant had done according to the instruction and procedure and did nothing which come under the definition of misconduct.
- D. That the appellant submitted detail report about the matter to his high ups and the high ups directed the appellant to process accordingly tender documents which shows that the appellant has informed his high ups and did as he was directed.
- E. That the inquiry committee did not proved the charge level against the appellant except the 1 & 2 charges which was also based on wrongly presuming the reckoning the time limit of 21 days for deposition additional security as 11.03.2016 instead of 08.03.2016 which was the bidding opening date and if the exact date 08.03.2016 is considered then the expiry of 21 days for depositing additional security was expired on 29.03.2016 , but the contractor M/S Pir Muhammad & Co submitted additional security on 04.04.2016 and after expiry of 21 days the appellant had done the process according to the prescribed procedure, but the inquiry committee baselessly proved the charge 1 & 2 against the appellant by wrongly presuming the date of 11.03.2016 instead of 08.03.2016. **(Copy of additional security is attached as Annexure- T)**
- F. That the appellant has not violated any clause of BN&R Code, CPWA Code and KPK KAPRA rules which regulates the function of the department and the procurement procedure.
- G. That minor punishment of censure on baseless allegations was imposed upon the appellant, but this minor punishment will effect his further promotion of the appellant being an officer of grade-18




working on OPS against the post of BPS-19, therefore the penalty of censure imposed upon the appellant on baseless allegation may be set aside to not affect his future promotion and his service carrier.

- H. That the appellant has not been treated in according to law and has been punished for not fault on his part.
- I. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

  
APPELLANT  
Rahmat Hakim

THROUGH:

  
(M.ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT,  
  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT,  
&   
ASAD MAHMOOD  
ADVOCATE HIGH COURT.



اللہ ہی لیلے ہیں سترق و مغرب القرآن  
DAILY MASHRIQ PESHAWAR

روزنامہ  
سیدناج میر شاہ  
پشاور  
سلسلہ اشاعت کے 49 سال

پشاور اسلام آباد سیکرٹریٹ شائع ہونے والا کثیر الاشاعت قومی اخبار  
ABC CERTIFIED

جلد 49  
شمارہ 178  
مئی 07 جمادی الاول 1437ء 16 فروری 2016ء 03 بجائے 12 روپے

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

NOTICE INVITING TENDERS FROM PRE-QUALIFIED CONTRACTORS

C&W Department (Division Upper Dir) Government of Khyber Pakhtunkhwa invites sealed bids from the pre-qualified firms /contractors as listed below for the works, up to 08/03/2016 at 12.00 Hours. The bids will be opened on the same date at 14.00 Hours.

S.No	Name of Work
01	Construction/Rehabilitation of Dir Mataka Road Dir Upper ADP No-1142/151071
02	Rehabilitation/Reconstruction of Roads (A) Ala Salamkot, Dobando Dara, Nusrat Dara, Shamarkand and (B) Construction of Major General Sana Ullah Shaheed Road Dir Upper ADP No-1138/150827. Sub Head:- (1) Ala Salamkot Road (2) Dobando Road (3) Nasrut Dam Road
03	Rehabilitation & Construction of Roads (A) PCC Road Kumrat Badgoai and Jandrai Road (B) Doog Dara, Osorai Dam, Kadikheel Dara Road District Dir Upper ADP.No-1139/150829. Sub Head:- 1-Kumrat Road 2-Badgoai Road 3-Doog Dara Road.

S#	Name of Contractors/ Firms	S#	Name of Contractors/ Firms	S#	Name of Contractors/ Firms
1	Badshah ul Mulk & Sons	25	Haji Fida Muhammad & Co	49	Tila Muhammad
2	Bannu Construction	26	Hamid Jan & Brothers	50	Work vision
3	Dawood Construction	27	Jamal Kheel Const: Co	51	Tahir Rehman & Brothers
4	F.B Construction	28	Lawari Construction	52	Waheed Khan & Brothers
5	Jalil & Brothers	29	M/S A.Q Khan	53	Malak Bahramand Khan & Co
6	Jan Alam & Co	30	M/S Anar Jan	54	Muhammad Kheel Construction
7	M/S Abdur Rahim & Co	31	M/S Faisal Construction	55	Muhammad Aslam Khan Bhattani
8	M/S Almar Gul Bhattani	32	M/S Haq Nawaz&Brothers	56	Muhammad Shafiq Khan Brothers
9	M/S Dir Sheringal Const:	33	M/S Kaka Construction	57	Naz Amin Khan & Brothers
10	M/S HCl Construction	34	M/S Kumrat Construction	58	Noor Construction
11	M/S Khan Construction	35	M/S Nizam-ud-Din	59	Pir Muhammad & Co
12	M/S Nadar Shah	36	M/S Saleh Construction	60	Rahat Const: Co
13	M/S Qalander Bux ABRO & Co	37	M/S Seven Star Construction Co	61	Rehman Construction & Builders
14	M/S Rohail Builders	38	M/S Star Construction Co	62	Shoukat Khan & Co
15	M/S Sana Ullah Baloch	39	M/S Wordag & Co	63	Sibghat Ullah
16	M/S Shaheen Const:	40	Muhammad Irshad & CO	64	Syed Sardar Ali & Co
17	M/S Sub Major Retd Syed Qasim Jan	41	Mustafa Kamal Attaturk	65	Zahid Bashir
18	M/S Zeb Brothers	42	Pakhtunkhwa Constr:Co	66	National RCC Works
19	Malak Bakht Rawan	43	Syed Mohsin Shah & Sons	67	New Khan Builders
20	Main Saleh Janb & Sons	44	Shah Baba Construction	68	New Saddat Builders
21	Akhonzada Fazal Jamil	45	Shuaib Construction	69	Syed Rahim Shah & Brothers
22	Bakht Zada	46	Fazal Manan & CO	70	Syed Yaqoob Shah & Sons
23	Iqbal Construction	47	Haji Bahadar Sheer & Sons	71	Bashir Ahmad & Sons
24	M/S Rabat Construction	48	Rehmat Ali & Brothers	72	M/S Haji Fazal Rahim & Sons

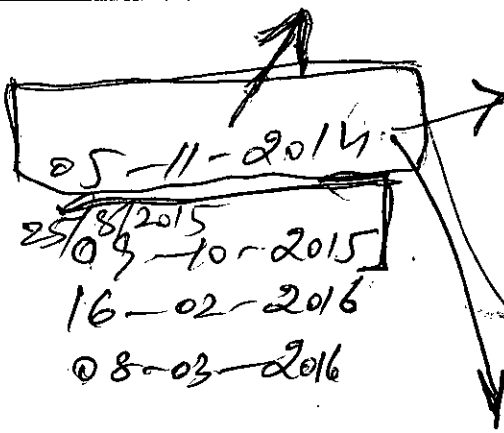
(1)- Tender form, BOQ and instruction to bidders (when there are bid documents) can be downloaded up to one day prior to the opening date from C&W web site ([www.cwd.gkp.pk](http://www.cwd.gkp.pk)). (2)- Original bid security in the shape of call prior to the opening date from Executive Engineer C&W Division Upper Dir shall accompanies the bid. (3)- The bidders

ATTESTED

Executive Engineer  
C&W Division Upper Dir

Contract for  
Deptt:

① Kin div =



② NIT deed =

25/8/2015  
09-10-2015

7 calls NP2

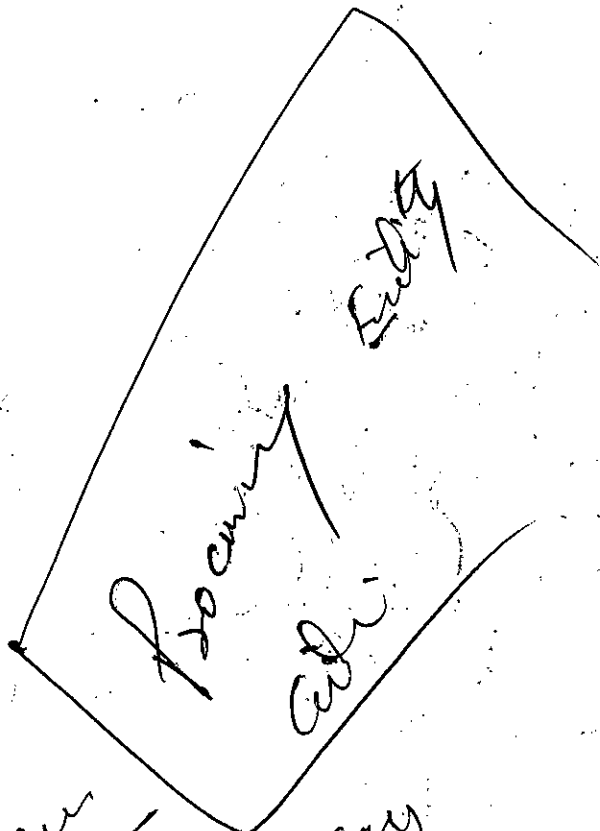
16-02-2016

③ 7/0/Art 2

08-03-2016

So the instructions to bidders  
as per para-3 of NIT is contradictory

Gen Ins of client  
D S (T) / Policy / vol 1 / 2013  
dt - 2/7/2013  
Rev - 17/2013



Gen

Ins of office

Gen

Rev of Dept

COMPARATIVE STATEMENT

E/cost: Rs. 84.637 (M)

A<sub>1</sub>  
7

N.I.T NO.1681  
WORK NO-05

Name of Work:- REHABILITATION/RECONSTRUCTION OF ROADS (A) PCC ROAD KUMRAT, BADGOAI AND JANDRAI ROAD (B) DOOG DARA, OSORAI DARA AND KADI KHELL DARA ROAD DIR UPPER ADP NO-1139/150829 (2015-16)

Sub Head:- KUMRAT ROAD 08-KM

S#	Electronic Tender form No	Name of Contractors/Firms	Contract Bid Cost Rs.	Evaluated bid cost	Remarks
1	2091911778	Pir Muhammad & Co	76173300.00	76173299.97	Lowest
2	2091911785	Almar Gul	76180134.18	76180134.18	✓
3	2091911938	New Khan Builders	81906676.92	81906676.92	
4	2091911840	Haji Fazal Rahim	76181764.00	76181764.00	✓
5	2091911973	HCI Construction Co.	81979867.20	81979867.20	

The Evaluated bid cost of Rs.76173299/97 offered by Pir Muhammad & Co Govt: Contractor at Sl: No-01 in the Comparative statement as evaluated by the evaluation committee, being lowest is hereby recommended for approval please.

EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

Divisional Head Draftsman  
C&W Division Upper Dir

SUB DIVISIONAL OFFICER  
C&W SUB DIVISION PK-91

HEAD CLERK  
C&W DIVISION UPPER DIR

DIVISIONAL ACCOUNTS OFFICER  
C&W DIVISION UPPER DIR

SUPERINTENDING ENGINEER  
C&W CIRCLE LOWER DIR AT TIMARGARA

Index II

10/60



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

B  
9

Dated Peshawar, the 05<sup>th</sup> November, 2014.

NOTIFICATION: No. SO(FR)/FD/9-7/2011/Vol-II: In partial modification and continuation of this office Notification of even number dated 03.01.2014, the Competent Authority has been pleased to approve that in procurement of Goods, Works and Services by any public procuring entity, the contract shall be awarded to the contractor / bidder whose evaluated bid / quotation is the lowest, in conformity with relevant rules, and meets the specifications and quality needs of the procuring entity. In case of bids below the Engineer estimate / BOQ on Market Rate Basis, the contractors / bidders shall deposit additional bank guarantees, as prescribed, to firm up their bids. The bank guarantees and call deposits shall be accepted, subject to verification from the issuing bank. In case of ongoing projects, all bank / insurance guarantees and call deposits shall also be verified from the concerned banks and insurance companies, as the case may be.

2. Further, in lieu of a bank guarantee, an equivalent insurance coverage of a company having at least AA rating from PACRA/JCR shall also be acceptable from contractors / bidders quoting up to 10% below on Engineer estimates / BOQ while bank guarantees shall be obtained from contractors / bidders quoting more than 10% below on Engineer estimates / BOQ. These guarantees will be discharged on the expiry of the defect liability period of the contracts.
3. The above provisions shall come into force with immediate effect.
4. All relevant Departments/Offices/Authorities shall make changes in the relevant documents and procedures to incorporate the above provisions.

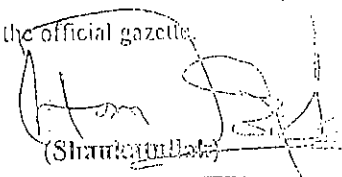
Secretary to Govt. of Khyber Pakhtunkhwa  
Finance Department

Encl: No. SO(FR)/FD/9-7/2011/Vol-II

Dated Peshawar, the 05.11.2014

Copy forwarded for information and necessary action to the:

1. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Additional Chief Secretary, Khyber Pakhtunkhwa Planning & Development Department, Peshawar.
3. Principle Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
4. Principle Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar
5. All Administrative Secretaries in Khyber Pakhtunkhwa.
6. Secretary Provincial Assembly, Khyber Pakhtunkhwa, Peshawar
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Commissioners, Khyber Pakhtunkhwa.
9. All Deputy Commissioners, Khyber Pakhtunkhwa.
10. Accountant General, Khyber Pakhtunkhwa, Peshawar.
11. All Districts / Agency Account Officers in Khyber Pakhtunkhwa.
12. Treasury Officer, Khyber Pakhtunkhwa, Peshawar
13. Registrar, Peshawar High Court, Peshawar
14. Managing Director, Khyber Pakhtunkhwa, Public Procurement Regularity Authority, Peshawar with the request to make corresponding changes in the standard bidding documents, in the prescribed manner, on immediate basis.
15. All Officers in Finance Department.
16. All Drawing and Disbursing Officers in Khyber Pakhtunkhwa.
17. Manager, Stationary and Printing Press Khyber Pakhtunkhwa for printing in the official gazette.

  
(Shaukatullah)

Section Officer (FR)

Bo

**ATTESTED**

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Annex IV

1752 /2-M

Dated Upper Dir the 11 /03/2016.

Pir Muhammad & Co  
Govt: Contractor  
Phase-I Hayat Abad Sector E-3  
Street-1 House No-1 Peshawar.

Subject:-

TENDER PROCESS DATED 08-03-2016.  
REHABILITATION/RECONSTRUCTION OF ROADS (A) PCC  
ROAD KUMRAT, BADGOAI AND JANDRAI ROAD (B) DOOG  
DARA, OSORAI DARA AND KADI KHELL DARA ROAD DIR  
UPPER ADP NO-1139/150829 (2015-16). SUB HEAD:- KUMRAT  
ROAD 08-KM.

Reference:-

Your Tender on 08-03-2016.

In light of Finance Department Khyber Pakhtunkhwa notification No-SO (FR)/FD/9-7/2011/Vol-II, dated 05-11-2014 " in Case of bids below the Engineer Estimate/BOQ on Market Rate, basis the Contractors/Bidders shall deposit Additional Call Deposit/Bank Guaranties/Insurance , as prescribed, to Firm of their bids. The Bank Guaranties, Call Deposits and Insurance shall be accepted, subject to verification from the issuing Bank". You have quoted the rate of Rs.76173299/97 Against the Estimated Cost of Rs.84637000/- for the subject work and after evaluation of bids You/Your Firm are declared as the lowest successful bidder. You are directed to deposit the balance Additional Security upto 21-03-2016 at 2.00 (P:M) for 12-Months positively, otherwise the 2<sup>nd</sup> Lowest bidder will be offered the work and your Call Deposit already deposited by you will be forfeited in favour of Government.

EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

Copy to:-

01 The Superintending Engineer C&W Circle Lower Dir at Timargara for information please.

EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

10/1/ Balso  
10/1/ Balso

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. D (P&M)/C&WD/1-43/2015  
Dated Peshawar the 09/10/2015

D  
121  
10

To

1. The Chief Engineer (Center),  
C&W Department, Peshawar.
2. The Chief Engineer (North),  
C&W Department, Peshawar.
3. The Chief Engineer (East),  
C&W Department, Abbottabad.
4. The Managing Director (PKHA),  
C&W Department, Peshawar.

Annex: XV

Subject: STANDARDIZATION OF NOTICE INVITING TENDER.

In continuation of this office letter of even No. dated 25/08/2015, amended Standardized Notice inviting Tender is enclosed for implementation and compliance with immediate effect.

(ENGR. SHAKIR HABIB)  
DIRECTOR (P&M)

Endst: No. & Date Even:

Copy forwarded to:-

1. The Chairman Transparency International Pakistan w/r to letter No. TL15/510/2A, TL15/510/6A and TL15/510/1A dated 05/10/2015
2. The Principal Secretary to the Chief Minister Khyber Pakhtunkhwa, Peshawar.
3. The PSO to Chief Secretary Khyber Pakhtunkhwa Peshawar.
4. The PS to Director General NAB (F), Peshawar.
5. The PS to Secretary C&W Department Peshawar for information.

1-9/ General

DIRECTOR (P&M)

**ATTESTED**

6  
①

GOVT: OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT.

INSTRUCTIONS TO BIDDERS  
(Pre-qualified contractors)

1. Tender Form should accompany the following:
  - (a) Priced BOQ.
  - (b) 2% Bid Security in the shape of deposit at call (original)
2. Incomplete/ Conditional / Telegraphic bids shall not be entertained. Bids shall be signed by authorized persons.
3. In case the successful bid is below the Engineers estimate up to 10%, the bidder shall provide performance guarantee /insurance coverage of a company having at least AA rating from PACRA/JCR or bank guarantee equal to 10% of the estimated cost within 21 days of acceptance letter. In case the bid is more than 10% below the Engineer Estimate, the bidder shall provide bank guarantee as additional security within 14 days equal to the amount of the difference of the quoted bid and the Engineer Estimate to firm up the bid. These guarantees will be discharged on the expiry of the defect liability period of the contracts.
4. If the performance bond or bank guarantee (which ever the case may be) is not provided by the bidder in the required period, then offer will be given to the next lowest bidder & so on and the bid security of the bidder will be forfeited.
5. Complete bids (both original and duplicate) must reach the concerned offices on or before the fixed date/ time.
6. Bidder should fill the BOQ on Item Rate System, if any item is left blank, it will be considered to be done free of Cost. Only Two (02) digits after the decimal will be considered in item rates.
7. Any bidder who provides incorrect information should be disqualified.
8. Time allowed for completion of the work is as specified in the NIT which will start from the issuance of work order.
9. Bids will be valid for Ninety (90) days.
10. Successful Bidder should sign the agreement with the department within Seven (07) days after acceptance of bid.

visit of Scheduled Banks shall be acceptable.

If evaluated bid costs of two or more than two bidders are same then the successful bid will be declared through draw.

- 13 Bids will be opened after 30 minutes of closing time in the presence of bidders/ their representatives who choose to be present.
- 14 The employer has the authority to reject any bid or all the bids assigning valid reasons.
- 15 Bid security of some or all the bidders will be retained by the employer till approval of Tender/ bid validity period.
- 16 All other terms / Conditions/ documents can be seen in the office of the undersigned/consultant on any working day during office hours.



Executive Engineer



No. 1993  
TQ

M

Dated

Upper Dir the 30/03/2016.

13

Pir Muhammad & Co  
Govt: Contractor  
Phase-I Hayat Abad Sector E-3  
Street-I House No-1 Peshawar.

Annex VI

Subject:-

TENDER FOR THE WORK:- REHABILITATION/  
RECONSTR. OF ROADS (A) PCC ROAD KUMRAT,  
BADGOAI AND JANDRAI ROAD (B) DOOG DARA, OSORAI  
DARA AND KADI KHELL DARA ROAD UPPER DIR ADP  
NO-1139/150829 SUB HEAD:- KUMRAT ROAD 08-KM.

Reference:-

This office No-1792/2-M dated 11-03-2016.

You were directed vide the above refer letter of this office to deposit the additional security in shape of Bank Guaranty/ Call Despite. Due to non deposition of the additional security on time.

Therefore your 2% Call deposit already deposited by you is hereby forfeited in

favour of Govt:

*[Signature]*  
EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

Copy to:-

- 01- The Chief Engineer (North) C&W Deptt: Peshawar for information please.
- 02- The Superintending Engineer C&W Circle Lower Dir at Timargara for information.
- 03- *M/S Almar Gul Govt: Contractor being 2<sup>nd</sup> lowest you are directed to deposit the additional security upto 11-04-2016 at 2.00 (P.M)*

EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

SERVICES PEW/MO CUSTOMERS SERVICES DEPTT. UAN 111-202-202  
KHI 35319851, LHE 37552913, ISB 2824890, FSD 8716574, UET 2063105  
RWP 5478473, MUX 4541453, HDD 3821231, GUJ 3859433, PEW 5273989

O/N	EXP	OTN	72 Hrs.	CONSIGNOR'S ACCOUNT NO.	DESTINATION	PIECES	WEIGHT
34				0620877	PEW		

CONSIGNEE  
*[Signature]*

ATTENTION TEL

DECLARED VALUE  
YES  NO  AMOUNT

THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE OF SHIPPER'S COPY IN TENDERING THIS FOR SPECIAL INCIDENT FOR CONSEQUENTIAL DELAYS OR DAMAGES ARISING FROM CARRIAGE APPLIED WITH RESPECT TO THIS SHIPMENT THE LIABILITY OF OCS FOR ANY LOSS OR DAMAGE SHALL REMAIN WITH THE SHIPPER, IT WILL BE TREATED "ON SHIPPER'S RISK" ALONE.

HEREIN ARE TRUE AND CORRECT  
NAME CODE

COLLECTION BY OCS DATE TIME  
*[Signature]* *[Signature]*

RECEIVED IN GOOD ORDER AND CONDITION  
CONSIGNEE'S SIGNATURE DATE  
PLEASE PRINT NAME TIME

S.T. NO.: 12-00-9808-003-55

ATTESTED

Executive Engineer

April 07, 2016

O/O&SD/2016/680

C&W Division  
per Dir,  
istt Upper Dir.

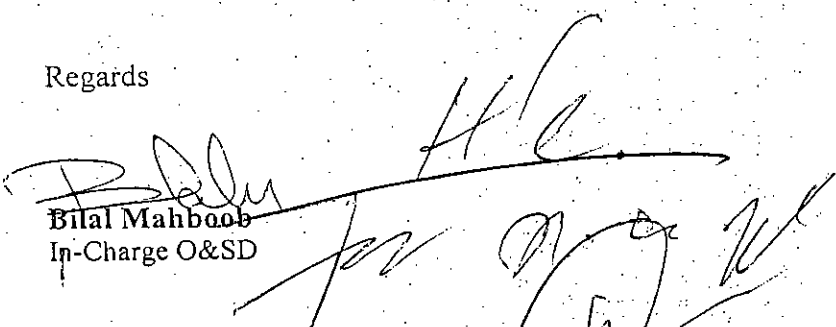
### Fake Security Deposit Receipt Verification

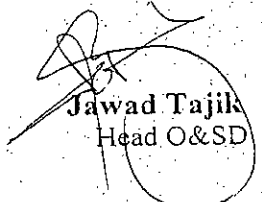
Please refer to the subject.

A request letter has been received from Mr. Gulistan CNIC # 15701-6513299-7 C/O Mr. Imran MP Upper Dir regarding verification of SDR # 574289 for Rs. 1,550,000/- dated March 4, 2016 favorir XEN C&W Division Upper Dir. Upon inquiry from both Islamic Banking and Conventional bankir Branches D. I Khan the SDR was not found fake and forged which is tantamount to fraud and forgery.

In this connection you are requested to conduct an inquiry and trace out the culprits for proper leg-regularity action for an attempted fraud of presenting fake SDR to your department while using o Bank's Name.

Regards

  
Bilal Mahboob  
In-Charge O&SD

  
Jawad Tajik  
Head O&SD

CC for:-

- PS to EVP / Group Head Operations & Support Group, The Bank of Khyber.
- Head Internal Audit Division, The Bank of Khyber. For Information
- Manager, The Bank of Khyber, Islamic Banking Branch and Conventional banking branch D.I Khan for information.
- Mr. Gulistan for information
- Manager Upper Dir Branch.

Hamid

**ATTESTED**

Annex VII

15

No. 2481 /2-M dated Upper Dir the 28/04/2016.

The Chief Engineer (North)  
Communication & Works Deptt.  
Peshawar.

Subject:- BLACK LISTING OF CONTRACTOR.

It is submitted for your kind information that the Pre-Qualification was called for the work "Rehabilitation/Reconstruction of Roads (A)PCC Road Kumrat, Badgoai and Jandrai Road (B) Doog Dara, Osorai Dara and Kadi Khell Dara Road Dir Upper ADP No-1139/150829 (2015-16) Sub Head:- KUMRAT ROAD "

One Mr. Almar Gul Bhattani Govt. Contractor Pre-Qualified vide your office No-307/31-G/Dir Upper dated 13/01/2016 at Sl: No-09 and the Contractor participated in the tenders accordingly. The Contractor was attached Call Deposit of 2 % Earnest Money with tender form bearing No-574289 dated 04/03/2016 for Rs.1550000/- verified from the concerned bank which was Fake (Copy attached) for ready reference.

The Contractor M/S Almar Gul Bhattani of Village Monglin Ali Khel Tehsil Jandola F.R Tank is hereby recommended for black listing and for further necessary action under the rules.

EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

- Copy to :-
- 01- The Chief Engineer (Center) C&W Deptt: Peshawar for information please.
  - 02- The Superintending Engineer C&W Circle Lower Dir at Timargara.

EXECUTIVE ENGINEER  
C&W DIVISION UPPER DIR

ATTESTED



Annex: XII (17)



**OFFICE OF THE SUPERINTENDING ENGINEER  
C&W CIRCLE SWAT**

{Phone # 0946-9240114} {Fax # 0946-9240113}  
{Email # secnswat@gmail.com}

NO. 3105 / 129-116, Dated: 02/06/2016.

To,  
Chief Engineer (North)  
Communication & Works Department  
Peshawar.

Subject: "REHABILITATION/ RECONSTRUCTION OF (A) PCC ROADS  
KUMRAT BADGOLA & JANDRAI ROAD (B) DOG DARA, USORAI  
DARA, KADI KHEL DARA DIR UPPER ADP # 1139/150829 (2015-  
16).  
TENDERS OF KUMRAT ROAD DIR UPPER

Order / Authority:

Chief Engineer (North) Communication & Works Deptt. Peshawar directed the undersigned vide letter No. 776/1-G/Dir Upper dated: 09-5-2016 to submit report in the matter so as to finalize the issue of award of the contract (Annexure-A).

Report:

Chief Engineer has fully explained history of the matter in his letter however the following points are explained in detail:

05 bidders participated in the financial bid opening on 8/3/2016(Annexure-B).

Pir Muhammad and Company Govt. Contractor was evaluated as lowest bidder with Evaluated Bid Cost of Rs. 76,173,299.97 against the Engineer's Estimate of Rs. 84.637 million (Annexure-C).

The quoted bid was 10.00% below the Engineer's Estimate therefore the successful bidder had to provide *Performance Guarantee/ Insurance Coverage of a company having at least AA rating from PACRA/ JCR or Bank Guarantee within 21 days of the acceptance letter as per NIT Conditions (Instructions to Bidders paragraph 3 attached as Annexure-D).*

The Executive Engineer issued a letter to the lowest bidder Pir Muhammad & Company on 11/3/2016 and directed him to deposit the Balance Additional Security upto 21/3/2016 (Annexure-E) instead of Performance Guarantee as was required by the NIT Conditions.

Handwritten signature/initials.

Handwritten signature/initials.

**ATTESTED**

Vertical stamp on the right margin: "RECEIVED" and "Time Allowed" with a date field.

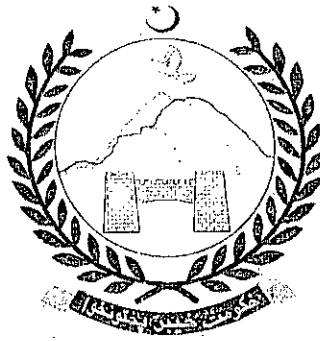
5. As per NIT Conditions/ Instruction to bidders, the successful bidder had to provide the Guarantee within 21 days i.e. upto 01/4/2016 but the Executive Engineer initiated penal action against the bidder on 30/3/2016 for non-providing the guarantee within 19 days (Annexure-F).
6. As per report of the Executive Engineer, the lowest bidder Pir Muhammad & Company provided the guarantee on 4/4/2016 whereas the Guarantee was issued by Jubilee General Insurance Company (having AA+ rating) on 30/3/2016 and was delivered immediately to the Executive Engineer's office as per claim of the bidder. Stamped paper for this particular purpose was issued on 25/3/2016 (Anx-H).
7. The Executive Engineer had to initiate penal action against the lowest bidder after 01/4/2016 but he took the action against the contractor on 30/3/2016 stating the reasons of very short period of working season in Kumrat valley (annexure-G).
8. Although, as per statement of the Executive Engineer, the Guarantee was delivered to his office on 4/4/2016 but keeping in view the two gazette holidays of Saturday and Sunday (2<sup>nd</sup> and 3<sup>rd</sup> April), receipt of the guarantee on 4/4/2016 should have been considered as delivered in time.
9. In the best interest of the public and keeping in view all the evidences, I am of the opinion that the insurance guarantee issued by the Jubilee General Insurance Company on 30/3/2016 may be accepted, therefore, late delivery of the guarantee may not be considered a reason of rejection of the lowest bid and/ or initiating penal action against the bidder Pir Muhammad & Company Government Contractor.

Report is submitted for further necessary action please.

*M. Tariq*  
Engineer Muhammad Tariq  
Superintending Engineer  
C&W Circle Swat.

J  
19

CONFIDENTIAL



PROVINCIAL INSPECTION TEAM, KHYBER PAKHTUNKHWA

INQUIRY REPORT

INQUIRY INTO AWARD OF TENDER OF THE SCHEME

"REHABILITATION & CONSTRUCTION OF KUMRAT ROAD (8-KM),

DIR (UPPER)" ADP NO. 1139/150829 PROJECT.

**ATTESTED**

(20)

CONFIDENTIAL



PROVINCIAL INSPECTION TEAM, KHYBER PAKHTUNKHWA

INQUIRY REPORT

Subject: - Inquiry into Award of Tender of the Scheme  
"Rehabilitation & Construction Of Kumrat Road  
(8-KM), Dir (Upper)" ADP No. 1139/150829 Project.

1- ORDER OF INQUIRY

Orders of the Competent Authority to hold an inquiry into the case in hand were communicated vide Chief Minister's Complaint and Redressal Cell, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar letter No. SO-I(C&RC) CMS/1-65/Pir Muhammad/App/1091/w-e dated 10-05-2016 (Annex: A).

2- COMPLAINT.

M/S Pir Muhammad & Co, Govt. Contractor, submitted a written complaint to Chief Minister's Complaint & Redressal Cell, Chief Minister's Secretariat, on 06-05-2016 wherein it was mentioned that his firm was the 1<sup>st</sup> lowest and successful bidder after evaluation of tenders on 08-03-2016 for the scheme "Rehabilitation and Re-construction of PCC road Kumrat District Dir Upper" under the ADP No. 1139 /150829 (Annex: B). It was alleged in the complaint that the Executive Engineer, C&W



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Division, Dir Upper rejected his bid and forfeited his call deposit without any reason while the bid of the 2<sup>nd</sup> lowest M/S Almar Gul Afridi was rejected due to fake call deposit, and the bid was awarded illegally to the 3<sup>rd</sup> lowest M/S Haji Fazal Rehim & Co.

3- INQUIRY PROCEEDINGS.

- a- On receipt of the reference, PIT requested the Executive Engineer C&W Division, Dir Upper to provide all the relevant record of the case alongwith a detailed brief supported by relevant documents (Annex: C). In response some of the record was submitted to PIT (Annex: D).
- b- Provincial Inspection Team requested the Executive Engineer Dir Upper to attend the office of PIT on 30-06-2016 for discussion. In response he communicated his non-availability on the scheduled date due to some other engagements (Annex: E).
- c- A meeting was held with the then concerned Executive Engineer, C&W Division, Dir (Upper) and other relevant staff on 26-10-2016, wherein the matter was discussed in detail (Annex: F). The following recorded their joint statement on 26-10-2016 (Annex: G).

S.No	Name	Designation
1.	Mr. Rehmat Hakeem	The then Executive Engineer Communication & Works Division, Dir Upper
2.	Mr. Noor Rehman	Sub. Divisional Officer, C&W Division, Dir Upper.
3.	Mr. Akram Khan	Division Account Officer, C&W Division, Dir Upper.

4- OBSERVATIONS

After scrutiny of the available record/documents, detailed discussions and written statement of the concerned staff of C&W Department, observations of PIT are as under:-

- a- The scheme "Rehabilitation / Re-construction of PCC road Kumrat (8-KM)" was approved by the PDWP in its meeting held on 02-11-2015. Administrative approval of the scheme amounting to Rs. 84.637 million was issued by Communication and Works Department on 01-12-2015 (Annex: H).
- b- Tender for the scheme were called from the pre-qualified contractors/firms on 16-02-2016 (Annex: I). Tenders were opened and evaluated on 08-03-2016. The contractors/firms offered their bids as per following details (Annex: J):-

S.No	Name of Contractors/Firm	Contract Bid Cost (Rs.)	% Below on Estimated Cost	Remarks
1.	M/S Pir Muhammad & Co	76,173,300/-	10%	1 <sup>st</sup> Lowest
2.	M/S Almar Gul	76,180,134/-	9.99 %	2 <sup>nd</sup> Lowest
3.	Haji Fazal Rehim	76,181,764/-	9.98%	3 <sup>rd</sup> Lowest
4.	New Khan Builders	81,906,676/-	3.23%	4 <sup>th</sup> Lowest
5.	HCI Construction & Co	81,979,867/-	3.14%	5 <sup>th</sup> Lowest

- c- According to Finance Department, Khyber Pakhtunkhwa Notification No. SO(FR)/FD/9-7/2011/Vol-11 dated 05-11-2014 and Clause-3 of Instruction to Bidders (Annex: K), "In case the successful bid is below the Engineers estimate upto 10% the bidder shall provide performance guarantee/insurance coverage of a company having at least AA

rating from PACRA/JCR or bank guarantee equal to 10% of the estimated cost within 21 days of acceptance letter. In case the bid is more than 10% below the Engineer Estimate, the bidder shall provide bank guarantee as additional security within 14 days equal to the amount of the difference of the quoted bid and the Engineer estimate to firm up the bid. These guarantees will be discharged on the expiry of the defect liability period of the contracts."

d- Perusal of the record shows that the contractor M/S Pir Muhammad & Co was directed vide Executive Engineer C&W Division Upper Dir office letter dated 11-03-2016 to submit additional security in shape of bank guarantee upto 21-03-2016 at 2:00 PM positively, otherwise the 2<sup>nd</sup> lowest bidder would be offered the work and his call deposit would be forfeited in favour of government (Annex: L). It was observed that the Executive Engineer, C&W Division, Dir (Upper) was required to have given the contractor twenty One (21) days for depositing the additional security but instead he gave only Ten (10) days, which was clear cut violation of the bidding documents.

e- The contractor Pir Muhammad & Co failed to deposit additional security in shape of bank guaranty/call deposit by the target date of 21-03-2016 given by the Executive Engineer, C&W Division, Dir (Upper), therefore, his call deposit was forfeited by the Executive Engineer, C&W Division, Dir (Upper) vide letter 30-03-2016 (Annex: M). Later on, the contractor M/S Pir Muhammad submitted the additional security of Rs. 8,463,700/- was to the Executive Engineer, C&W Division, Dir (Upper) on 04-04-2016 (Annex: N).

- f- The bid was offered to the 2<sup>nd</sup> lowest bidder M/S Almar Gul, but his call deposit was found fake at the time of confirmation from Bank of Khyber (Annex: O). Therefore, his firm was recommended for blacklisting vide letter dated 28-04-2016 (Annex: P). Subsequently, M/S Haji Fazal Rahim was offered the bid, being the next lowest as per comparative statement, and his bid was forwarded to the Superintending Engineer, C&W Circle, Lower Dir at Timergara for approval of the competent authority vide Executive Engineer, C&W Division, Dir (Upper) letter dated 28-04-2016 (Annex: Q).
  
- g- The concerned staff of C&W Department stated in their joint written statement that the contractor M/S Pir Muhammad & Co submitted a written complaint to the Chief Engineer (North), C&W Department, Peshawar who nominated the Superintending Engineer, C&W Circle, Swat as Inquiry Officer to probe the matter. The Inquiry Officer submitted his report to the Chief Engineer (North), C&W Department, Peshawar on 02-06-2016 wherein he proposed to accept the insurance guarantee of M/S Pir Muhammad (Annex: R). It was mentioned in the inquiry report that keeping in view the two gazette holidays of Saturday and Sunday (2<sup>nd</sup> & 3<sup>rd</sup> April, 2016), receipt of the guarantee on 04-04-2016 should have been considered as delivered in time. They further stated that the Chief Engineer (North), C&W Department, Peshawar vide letter dated 15-06-2016 directed the Executive Engineer, C&W Division, Dir (Upper) to process the case in light of the inquiry report (Annex: S). Accordingly, the insurance guarantee of M/S Pir Muhammad & Co was accepted and was recommended for award of tender vide letter dated 29-06-2016 (Annex: T).

The bid was approved by the Chief Engineer (North), C&W Department, Peshawar on 04-07-2016 (Annex: U) and work order was issued to M/S Pir Muhammad & Co on 11-07-2016 (Annex: V).

A question was put to the concerned staff of C&W Department that the call deposit of the contractor was forfeited due to non-deposition of the additional security amount while the twenty one (21) days time was not yet exhausted and the concerned contractor provided the requisite additional performance security on Monday i.e. 04-04-2016 which was on the first working day after expiry of the last date of 01-04-2016. They replied that the tenders were opened on 08-03-2016 and the contractor M/S Pir Muhammad & Co was present at that time and he came to know that he was the successful bidder so he was required to have submitted the additional security amount within twenty one (21) days starting from 08-03-2016. Therefore, his call deposit was forfeited after twenty one (21) days counting from 08-03-2016.

5- FINDINGS

Based on the observations at Para-4 (a to g) of this report, findings are as under:-

- a- That, the contractor M/S Pir Muhammad & Co was the lowest bidder by offering a bid 10 % below on the Engineer's Estimate. The Executive Engineer, C&W Division, Dir (Upper) was supposed to have given twenty one (21) days to the contractor for submission of additional security as per advertisement and relevant Instructions to Bidders. Although, the Executive Engineer, C&W Division,

Dir (Upper) had a copy of letter dated 11-03-2016 issued to the contractor M/S Pir Muhammad & Co for depositing the additional security amount by 21-03-2016 but he didn't present the acknowledgment receipt of the said letter to confirm as when had exactly the said letter been handed over to the contractor M/S Pir Muhammad & Co so as to count the twenty one (21) days time period accordingly. If it is assumed that the letter dated 11-03-2016 had been delivered to the contractor M/S Pir Muhammad & Co on the same day, which could not be confirmed actually. Even then the Executive Engineer was bound to have waited till 01-04-2016 so that the contractor should have deposited the additional security. Thus, not affording him due opportunity, therefore, could not deposit the amount as such forfeited the call deposit of the contractor on 30-03-2016 which was not in accordance with law. Therefore, forfeiture of the call deposit of the contractor M/S Pir Muhammad & Co by the Executive Engineer, C&W Division, Dir (Upper) on 30-03-2016 was not justified and was also in violation of the Instructions to Bidders which was part of the bidding documents and the instant bidding was carried out under KPPRA Rules 2014.

- b- That, Additional Performance Security of the contractor M/S Pir Muhammad & Co was issued by the Guarantor M/S Jubilee General Insurance Company Ltd on 30-03-2016 and it was delivered to the office of Executive Engineer, C&W Division, Dir (Upper) on 04-04-2016 (Monday) which was the first working day after the expiry of the probable last date of 01-04-2016 (Friday) for submission of additional security. But, the Executive Engineer, C&W Division, Dir (Upper) forfeited the call deposit of the lowest bidder M/S

Pir Muhammad before expiry of the time allowed as per NIT. Later on, an inquiry was conducted by the Superintending Engineer, C&W Circle, Swat upon the orders of the Chief Engineer (North), C&W Department, Peshawar, in which it was concluded that last date for submission of additional security was 01-04-2016 and it was recommended to consider the additional security of the contractor. Accordingly, the additional security was accepted and the tender has now been awarded to the complainant M/S Pir Muhammad & Co. However, commencement of the work was delayed by about three months due to mismanagement and unnecessary urgency without any valid justification by the Executive Engineer, C&W Division, Dir (Upper).

c- That, the allegation regarding favouritism and illegality for attempting to award the tender to M/S Haji Fazal Rahim was found correct because of the following circumstantial evidences;

- i. Non-receipt of letter dated 11-03-2016 to the contractor M/S Pir Muhammad & Co;
- ii. Forfeiture of the call deposit of the contractor M/S Pir Muhammad & Co before expiry of the time;
- iii. Unnecessarily pressurizing the contractor M/S Pir Muhammad & Co by mentioning 21-03-2016 instead of 01-04-2016 as last date for submission of additional security.

28/10

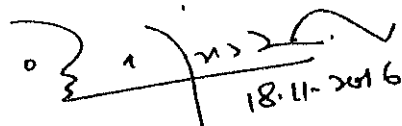
6- RECOMMENDATIONS

Based on observations and findings of this report, recommendations of PIT are as follows:-

- a- Mr. Rehmat Hakim, the then executive Engineer, C&W Division, Dir (Upper) may be immediately suspended from his current posting of Superintending Engineer, C&W Circle, Lower Dir at Timergara and may be also be proceeded for the following omissions and commissions regarding inefficiency, corruption, and misconduct as mentioned in this report under the relevant rules;
  - i. Violation of rules reflected in the NIT and Instructions to Bidders in the instant bidding process by not allowing twenty one (21) days to the successful bidder for depositing additional security.
  - ii. Forfeiture of the call deposit of the contractor M/S Pir Muhammad & Co before expiry of the time;
  - iii. Unnecessarily pressurizing the contractor M/S Pir Muhammad & Co by mentioning 21-03-2016 instead of 01-04-2016 as last date for submission of additional security.
  - iv. Misuse of authority by attempting to extend favour and award tender illegally.
  - v. Mismanagement causing delay in commencement of work, which may also cause loss to the government exchequer in the shape of price hike/escalation in future.
  - vi. Creating bad name for government and not safeguarding government interest.



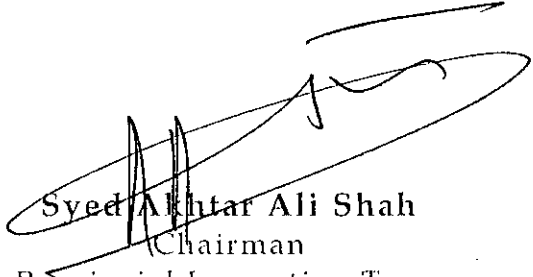
- b- It is also recommended that he may be banned from field posting in future in the best interest of the government work so as to avoid such like infringement of rights of the bidders and also embarrassment for the government.
  
- c- The charges mentioned at Para-6(a) above also attracts Clause-2(p)(vi) "Gratification" of Khyber Pakhtunkhwa Ehtesab Commission Act-2014. It is, therefore, recommended that the case may also be referred to Ehtesab Commission, Khyber Pakhtunkhwa for proceedings under the relevant law.

  
18.11.2016

Engr. Owais Islam  
Senior Engineer  
Provincial Inspection Team  
Khyber Pakhtunkhwa



Engr. Muhammad Yaqoob  
Member (Technical)  
Provincial Inspection Team  
Khyber Pakhtunkhwa



Syed Akhtar Ali Shah  
Chairman  
Provincial Inspection Team  
Khyber Pakhtunkhwa



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**CHIEF ENGINEER (NORTH)**  
**COMMUNICATION & WORKS DEPARTMENT**  
**GOVT. OF KHYBER PAKHTUNKHWA, PESHAWAR**  
Block-C 3<sup>rd</sup> Floor, Attached Department Complex Khyber Road Peshawar  
PH: 091-9210456 FAX 091-9210478 E-mail: [cnwnorth@yahoo.com](mailto:cnwnorth@yahoo.com)

No. 82712-G/Dir Upper

Dated: 15/8/2016

To

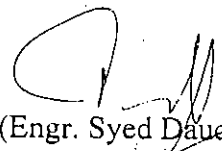
The Executive Engineer,  
C&W Division Dir Upper.

Subject: "REHABILITATION / RECONSTRUCTION OF (A) PCC ROADS KUMRAT, BADGOAI & JANDRAI ROAD (B) DOAG DARA, USORAI DARA, KADI KHEL DARA DIR UPPER ADP NO. 1139/150829 (2015-16)"  
Sub-Head: KUMRAT ROAD (08-KM) DISTRICT DIR UPPER

Enclosed find herewith the subject tender documents (in original) collected from the office of the Superintending Engineer, C&W Circle Dir Lower which were returned forwarded to him vide this office letter No. 748/1-G/Dir Upper dated 13/4/2016 alongwith detail report submitted by the Superintending Engineer C&W Circle Swat in light of directions of this office letter No. 776/1-G/Dir Upper dated 3/5/2016, vide his letter No. 3105/29-MG dated 2/6/2016 alongwith its enclosures which is self explanatory.

You are directed to go through the report and process the tender documents accordingly.

**Note:** Please depute an official of your office to collect the tender documents (in original) within 02-days positively.

  
(Engr. Syed Daud Jan)  
Chief Engineer

Copy forwarded to the:

- 1- Superintending Engineer, C&W Circle Dir Lower w/r to above.
- 2- Superintending Engineer, C&W Circle Swat w/r to above.

Chief Engineer

Anx: Y

**ATTESTED**



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**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**PUBLIC HEALTH ENGINEERING DEPARTMENT**  
DPM/PHED/C&W Inquiry/2016-17/ADP 1139/150829/  
Dated Peshawar, the June 5, 2017 1708

To

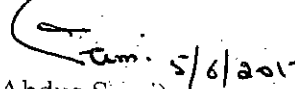
Engr. Rehmat Hakeem,  
The then Executive Engineer (BS-18) C&W Division, Dir Upper,  
Presently working as, SE (OPS) H/Q O/o CE (Centre) C&W Peshawar.

Subject: - **INQUIRY INTO AWARD OF THE SCHEME "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR UPPER" ADP NO.1139/150829 PROJECT**

The Section Officer (Estb) Communication & Works Department Khyber Pakhtunkhwa vide letter No. SOE/C&WD/8-44/2016 dated 31-05-2017 has intimated that the Competent Authority (Chief Minister) has appointed Mr. Muhammad Fakhar-e-Alam (PCS BS-19) Additional Secretary ST&IT Department Peshawar and undersigned as members of the Inquiry Committee to conduct formal inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in the subject case.

In pursuance with the order of the Competent Authority I hereby serve you with the charge sheet and statement of allegations duly signed by the Competent Authority (Chief Minister). You are, therefore, required to submit your written defense within seven (07) days of the receipt of this charge sheet, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

Encl: As above

  
(Abdus Sami)  
Member Inquiry Committee,  
Director (P&M),  
PHE Department Peshawar.

Copy forwarded for information to the:

1. Mr. Muhammad Fakhar-e-Alam (PCS BS-19) Additional Secretary ST&IT Department Peshawar.
2. Chief Engineer (North) C&W Peshawar. He is requested to depute an officer well conversant with the case to assist the Inquiry committee and provide all relevant record.
3. Executive Engineer C&W Division Dir Upper.
4. Section Officer (Estt) Communication & Works Department Khyber Pakhtunkhwa Peshawar.

\_\_\_\_\_  
Director (P&M)

**ATTESTED**  


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CHARGE SHEET

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Engr. Rehmat Hakeem Executive Engineer (BS-18) C&W Department; presently working as SE (OPS) HQ O/O CE (Centre) C&W Peshawar as follows:

That you, while posted as XEN C&W Division Dir Upper, committed the following acts/omissions in the award of tender of the scheme "Rehabilitation and Construction of Kumrat Road (8 KM) Dir Upper" ADP No.1139/150829:

- i. Violation of rules reflected in the NIT and instructions to bidders in the instant bidding process by not allowing twenty one (21) days to the successful bidder for depositing additional security.
- ii. Forfeiture of the call deposit of the contractor M/S Pir Muhammad & CO before expiry of the time.
- iii. Un-necessarily pressurizing the contractor M/S Pir Muhammad & CO by mentioning 21.03.2016 instead of 01.04.2016 as last date for submission of additional security.
- iv. Mis-use of authority by attempting to extend favour and award tender illegally.
- v. Mis-management causing delay in commencement of work, which may also cause loss to the government exchequer in the shape of price hike/escalation in future.
- vi. Creating bad name for government and not safeguarding government interest.

2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 ibid.

3. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this charge sheet to the Inquiry Officer/Committee.

4. Your written defence, if any, should reach the Inquiry Officer/ Committee within specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall be taken against you.

5. Intimate whether you desire to be heard in person

6. A Statement of Allegations is enclosed.

(Pervez Khattak)  
Chief Minister  
Khyber Pakhtunkhwa

## DISCIPLINARY ACTION

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Rehmat Hakeem Executive Engineer (BS-18) C&W Department; presently working as SE (OPS) HQ O/O CE (Centre) C&W Peshawar has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:

### STATEMENT OF ALLEGATIONS

- i. Violation of rules reflected in the NIT and instructions to bidders in the instant bidding process by not allowing twenty one (21) days to the successful bidder for depositing additional security.
  - ii. Forfeiture of the call deposit of the contractor M/S Pir Muhammad & CO before expiry of the time.
  - iii. Un-necessarily pressurizing the contractor M/S Pir Muhammad & CO by mentioning 21.03.2016 instead of 01.04.2016 as last date for submission of additional security.
  - iv. Mis-use of authority by attempting to extend favour and award tender illegally.
  - v. Mis-management causing delay in commencement of work, which may also cause loss to the government exchequer in the shape of price hike/escalation in future.
  - vi. Creating bad name for government and not safeguarding government interest.
2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules:-

- i. \_\_\_\_\_
- ii. \_\_\_\_\_

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/ Inquiry Committee.

(Pervez Khattak)  
Chief Minister  
Khyber Pakhtunkhwa

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**MOST URGENT/SECRET/CONFIDENTIAL**

To,

- 1) Mr: Muhammad Fakhar-e-Alam( PCS BS-19)  
Additional Secretary ST&IT Department Peshawar
- 2) Engr: Abdus Sami (BS 19)  
Director (P&M) PHE Department Peshawar

**SUBJECT:- INQUIRY INTO AWARD OF TENDER OF THE SCHEME, "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD(8 KM) DIR UPPER" ADP NO 1139/150829 .**

**Reference: - I. Section Officer (Estt) C&W Department Peshawar letter  
No.SOE/C&WD/8-24/2016 Dated 31/05/2017**

**II. Your office No. DPM/PHED/C&W Inquiry/2016-17/ADP  
1139/150829/1708 Dated 5/6/2017**

Sir,

**I) A) Most respectfully,** I make the following submissions in reply to the charge sheet and statement of allegation served on me vide letter under Reference No: I

- That the charges leveled against me are biased, ill-founded and baseless.
- That the charges are based on suspicions, assumptions and presumptions and are general in nature without any reference to the violation of any particular rule/clause of B&R Code, CPWA Code, Esta Code, Financial Rules, KPK KAPRA rules or any administrative order issued by the department in this regard.
- That I have been wrongly implicated in "Baseless Charges" just to pave way for my victimization and bring "stigma" on my spotless service carrier.
- **That the charges are fully denied.**
- That the following brief history, supported with photo copies of the relevant documents in processing the subject tender will clarify my position, involvement and effort made regarding the fair, transparent and expeditious disposal of the tender and fulfilling my official responsibilities.

**ATTESTED**

**B) BRIEF HISTORY.**

CONSTRUCTION OF ROAD (A) PCC ROAD KUMRAT, BADOGOAI AND JANDRAI ROAD (B) DOOG DARA, OSORAI DARA, KADIKHELL DARA ROAD DISTRICT DIR UPPER ADP NO-1139/150829 PROJECT SUB HEAD:- **KUMRAT ROAD.**

- 01-The scheme consisting of 06-Nos components approved for Rs.325.500 Million vide No-SOR/V-39/W&S/03/Vol-II dated 01/12/2015 (Copy of the A.A attached as **Annex-I**).
- 02-The cost of the component "Kumrat Road (08-Km)" is Rs.84.637 Million.
- 03-Tenders from the pre-qualified contractors were called 8/3/2016 and opened in the presence of contractors/their representative and tender opening committee. Five Nos contractors participated.
- 04-The offered bids of the participating contractors were evaluated ON 08-03-2016, on the same day, and M/S Pir Muhammad was declared as the 1<sup>st</sup> lowest bidders.(copy of the Comparative Statement as **Annex:-II**).
- 05-According to the department Circular No DS (Tech)/Policy/I-Vol-1/2013 dated 02/07/2013 under Clause 6 and 7 of the caption," **B Receipt, Opening and evaluation of tenders/bids**" only 7 days were specified for the bid evaluation, approval or return of the tenders for each of the office of Divisional Engineer, Superintending Engineer and Chief Engineer as the case may be.(copy of the circular attached as **Annex III**).
- 06- Though the representative of M/S Pir Muhammad & Co was present in the tendering process however, he was asked vide Executive Engineer C&W Division Upper Dir office No-1792/2-M dated 11/3/2016 to deposit the additional Security up to 21/3/2016, for the quick disposal of the tender, but he failed to deposit the additional Security up to 30-03-2016. (copy of the letter attached as **Annex IV**)
- 07-As per instruction of the circular mentioned in Para 05, the tender of the lowest bidder M/S Pir Muhammad was sent to Superintending Engineer C&W Circle Dir Lower for approval of the competent authority vide this my office No 1843/2M dated 16/3/2016(copy of the letter attached as **Annex V**) without waiting for the deposition of the additional security.
- 08-Due to failure of M/S Pir Muhammad to deposit the Additional Security up to 30/3/2016, the 2 % Earnest Money, already deposited was forfeited in favor of Govt. vide my office No 1993/2 M Dated 30/3/2016 with copy to 2<sup>nd</sup> lowest bidder Mr Almar Gul to deposit the additional security up to 11/4/2016(copy of the letter attached as **Annex VI**).

- 09-The call deposit of the 2<sup>nd</sup> lowest bidder M/S Almar Gul, attached with the tender form was found fake on verification from the concerned Bank. His name was recommended for black listing to the Chief Engineer (North) C&W Deptt: Peshawar vide This office No-2491/2-M dated 28/04/2016. (copies of the letter and bank verification attached as **Annex VII**)
- 10-During the process of approval of the tender the 1<sup>st</sup> lowest bidder M/S Pir Muhammad furnished bank guarantee in the office of the under signed on 4/4/2016, issued from Jubilee General Insurance Co Ltd. Peshawar Branch on 30/3/2016, after 27 days of the opening of the tender, against whom penal action was already initiated.(copy of the bank guarantee is attached as **Annex VIII**)
- 11-The tender of the 3<sup>rd</sup> lowest bidder, Haji Fazal Rahim was recommended to Superintending Engineer C&W Circle Lower Dir at Timargara for approval vide this office No-2492/2-M dated 28/04/2016 as the tender was in the process of approval in the office of chief engineer (North) and was not yet approved. (copy of the letter attached **Annex IX**)
- 12-While still the tender was in the process of approval, the 1<sup>st</sup> lowest Bidder M/S Pir Muhammad on one hand lodged complaint in the Chief Minster complaint cell, the inquiry of which was entrusted to Provincial Inspection team and on the other hand submitted an application to the Chief Engineer (North) against the decision of forfeiture of his 2% call deposit and the tender process.
- 13-All the relevant documents and brief history were provide to the provincial inspection team vide my office No 3199/4-A dated 26/5/2016(copy of the letter attached as **Annex X**)
- 14-The Chief Engineer(North) directed Mr. Engineer Muhammad Tariq, Superintending Engineer C&W Circle Swat for report to resolve the issue vide his No 776/1-G/ Dir Upper dated 9/5/2016(copy of the letter attached as **Annex XI**)
- 15-The Superintending Engineer Muhammad Tariq submitted his report vide his office No 3105/29 MG dated 2/6/ which was forwarded by the Chief Engineer (North) vide his No 827/1-G/Dir Upper dated 15/6/2016(copy of the report and letter of the Chief Engineer are attached as **Annex XII**)
- 16- There are clear contradictions in the report of Mr Muhammad Tariq, SE C&W Circle Swat as 21 day as per NIT conditions for the deposition of additional security should be reckoned from 8/3/2016, the date of opening of tenders. Even if it is counted from the date of issuance of notice to the contractor i.e. 11/3/2016 the 21th day comes to be on 31/3/2016. The contractor should have deposited the additional security atleast on 31/3/2016, where as in the



instant case the contractor have furnished the bank guarantee on 4/4/2016 in the office of the under signed.

17-Since in his letter referred to in para 15, the Chief Engineer(North) had issued clear instruction," **you are directed to go through the report and process the tender documents accordingly**", therefore the tender document were resubmitted to the Chief Engineer (North) vide my office No 3537/2M dated 29/6/2016(copy of the letter attached as **Annex XIII**).

18- The tender was accepted by the Chief Engineer (North) vide his office NO 2172/1-G/Dir Upper dated 04/7/2016 and work order was issued to the contractor accordingly.(Copy of the acceptance letter is attached as **Annex XIV**).

19-All the tender formalities have been fulfilled strictly in accordance to the rules and in the best interest of the work.

**2) Para wise replies to the charges and statement of allegations:-**

\* i) There are no rules of the Notice Inviting Tenders (NIT). Instead some conditions are put forth for the fair, transparent and expeditious disposal of the tender process by the procuring entity. Since the NIT conditions of each division were different than other division, the Department standardized the NIT conditions and circulated vid D (P&M)/C&WD/1-43/2015 Dated 9/10/2015 for guidance of the divisional officer for each category/type of tenders. The main part of the NIT is published in the News Papers while the instructions to bidders are uploaded on the Department website which is downloaded by the interested contractors along with their tender form (copy of the standard NIT is attached as **Annex XV**). As fully explained in the brief history of the tenders, 21 days as per the standardized NIT conditions, were allowed to the successful bidder for depositing the additional security but he failed to comply with the condition.

**The charge is denied.**

\* ii) As explained in para 8 of the brief history of the tender, sufficient time was allowed to the contractor as per standardize NIT conditions but due to his lack of interest in the work, and very limited working season in the project area, his call deposit was forfeited after expiry of the specified time limit.

**The charge is denied**

iii) As stated in **para 05** of the brief history, only 7 days were specified for each handling office to process/approve or return the tenders. The requisite tender was processed as **per para 7** of the brief history **Annex V**, without waiting for the deposition of the additional security, which is ample proof of the quick processing of the tenders. However the contractor was given notice to sensitize him about fulfilling his responsibilities rather than pressurizing him. The contractor had downloaded the instruction to bidder along

with his tender, form so he was fully aware of the NIT conditions. No action was taken against him until 30/3/2016, the 21 days' time limit.

**The charge is based on suspicion and is denied.**

iv)

The charge is quite ridiculous, as all the 1<sup>st</sup> three lowest bidders had quoted nearly the same competitive bid of 10% below on the tender cost, as evident from Annex II, the comparative statement, with only a minor difference of rate in thousands. The 1<sup>st</sup> lowest bidder M/S Pir Muhammad renders himself liable for penal action due to his lack of interest in the work. The 2<sup>nd</sup> lowest bidder M/S Almar Gul Bhattni was recommended for black listing due to providing fake call deposit. The tender of the 3<sup>rd</sup> lowest bidder M/S Fazal Rahim was recommended for approval as per KPK KAPRA Rules. The extending of favor and award of contract illegally after such a transparent manner is unimaginable.

**The charge is biased in nature, based on suspicion and is fully denied.**

- v) The tender process as explained above speaks loudly about the fairness, manner of transparency, adherence to rules, timely actions, expeditious disposal and best possible management within the framework of different codes and Govt rules. The loss to Govt: exchequer in the shape of price hike/escalation in future is just presumption and has no footings. The delay in the approval process of the tender are due to unavoidable procedural process and fulfilling of codal formalities and cannot be attributed to mismanagement.

**The charge is denied.**

- vi) In the light of the above explanations and documentary proofs, it is crystal clear that the process of tender of the project was carried out with an efficient and transparent manner keeping in view the Govt: rules in vogue and fulfilling all codal formalities.

I am feeling proud of having earned good name for myself and for my department during my entire service, due to my uncompromising attitude on rules and safeguarding the Govt: interest.

**The charge is biased in nature, based on suspicion and speculations and is fully denied.**

- 3) Due to the aforesaid explanation and documentary evidence I am not at all guilty of the misconduct under Rule- 3 of Khyber Pakhtunkhwa Govt: Servants (E&D) Rules 2011.

**The imposition of any penalty on me for the baseless charges shall mean:-**

- (i) Total denial of natural justice to me.
- (ii) My victimization for no fault of mine.
- (iii) Causing damage to my good reputation.

- (iv) **Causing mental agony to me.**  
And (v) **Damaging my clean service record.**

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- 4) **With immense respect, I submit this written defense and hope that full justice will be meted to me and I shall be exonerated of all the charges.**

**In case, you still require more explanations / information / clarification, I may very kindly be provided an opportunity of 'Personal Hearing'.**

**Thanking you in anticipation.**

**D.A. Annexures I,II,...,XV**

**Yours Sincerely,**

**Dated June 16, 2017**



**(ENGR. RAHMAT HAKIM)**

**Ex- Executive Engineer  
C&W Division Dir Upper**

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGINEERING DEPARTMENT  
DPM/PHED/C&W Inquiry/2016-17/ADP 1139/150829/  
Dated Peshawar, the July 17, 2017.

To  
The Secretary,  
Communication & Works Department,  
Govt. of Khyber Pakhtunkhwa.

AS/DS  
12-07-2017  
Mx, 19/17

Subject: - INQUIRY INTO AWARD OF THE SCHEME "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR UPPER" ADP NO.1139/150829 PROJECT

Ma  
2017

Sir,

Reference, Communication & Works Department letter No. SOE/C&WD/8-44/2016 dated 31-05-2017 on the subject cited above.

2. Formal Enquiry in the subject case has been conducted/completed by the Enquiry Committee. The Enquiry Report (along with annexures) is sent herewith for further necessary action.

Encl: as above

(Abdus Sami)  
Director (P&M),  
PHE Department Peshawar.

SOE  
(hmg)  
21/7

Please process.

SA  
Lm  
aw 25/7

ATTESTED

## INQUIRY REPORT

**AWARD OF TENDER OF THE SCHEME "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR UPPER" ADP NO. 1139/150829 PROJECT****1. ORDER OF INQUIRY:**

The Communication & Works Department Khyber Pakhtunkhwa vide letter No. SOE/C&WD/8-44/2016 dated 31-05-2017 intimated that the Competent Authority has appointed the undersigned as members of the Inquiry Committee to conduct formal inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in the subject case (**Annex-I**).

**2. BACKGROUND:**

i). A project titled "Rehabilitation/Reconstruction of a) RCC roads Kumrat, Badogai & Jandrai Road b) Doag Dara, Usorai Dara, Kadi Khel Dara Dir Upper" ADP # 1139/150829 (2015-16) (for a period of 20 months from 2015-16 to 2016-17) at a total cost of Rs. 325.500 million was approved by PDWP in its meeting held on 02-11-2015 and administrative approval issued by C&W department vide letter No. SOR/V-39/W&S/03/Vol-II dated 01-12-2015 (**Annex-II**). As per nomenclature of the project it included Kumrat road (8 KM) at a cost of Rs. 84.637 million.

ii). The invitation of applications for Pre-Qualification of contractors for said work was published in newspapers with final date of submission as 21-12-2015 (**Annex-III**). As a result 71 contractors/firms were pre-qualified. A total of five contractors participated in the tendering process of subject scheme and tender was opened on 08-03-2016. The rates offered by M/S Pir Muhammad & Co were Rs. 76,173,299/97 i.e. 10% below than the original tender cost of Rs. 84.737 million and was found the lowest bidder (**Annex-IV**).

iii). The C&W Department in order to streamline the procurement process vide letter No. D(P&M)/C&WD/1-43/2015 dated 09/10/2015 notified standard notice inviting tender from pre-qualified contractors accompanied with instructions to bidders, stating that in case successful bid is below the Engineer estimates upto 10%, the bidder shall provide performance guarantee/insurance coverage of a company having at least AA rating from PACRA/JCR or bank guarantee letter equal to 10% of the estimated cost within 21 days of acceptance letter (**Annex-V**). Meanwhile, the Executive Engineer C&W Division Dir Upper on 11-03-2016 informed the M/S Pir Muhammad & Co Govt. contractor, that in the aforesaid work he is the lowest successful bidder, therefore, he may deposit balance additional security upto 21-03-2016 otherwise his already deposited call deposit will be forfeited in favour of Government (**Annex-VI**). The contractor got managed Additional Performance Security from Jubilee General Insurance Company Limited for Rs. 8,463,700/- on 30-3-2016 (**Annex-VII**). On the other hand on 30-03-2016 the Executive Engineer C&W Division Dir Upper due to non-deposition of additional security in shape of Bank Guarantee/Call Deposit by M/S Pir Muhammad & Co Govt. contractor, forfeited his 2% Earnest money/call deposit earlier deposited in favour of Government (**Annex-VIII**).

iv). The Executive Engineer C&W Division Dir Upper under the circumstances tried to offer the work to 2<sup>nd</sup> lowest bidder Mr. Almar Gul Contractor but unfortunately his call deposit was found fake and instead his case was recommended to Chief Engineer (North) C&W Department for black listing (**Annex-IX**). He then offered the award to 3<sup>rd</sup> lowest bidder Hali Fazal Rahim Govt. Contractor & recommended his case to Chief Engineer (North) (**Annex-X**).

v). The M/S Pir Muhammad & Co Govt. contractor aggrieved with the situation approached Chief Engineer (North) C&W Department. The Chief Engineer (North) C&W Department on

09-05-2016 ordered an inquiry in the matter (Annex-XI). The Superintending Engineer C&W Circle Swat as an inquiry officer on 02-06-2016 concluded that "as per NIT conditions/instructions to bidders, the successful bidder was required to provide the Guarantee within 21 days i.e. upto 01/04/2016 but the Executive Engineer initiated penal action against the bidder on 30-03-2016 for non-providing the guarantee within 19 days (Annex-XII). The inquiry officer further stated that as per Executive Engineer the said guarantee was provided on 04-04-2016 whereas as per claim of the bidder it was delivered to Executive Engineer's office immediately. The inquiry officer concluded that keeping in view the gazette holidays of Saturday & Sunday (2<sup>nd</sup> & 3<sup>rd</sup> April), receipt of guarantee on 04-04-2016 should have been considered as delivered in time".

vi). Based on this inquiry report, the work was finally awarded to M/S Pir Muhammad & Co Govt. contractor and work order was issued on 11-07-2016 (Annex-XIII) and subsequently contract agreement was signed (Annex-XIV).

vii). Inquiry was ordered by the Chief Engineer (North) C&W Department on 09-05-2016 which was concluded by Superintending Engineer C&W Circle Swat on 02-06-2016. Simultaneously, M/S Pir Muhammad & Co Govt. contractor also lodged an identical complaint with Chief Minister's Complaint Cell which was subsequently referred to Provincial Inspection Team (PIT) and they asked Executive Engineer C&W Dir Upper on 18-05-2016 for provision of record (Annex-XV). The Executive Engineer reply to PIT is at Annex-XVI.

viii). The C&W Department was addressed to provide a copy of PIT report (Annex-XVII). The perusal of PIT report, received on 30-06-2016 from C&W Department, revealed that the acknowledgement of contractor for receipt of letter dated 11-3-2016 couldn't be produced. As per PIT report Xen was required to wait till 01-04-2016 before forfeiture of call deposit, thus he has violated the instructions to bidders which was part of the bidding documents. Thus due to overall mismanagement and unnecessary urgency commencement of work was delayed by about three months. Hence allegations regarding favouritism and illegality for attempting to award the tender to M/S Haji Fazal Rahim was found correct. On the recommendations contained in PIT report charge sheet was served upon the accused (Annex-XVIII).

ix). In light of the above, the C&W Department observed that Engineer Rehmat Hakeem the then Executive Engineer (BS-18) C&W Division Dir Upper presently working as, SE (OPS) H/Q O/o CE (Centre) C&W Peshawar has committed the following acts/omissions in the award of tender of the scheme "Rehabilitation and Construction of Kumrat Road (8KM) Dir Upper " ADP No.1139/150829 (Annex-I);

- Violation of rules reflected in the NIT and instructions to bidders in the instant bidding process by not allowing twenty one (21) days to the successful bidder for depositing additional security.
- Forfeiture of the call deposit of the contractor M/S Pir Muhammad & Co before expiry of the time.
- Un-necessarily pressurizing the contractor M/S Pir Muhammad & Co by mentioning 21.03.2016 instead of 01-04-2016 as last date for submission of additional security.
- Mis-use of authority by attempting to extend favour and award tender illegally.
- Mis-management causing delay in commencement of work, which may also cause loss to the government exchequer in the shape of price hike/escalation in future
- Creating bad name for Government and not safeguarding Government.

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**PROCEEDINGS:**

In order to proceed with the inquiry the accused officer Engineer Rehmat Hakeem the then Executive Engineer (BS-18) C&W Division Dir Upper presently working as, SE (OPS) H/Q O/o CE (Centre) C&W Peshawar was served with charge sheet and statement of allegations duly signed by the Chief Minister Khyber Paktunkhwa (competent authority) with the direction to furnish his written defense within seven (7) days vide letter No. DPM/PHED/C&W Inquiry/2016-17/ADP 1139/ 150829. The office of the Chief Engineer (North) C&W Peshawar was requested to provide the following documents (**Annex-XIX**):

- A brief about the case, highlighting all relevant features including present status.
- A copy of fact finding report if earlier conducted.
- Nature of complaint, Audit Report or any other document, if any.
- PC-I/cost estimate with copy of Administrative Approval letter.
- Newspapers cutting showing NIT/advertisement.
- Copy of tender document including bids alongwith copy of call deposits/tender register & comparative statement.
- Contract agreement & work order.
- Documents showing forfeiture of call deposits of M/S Pir Muhammad & Co and all other contractors if any.
- Date of actual commencement and current status of work.
- Detail of funds released & payment made.
- Progress report since commencement of work till date.
- Detail cost estimate with Technical Sanction letter.
- M.Bs containing all measurements.
- All voucher(s), along with final bill & PC-IV, if scheme completed.
- Monthly Accounts showing all payments alongwith forfeiture of call deposits.
- Final Grant(s) from project commencement till finalization.
- Any other relevant information, to support inquiry committee, about project

C&W Department was also repeatedly requested to appoint a Departmental Representative on 05-06-2017, who appointed the Departmental Representative on 03-07-2017 i.e. after a delay of one month.

**4. REPLIES OF THE ACCUSED:**

Engineer Rehmat Hakeem the then Executive Engineer (BS-18) C&W Division Dir Upper presently working as, SE (OPS) H/Q O/o CE (Centre) C&W Peshawar replied vide his letter No. PF-/004 dated 16-06-2017 (**Annex-XX**). The accused denied the charges on the following grounds:-

- That the charges are based on suspicions, assumptions and presumptions and are general in nature without any reference to the violation of any particular rule/clause of B&R Code, CPWA Code, Esta Code, Financial Rules, KPK KAPRA rules or any administrative order issued by the department in this regard.

- After opening of tender on 08-03-2016 in the presence of contractors/their representative M/S Pir Muhammad was declared as the 1<sup>st</sup> lowest bidders on the same date and was asked vide C&W Division Upper Dir office No-1792/2-M dated 11/3/2016 to deposit the additional Security up to 21/3/2016, for the quick disposal of the tender, but he failed to deposit the additional Security up to 30-03-2016 (**Annex-VI**). However, inline with departmental instructions dated 02/07/2013 (**Annex-XXI**), the tender of the lowest bidder M/S Pir Muhammad was sent to Superintending Engineer C&W Circle Dir Lower for approval of the competent authority vide his letter No 1843/2M dated 16/3/2016 (**Annex-XXII**) without waiting for the deposition of the additional security

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- Due to failure of M/S Pir Muhammad to deposit the Additional Security up to 30/3/2016, the 2 % Earnest Money, already deposited was forfeited in favour of Govt: vide letter No 1993/2 M Dated 30/3/2016 with copy to 2<sup>nd</sup> lowest bidder Mr Almar Gul to deposit the additional security up to 11/4/2016 (**Annex-VIII**). Since the call deposit of the 2<sup>nd</sup> lowest bidder M/S Almar Gul, attached with tender form was found fake on verification from the concerned Bank, he was therefore recommended for black listing to the Chief Engineer (North) C&W Deptt: Peshawar vide No-2491/2-M dated 28/04/2016 (**Annex-IX**).
- During the process of approval of the tender, the 1<sup>st</sup> lowest bidder M/S Pir Muhammad furnished bank guarantee to Xen Dir C&W office on 4/4/2016, issued from Jubilee General Insurance Co Ltd Peshawar Branch on 30/3/2016. After 27 days of the opening of the tender, against whom penal action was already initiated (**Annex-VII**).
- Subsequently the tender of the 3<sup>rd</sup> lowest bidder, Haji Fazal Rahim was recommended to Superintending Engineer C&W Circle Lower Dir at Timargara for approval vide letter No-2492/2-M dated 28/04/2016 as the tender was in the process of approval in the office of chief engineer (North) and was not yet approved (**Annex-X**).
- Meanwhile, the 1<sup>st</sup> lowest Bidder M/S Pir Muhammad on one hand lodged complaint in the Chief Minister complaint cell, who entrusted enquiry to Provincial Inspection team and on the other hand he also submitted an application to the Chief Engineer (North) against the decision of forfeiture of his 2% call deposit and the tender process. All the relevant documents and brief history were provided to the provincial inspection team vide letter No 3199/4-A dated 26/5/2016 (**Annex-XVI**).
- As per instruction of Chief Engineer (North), the Superintending Engineer C&W circle Swat submitted his report vide his office No 3105/29 MG dated 2/6/2016 which was forwarded by the Chief Engineer (North) vide his letter No 827/1-G/Dir Upper dated 15/6/2016 (**Annex-XII**). Accused submitted that there are clear contradictions in the report of SE C&W Circle Swat as 21 days as per NIT conditions for the deposition of additional security should be reckoned from 8/3/2016, the date of opening of tenders. Even if it is counted from the date of issuance of notice to the contractor i.e. 11/3/2016 the 21th day comes to be on 31/3/2016. The contractor should have deposited the additional security at-least on 31/3/2016, where as in the instant case the contractor had submitted the bank guarantee on 4/4/2016 in his office.
- However, finally based on said preliminary inquiry, the Chief Engineer (North) C&W issued instructions and approval of tender was re-considered and then tender was accepted by the Chief Engineer (North) vide his office No 2172/1-G/Dir Upper dated 04/7/2016 in favour of 1<sup>st</sup> lowest bidder and work order was issued to the contractor accordingly (**Annex-XIII**).

The accused further clarified that;

- a) There are no rules of the Notice Inviting Tenders (NIT). Instead some conditions are put forth for the fair, transparent and expeditious disposal of the tender process by the procuring entity. Since the NIT conditions of each division were different the Department standardized the NIT conditions and circulated vide D(P&M)/C&WD/1-43/2015 Dated 9/10/2015 for guidance of the divisional officer for each category/type of tenders. The main part of the NIT is published in the News Papers while the instructions to bidders are uploaded on the Department website which are downloaded by the interested contractors along with their tender form



(copy of the standard NIT at **(Annex-V)**. 21 days as per the standardized NIT conditions, were allowed to the successful bidder for depositing the additional security but he failed to comply with the condition.

b) Sufficient time was allowed to the contractor as per standardized NIT conditions but due to his lack of interest in the work, and very limited working season in the project area, his call deposit was forfeited after expiry of the specified time limit.

c) Only 7 days were specified for each handling office to process/approve or return the tenders. The requisite tender was quickly processed without waiting for the deposit of the additional security. However, the contractor was given notice to sensitize him about fulfilling his responsibilities rather than pressurizing him. The contractor had downloaded the instruction to bid along with his tender, form so he was fully aware of the NIT conditions. No action was taken against him until 30/3/2016, the 21 days' time limit.

d) As all the 1<sup>st</sup> three lowest bidders had quoted nearly the same competitive bid of 10% below on the tender cost (**Annex-IV**) the comparative statement, with only a minor difference of rate in thousands. The 1<sup>st</sup> lowest bidder M/S Pir Muhammad rendered himself liable for penal action due to his lack of interest in the work. The 2<sup>nd</sup> lowest bidder M/S Almar Gul Bhattni was recommended for black listing due to providing fake call deposit. The tender of the 3<sup>rd</sup> lowest bidder M/S Fazal Rahim was recommended for approval as per KPK KAPRA Rules. The extending of favour and award of contract illegally after such a transparent manner is unimaginable.

e) The tender process speaks loudly about the fairness, manner of transparency, adherence to rules, timely actions, expeditious disposal and best possible management within the framework of different codes and Govt rules. The loss to Govt: exchequer in the shape of price hike/escalation in future is just presumption and has no footings. The delay in the approval process of the tender are due to unavoidable procedural process and fulfilling of codal formalities cannot be attributed to mismanagement.

ii. The Director (P&M) C&W Department, who issued notification dated 09/10/2015, was requested to clarify following points (**Annex-XXIII**):-

a) The specific time period of 21 days is whether inline with the CPWA Code, B&R Code or KPPRA Rules, Finance Department instructions or any other SOP of the department. If so please provide a copy of such said code/rule, if any.

b) And, if the said time period of 21 days is not in-line with any code/rule, then what is its legal value.

c) The said instructions for pre-qualified contractors are required to be issued to every contractor with tender documents by concerned Xen or these are directly downloaded along with tender documents.

d) Can any Xen can alter these instructions by reducing number of days from 21 to 10 or 15 days under normal conditions or keeping in view the site situation or climatic issues for early commencement of work.

e) Normally Additional Performance Security etc. are for a particular period and if work not yet completed during that particular period whether contractor is required to renew the said Insurance. If he failed to renew the documents even more than 3 months what actions are normally taken by the C&W department.

The Director (P&M) C&W Department however, advised to ask the Chief Engineer (North) C&W Department for clarification of these points (**Annex-XXIV**).

**ANALYSIS:**

i. The department failed to provide the clarifications, therefore, the accused, complainant contractor, the representative of the department and presently Executive Engineer C&W Division Dir Upper were summoned to attend the inquiry committee meetings alongwith relevant record. They appeared before the inquiry committee on 03-07-2017. In addition, the then and present SDO, Head Clerk, Accountant also attended proceedings on 5-7-2017. The accused, departmental representative and contractor were served with questionnaires.

ii. The accused repeated his earlier reply and further stated that there is neither any regular practice for issuance of Acceptance letter nor any proper instructions that when this Acceptance letter is to be issued. If as per practice in-vogue, he has not issued the said notice dated 11-3-2016, then all stake holders were required to follow date of opening of tender as baseline. The departmental representative also agreed to the statement of accused stating that there is no regular procedure regarding issuance of Acceptance letter and that the 8-3-2016 was to be considered as baseline. However, he added that after evaluation of bids and determination of lowest bidder, issuance of acceptance letter can be processed. The contractor replied that as per KPPRA Rules/guidelines, they follow 28 days for submission of Additional Security and accordingly the requisite Insurance was submitted within prescribed timeline. To a query regarding downloading of instructions for bidder he showed ignorance, however, additional tender documents provided by Xen's office showed that not only he has downloaded the said instructions but also attached the said instruction duly signed with tender documents (**Annex-XXV**). The contractor submitted that he received letter dated 11-3-2016 through email on the same date which was then forwarded to Jubilee Insurance. On receipt of insurance it was emailed to Xen's office on 01-04-2016. During cross examination, the SDO, Head Clerk and Accountant denied receipt of any requisite document on 01-04-2016 as concerned clerk did not presented it to them or Xen on 01-04-2016 and besides this, head clerk submitted that personally he has no knowledge of using internet including email. However, he admitted that the document was physically received on 4-4-2016 at 5.00 pm. The accused submitted that since he had already forfeited the call deposit on 30-3-2016, the receipt of additional insurance document on 1-4-2016 or 4-4-16 could have no effect on the tender process. To a query from contractor regarding establishment of his right on 4-4-2016 afternoon, he replied that if his claim was not correct then he should not have been awarded the contract by the department. The Head Clerk presented certain documents that the letters for submission of additional security to other contractor up to 21-3-2016 on the same date i.e. 11-3-2016 and 16-03-2016 were also issued to other contractors (**Annex-XXVI**) who turned up and submitted additional security within target date without any dispute. The accused added that the sole purpose of these letters for early submission of additional security was just to sensitize the contractors to ensure commencement of work and he did not forfeit the call deposit on 22-3-2016 rather otherwise, he waited upto 22 days upto 30-3-2016 (wef 8-3-2016). He further stated that actually at this rate it was a bit difficult for M/S Pir Muhammad & Co to execute work in such remote area and he was looking for to sublet it to someone else but he could not found any candidate, which resulted in delay in submission of additional security. All written statements to questionnaire and detail of cross examination are at **Annex-XXVII**. Both the parties stated that they have no witnesses for their defense. In order to confirm legality of ITB reply from Director (P&M) C&W and Chief Engineer

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(iv) C&W Department, since replies were not received, a meeting was held with concerned officers in C&W Department on 14-07-2017. The Chief Engineer (N) C&W replied on 14-07-2017 that all rules and codes are silent about 21 days' time limit and it was fixed by tendering authority in the NIT/ITB to give sufficient time to the interested/ successful bidders.

iii. The C&W Department vide letter No DS (Tech)/Policy/I- Vol-1/2013 dated 02/07/2013 issued instructions that under Clause 6 and 7 of the caption, "B Receipt, Opening and evaluation of tenders/bids" only 7 days were specified for the bid evaluation, approval or return of the tenders for each of the office of Divisional Engineer, Superintending Engineer and Chief Engineer as the case may be (Annex-XXI).

iv. The C&W Department in order to streamline the procurement process vide letter No. D(P&M)/C&WD/1-43/ 2015 dated 09/10/2015 notified standard notice inviting tender from pre-qualified contractors accompanied with instructions to bidders, stating that in case successful bid is below the Engineer estimates upto 10%, the bidder shall provide performance guarantee/insurance coverage of a company having at least AA rating from PACRA/JCR or bank guarantee letter equal to 10% of the estimated cost within 21 days of acceptance letter (Annex-V). But apparently there are no guidelines for issuance of Acceptance letter.

v. The invitation of applications for Pre-Qualification of contractors for said work was published in newspapers with final date of submission as 21-12-2015 (Annex-III). As a result, 71 contractors/firms were pre-qualified. A total of five contractors participated in the tendering process and tender was opened on 08-03-2016. The rates offered by M/S Pir Muhammad & Co were Rs. 76,173,299/97 i.e. 10% below than the original tender cost of Rs. 84.737 million was found lowest bidder (Annex-IV).

vi. The Executive Engineer C&W Division Dir Upper on 11-03-2016 informed the M/S Pir Muhammad & Co Govt. contractor through a notice, that in the aforesaid work he is the lowest successful bidder, therefore, he may deposit balance additional security upto 21-03-2016 otherwise his already deposited call deposit will be forfeited in favour of Government (Annex-VI). Though the contractor has downloaded the instructions for bidder containing 21 days but he stated that he has no idea about it rather he normally follows 28 days timeline and same is true for instant case. The contractor got managed Additional Performance Security from Jubilee General Insurance Company Limited for Rs. 8,463,700/- on 30-3-2016 (Annex-VII). On the other hand on 30-03-2016 the Executive Engineer C&W Division Dir Upper, considering 22 days from the opening of tender date on 08-03-2016, due to non-deposit of additional security in shape of Bank Guarantee/Call Deposit by M/S Pir Muhammad & Co Govt. contractor, forfeited his 2% Earnest money/call deposit, earlier deposited, in favour of Government (Annex-VIII).

vii. Even if NIT instructions are binding for all field officers and contractors of C&W Department then in the instant case contractor was required to present the performance guarantee/insurance or deposition of additional security at upto 31-03-2016 (inclusive of 11-3-2016) and at the latest upto 01-04-2016 (exclusive of 11-03-2016). But the contractor got managed Additional Performance Security from Jubilee General Insurance Company Limited for Rs. 8,463,700/- on 30-3-2016 (Annex-VII), emailed it on 01-04-2016 but no one was informed about it and physically submitted to the office of Xen C&W Dir Lower on 04-04-2016 at 5.00 pm i.e. after closure of office hour. As such in case,, call deposit was not forfeited on 30-3-2016 even then M/S Pir Muhammad & Co. didn't seem eligible on April 04 or April 05, 2016 for award of subject work. However, in the charge sheet there is no mention about this aspect, therefore, Inquiry Committee cannot press this point.

viii. The Superintending Engineer C&W Circle Swat as an inquiry officer on 02-06-2016 submitted that as per NIT conditions/instructions to bidders the successful bidder was required to provide the Guarantee within 21 days i.e. upto 01/04/2016 but the Executive Engineer

initiated penal action against the bidder on 30-03-2016 for non-providing the guarantee within 19 days (Annex-XII). The inquiry officer further stated that as per Executive Engineer the said guarantee was provided on 04-04-2016 whereas as per claim of the bidder it was delivered to Executive Engineer's office immediately. The inquiry officer concluded that keeping in view the gazetted holidays of Saturday & Sunday (2<sup>nd</sup> & 3<sup>rd</sup> April), receipt of guarantee on 04-04-2016 should have been considered as delivered in time. Based on the inquiry report the work was finally awarded to M/S Pir Muhammad & Co Govt. contractor and work order was issued on 11-07-2016 (Annex-XIII). Though work was awarded to M/S Pir Muhammad & Co and his grievances were addressed but the PIT inquiry remained the process which led to instant inquiry. If instructions for bidder were followed in its true spirit then any such lenient action for considering April 04 or April 05 for submission of additional security beyond 01-04-2016 could not have been allowed.

ix. Regarding delay in commencement of work, it has been observed that work orders for other 4 works were issued on 28-04-017 while for the subject scheme work order was issued on 11-07-2016 i.e. after three months as compared to other works. Further any claim about escalation etc. cannot be attributed to delay in commencement of work because the progress report clearly indicates that there is extremely low funding in this project. In this respect, against the total approval of Rs. 325.50 million, Rs. 15.00 million were incurred upto June 2016 and Rs. 35.06 million were released during 2016-17(Annex-XXVIII). Similarly against this project so far Rs. 4.739 million have been incurred and reportedly there is a liability of Rs. 5.00 million (Annex-XXIX). Further for the financial year 2017-18 Rs. 40.00 million have been allocated which indicates that even this project doesn't seem to be completed during 2017-18.

x. Additional Performance Security from Jubilee General Insurance Company Limited was valid upto 10-3-2017 while apparently work is in progress, Xen Dir Lower was enquired that whether it has been renewed or any action has been taken by department. In reply the accused stated that contractor was asked on 15-03-2017 for renewal but so far, he has not yet renewed the additional security. Rather, he submitted that his liability of Rs. 5.00 million will be deposited to cover additional security, which is not a proper way to deal with such like issues.

xi. In the advertisement for notice inviting tenders from pre-qualified contractors advertised in newspapers on 16-02-2016 it was mentioned that Tender form, BOQ and instruction to bidders (when there are bid documents) can be downloaded up to one day prior to the opening date from C&W web site ([www.cwd.gkp.pk](http://www.cwd.gkp.pk)). It included condition that in case successful bid is below the Engineer estimates upto 10%, the bidder shall provide performance guarantee/insurance coverage of a company having at least AA rating from PACRA/JCR or bank guarantee letter equal to 10% of the estimated cost within 21 days of acceptance letter (Annex-XXX).

xii. There is no regular practice for issuance of Acceptance letter to successful bidder in C&W Department nor any instructions were presented by C&W Department that after how much time Acceptance letter is required to be issued to successful bidder.

xiii. In case, these instructions are legally binding then the issuance letter dated 11-03-2016 for submission of additional security upto 21-03-2016 (within 11 days) was not justified. However, as observed accused issued identical letters to all successful bidders on same date for submission of additional security upto 21-3-2016 may be for sensitizing them for early finalization of procurement process due to limited working season in the project area. The contractor during personal hearing admitted that he and his representative were present during tender opening i.e. on 8-3-2016, wherein they were informed that they are lowest & successful bidder for the subject work. However, contractor followed KPPRA rules of 28 days for submission of additional security. On the other hand the accused presumed 8-3-2016 as

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baseline for submission of additional security with final date as 29-03-2016 and thus he ordered forfeiture of 2% earnest money on 30-03-2016 prior to 31-03-2016 or 01-04-2016 as otherwise observed in C&W inquiry report & PIT report.

xiv. If the final date for submission of additional security/ Performance guarantee is considered as 31-03-2016 or 01-04-2016, even then the contractor also got failed to comply with the general instructions for successful bidder for submission of additional security/ Performance guarantee upto 31-03-2016 or 01-04-2016 rather he submitted the same on 04-04-2016 at 5.00 pm after office closure time which otherwise under normal conditions has to be processed on 05-04-2016.

## 6. FINDINGS:

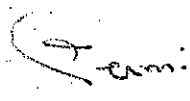
In light of above, it can be concluded that the charges:-


- a. **Violation of rules reflected in the NIT and instructions to bidders in the instant bidding process by not allowing twenty one (21) days to the successful bidder for depositing additional security seems to be proved** because accused did not produce specific NIT for this project containing reduced 10 days rather he followed the same 21 days as per advertisement. He should have considered 01-04-2016 as final date, from issuance of letter dated 11-3-2016, instead of 30-3-2016, when call deposit forfeited.
- b. **Forfeiture of the call deposit of the contractor M/S Pir Muhammad & Co before expiry of the time** is identical to charges at (a) above. Though it is dubious because the contractor has admitted that he and his representative were present during tender opening on 08-03-2016 wherein M/S Pir Muhammad & Co was declared as lowest and successful bidder. Therefore as matter of routine he was required to submit additional security within 21 days as per instructions to bidder. However, his earnest money was forfeited on 30-3-2016 instead of 01-04-2016, as explained in para 6 v (a) above, *Hence this charge seems to be proved against the accused.*
- c. **Un-necessarily pressurizing the contractor M/S Pir Muhammad & Co by mentioning 21.03.2016 instead of 01-04-2016 as last date for submission of additional security** The accused for submission of additional security up to 21-3-2016, issued letters to other contractors as well on the same date i.e. 11-3-2016 and 16-03-2016, therefore, this action was not discriminatory and *this charge for pressurizing the contractor M/S Pir Muhammad & Co seems not to be proved.*
- d. **Mis-use of authority by attempting to extend favour and award tender illegally.** *This charge seems to be proved partially* because accused originally recommended the case of lowest bidder/complainant even without receipt of additional security. However due to circumstantial situation initially his case was delayed but finally work was awarded to the same contractor and besides this there is no loss to government exchequer.
- e. **Mis-management causing delay in commencement of work, which may also cause loss to the government exchequer in the shape of price hike/escalation in future.** The work orders for 4 other schemes, which were tendered on the same date, were issued on 28-04-2016 and for the instant subject project work order was issued on 11-07-2016 (i.e. within three months) as such there is no major delay in commencement of work. The chances of escalation, if any, can however, be attributed to low funding for the individual subject sub project and overall project as well because so far, since commencement of all 5 works, less than 50.00 million have been released/utilized against the overall approval of Rs. 325.00 million and - - - - - for the

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financial year 2017-18 the allocation is Rs. 40.00 million and it is apprehended that with this pace of funding work might not be get completed during 2017-18. *As such this charge does not seem to be proved.*

- f. **Creating bad name for government and not safeguarding government.** This charge pertains to individual perception, the accused tried to expedite the approval of tendering process for timely execution of work due to limited working season in the project area, however, it did not worked. In this regard the department did not provide any evidence relating to this specific enquiry. *The charge is vague in its nature and doesn't seem to be proved.*

  
(ENGR. ABDUS SAMI)  
14/7/2017  
Member Inquiry Committee,  
Director (P&M) PHE Department,  
Peshawar.

  
(MUHAMMAD FAKHR ALAM)  
14/7/2017  
Member Inquiry Committee,  
Additional Secretary ST&IT Department,  
Peshawar.



Regd

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-44/2017  
Dated Peshawar, the Sept 08, 2017

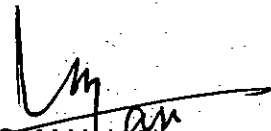
To  
Engr: Rehmat Hakeem ✓  
Superintending Engineer (OPS)  
C&W Circle, Bannu

Subject: INQUIRY INTO AWARD OF TENDER OF THE SCHEME "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR UPPER" ADP NO.1139/150829 PROJECT

I am directed to refer to the subject noted above and to enclose herewith two copies of the show cause Notice containing tentative minor penalty of "withholding of two increments for two years" along-with inquiry report conducted by inquiry committee comprising of Mr. Muhammad Fakhar-e-Alam Additional Secretary ST&IT Department and Engr. Abdus Sami Director (P&M) PHE Department Peshawar and to state that the 2<sup>ND</sup> copy of the show cause Notice may be returned to this Department after having signed as a token of receipt immediately.

2. You are directed to submit your reply, if any, **within 7 days of the delivery of this letter**, otherwise, it will be presumed that you have nothing to put in your defence and ex-party action will follow.

3. You are further directed to intimate whether you desire to be heard in person or otherwise.

  
(USMAN JAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

Sir  
for your kind  
reference  
13/9/17

S.E.  
13/9/17

SECTION OFFICER (Estb)

ATTESTED  








My Reference No.. 1004/PF

Dated 19/09/2017

P  
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To,

**The Honourable Chief Minister,  
Govt: of Khyber Pakhtunkhwa.**

Through: **Proper Channel**

Subject: **INQUIRY INTO AWARD OF TENDER OF THE SCHEME "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR UPPER" ADP NO. 1139/150829 PROJECT.**

Respected Sir,

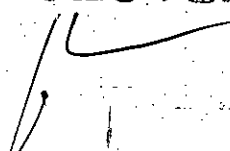
With reference to the letter bearing No.SOE/C&WD/8-44/2017 dated 08-09-2017, vide which Show Cause Notice containing tentative minor penalty of "withholding of two annual increments for two years" has been served upon the undersigned to furnish reply within stipulated period and be intimated for personal hearing. In the show cause notice, the following charges have been communicated:

- i. "Violation of rules reflected in the NIT and instruction to bidders in the instant bidding process by not allowing twenty one (21) days to the successful bidders for depositing additional security".
- ii. "Forfeiture of the call deposit of the contractor M/S Pir Muhammad & Co before expiry of the time".
- iv "Mis-use of authority by attempting to extend favour and award tender illegally".

In this regard the undersigned has explained the position in very detail in the brief history and para wise replies to the charges leveled against me in the reply of charge sheet / Statement of allegation to the inquiry officer, enclosing the entire relevant documents in the form of Annexure. However, in light of the enquiry report and the above referred to show cause notice, I submit my reply as under:

- i) That I have not violated the rules of the standardized NIT and instruction to bidders because the instruction to bidders by itself state, "in case the successful bid is below the engineer estimate up to 10%, the bidder shall provide performance guarantee/insurance coverage of a company having at least AA rating..... equal to 10% of the estimated cost within 21 days

**ATTESTED**



(55)

of acceptance letter...."(Standard NIT attached as Annexure XV). Sometime in July 2013, the administrative department fixed a time frame of the bid processing, restricting it to 7 days at each office, meaning there, by 07 days in Executive Engineer office, 07 days in Superintending Engineer office and 07 days in Chief Engineer office, and as such the undersigned kept it in notice and feel it obligatory to ask the bidder to arrange performance guarantee, rather to wait for approval from the Chief Engineer, being the competent authority as the acceptance power to this cost of bid was resting with him (The Circular is attached as Annex III). In the past the bidders who quoted their below rates up to 10% or more were bound to add additional security in the shape of CDRs, Bank guarantee etc in order to consider their bids, which is the same practice as covered in the standard NIT at present. The tender was opened and evaluated on 8/3/2016. The contractor failed to provide the additional security within 21 days of the date of opening / evaluation as per NIT condition therefore his call deposit was forfeited in favor of government on 30/8/2016. So there arise no question of not allowing 21 days, as such it was on the part of the 1<sup>st</sup> lowest / successful bidder to have compiled his documents, as he was present at the time of Opening of bids and was aware of being successful bidder. The inquiry committee has also stated in their report under the subhead," ANALYSIS" at serial no ii) that," additional document provided by xen's office showed that not only he has downloaded the said instruction but also attached the said instruction, duly signed with the tender documents (Annexure XXV of the report).

Hence the charge is baseless and not worth consideration.

- ii) As stated earlier in my replies to the charge sheet and statement of allegation, the period of 21 day will always and ever be calculated from the bid opening date ie 08/03/2016 and not from the date when I asked the contractor vide letter dated 11/03/2016 to deposit the additional security. So, thereafter on the expiry of 21 days ie. 29/03/2016, the 2% earnest money of the contractor Mr Pir Muhammad, amounting to Rs 1.693 million was forfeited in favour of government vide informed memo Dated 30/03/2016. According to the standard NIT condition No 4 under," Instruction to Bidders" the tender of the 2<sup>nd</sup> lowest

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bidder, Mr Almar Gul, was processed. The CDR (2%) of the 2<sup>nd</sup> lowest bidder, Mr Almar Gul was sent to the Bank for verification but the Bank authority reported in writing that the CDR is "Fake" for which I wrote a letter to the Chief Engineer for taking penal action against the contractor, as the enlistment of contractors rest with the Chief Engineer and there after the tender of the 3<sup>rd</sup> lowest bidder was processed. Both the above actions against the contractors, Mr Pir Muhamad and Almar Gul were correct, within the time limit and in ~~order~~ orders of the terms of the NIT.

**The charge is once again denied.**

I have not attempted to misuse authority and to extend favours and to award the tender illegally to any one of the contractor. As stated earlier, clause 4 of the Instruction to bidders of the NIT describe and specify the procedure:

"If the performance bond or bank guarantee (which ever the case may be) is not provided by the bidder in the required period, offered will be given to the next lowest bidder & so on and the bid security of the bidder will be forfeited". As the charge is linked with charge i) and ii) which I have expressed in their replies that when Mr Pir Muhmmad, the 1<sup>st</sup> lowest bidder did not provide the additional security, well in time, his 2% earnest money was forfeited in favour of government and the 2<sup>nd</sup> lowest bidder whose CDR was fake, was recommended to Chief Engineer for penal action. There was no other option left, except to extend offer to the 3<sup>rd</sup> lowest bidder and process his tender according to the NIT condition.

To further clarify it, is submitted that the tender was opened and evaluated on 83/2016. The bid along with comparative statement and relevant documents, except the performance guarantee of the 1<sup>st</sup> lowest contractor, Mr Pir Muhammad, was sent to Superintending Engineer C&W circle Dir Lower on 16/3/2016, with in the time frame fixed by the department in the mid of July 2013 under the heading, "ENSURING TRANSPERANCY IN BUSINESS PROCESS" (copy of the letter attached as **Annexure III** with the reply of the charge sheet) and as stated in the brief history at serial No. 5, I was in the understanding to complete all the formalities well before the approval of the bids by the Chief Engineer, being his competency and I tried my best that if the 1<sup>st</sup> lowest bidder decline or use delaying tactics, the work is started at

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the most earliest time due to limited working seasons in the project area with no other ethics or consideration.

Here I avail the opportunity to invite your kind attention to the Finance Department Notification even No SO(FR)/FD/9 - 7/2011/Vol-II, Dated 03/01/2014, read with Notification No SO(FR)/FD/9-7/2011/Vol- II, Dated 05/11/2014, "In case the bids below the Engineer estimate / BOQ on market rate basis, the bidders / tenderers shall deposit additional bank guarantee, as prescribed, to firm up their bidding. The bank guarantee and call deposit shall be accepted, subject to verification from the issuing bank" (The Notifications are attached as Additional Annexure A1 and A2). In these notifications, no time frame is fixed and it is mandatory for the lowest bidder, offering below rate up to 10% or more to deposit additional Banks Guarantee / Insurance Coverage, at the time when the bidders intends to participate.

Taking into account, all the ingredients as cited in above referred to Notifications and guide lines, I myself utmost tried to deliver good and to keep safe the Government interest at all. However the higher ups later granted approval to the bids in favor of the said contractor who produced the performance guarantee of Jubilee General Insurance Company Ltd Karachi issued on 30/03/2016 and received in the office of the undersigned on 4/4/2016 at 5:00 PM to whom the work order had been issued.

In the wake of the above submission and points discussed in the enquiry report which are summarized as below:

- a) The condition of allowing 21 day for the deposition of Additional security as per NIT condition has been fulfilled. The 1st lowest bidder failed to produced bank guarantee / insurance coverage as additional security from the date of tendering, 8/3/2016 up to 29/3/2016.
- b) The notice given to the contractor to deposit additional security, dated 11/3/2016 was misunderstood as letter of acceptance and was consider as base line for counting 21 days.
- c) The inquiry officers themselves were not clear about the NIT Clause under discussion so they sought clarification of the legality / status of the 21 days' time, given for depositing of additional security from Director P&M, whether these are in line with the CPWA Code, B&R Code or KPPRA Rules, Finance

Department instructions and other related information from Points a) to e) under serial no ii) page 5 and 6 of the enquiry report, who refer the clarification to Chief Engineer (North), (Annexure XXIII and XXIV of the enquiry report). Under the caption, " ANALYSIS" serial No ii) page 7 of the report of the inquiry officer, "the Chief Engineer replied on 14/07/2017 that all rules and codes are silent about 21 days' time limit and was fixed by tendering authority in the NIT/ ITB to give sufficient time to the interested / successful bidder".

d) Under the same caption and page at serial No iv) the enquiry officers states, "But apparently there are no guide lines for the issuance of acceptance letter".

e) Once again under the same caption," ANALYSIS" and serial No ii) page 6, recording the statement of the departmental representative," The departmental representative also agreed to the statement of the accused stating that there is no regular procedure regarding issuance of Acceptance Letter and that the letter dated 8/3/2016 to be considered as base line".

f) As referred to the Finance Department Notifications (Annexure A1 and A2) there is no defined time limit of 21 days for the depositing of additional security for the lowest bidders.

g) That the tender of the 1<sup>st</sup> lowest bidder Mr. Pir Muhammad was processed on the bases of the dubious enquiry conducted by the Superintending Engineer C&W Circle Swat (copy attached as Annexure XII of the reply to the charge sheet) and conveyed by the Chief Engineer (North) vide his letter (attached as Annexure XIII of the reply to charge sheet) with clear instruction, "you are directed to go through the report and process the tender documents accordingly".

h) The 21 days' time period for the deposition of additional security and its applicability has no mention anywhere in the Khyber Pakhtunkhwa Public Procurement Regularity Authority Rules.

i) The tender has been awarded and work order issued to the contractor after acceptance of tender by the Chief Engineer

(North) being the competent authority vide his No 2172/1-G/Dir Upper, Dated 04/07/2016 (copy attached as Annexure XIV of the reply to the charge sheet) without any loss to the Government or any adverse financial impact.

Therefore the imposition of any penalty upon me shall means:-

- a) Total denial of natural justice to me.
- b) Damaging my clear service record and career for no fault of mine.
- c) Causing mental agony to the undersigned.


It is, therefore, humbly requested that my reply may be accepted and may exonerate the undersigned from imposing the penalty upon the undersigned of "withholding two increments for two years", based on the ambiguous charges without any solid reference to the breach of any rules such as B&R Code, CPWA Code, General Financial Rules, KPPRA Rules and any other departmental instructions issued from time to time. I pray for an opportunity of personal hearing, if your good self deem it necessary for which I shall be obliged.

Yours' Faithfully

Dated 19.09.2017

Enclosures

- I) Inquiry report
- II) Reply to the charge sheet / statement of allegations
- III) Additional Annexure of A1 and A2

  
 (RAIHAT HAKIM)  
 SUPERINTENDING  
 ENGINEER (OPS) C&W  
 Circle Bannue



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

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Dated Peshawar the March.01, 2018

**ORDER:**

No.SOE/C&WD/8-44/2016: WHEREAS, Engr. Rehmat Hakeem the then XEN (BS-18) C&W Division Dir Upper, presently working as Superintending Engineer (OPS) C&W Circle Bannu was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the alleged acts/omissions in the award of tender of the scheme "Rehabilitation and Construction of Kumrat Road (8 KM) Dir Upper" ADP No.1139/150829.

2. AND WHEREAS, for the said act/omission specified in rule-3(a) of the rules ibid, they were served with charge sheet/statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Mr. Muhammad Fakhar-e-Alam Additional Secretary ST&IT Department and Engr. Abdus Sami Director (P&M) PHE Department Peshawar was constituted, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation and personal hearing of the officer concerned, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "**Censure**" upon the aforementioned officer.


SECRETARY TO  
Government of Khyber Pakhtunkhwa  
**Communication & Works Department**

Endst of even number and date

Copy is forwarded for information to:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (North/Centre) C&W Peshawar.
3. Superintending Engineer C&W Circle Dir Lower/Bannu.
4. Executive Engineer C&W Division Dir Upper.
5. District Accounts Officers Dir Upper/Bannu.
6. PS to Secretary Establishment Department, Peshawar.
7. PS to Secretary C&W Department, Peshawar.
8. PA to Deputy Secretary (Admn) C&W Department, Peshawar.
9. Officer concerned.
10. Office order File/Personal File.

ATTESTED

  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)



Diary No; 2461 <sup>R</sup>④  
05-03-2018

My reference No.. 1004=5/PF

Dated 05/03/2018

To,

**The Honourable Chief Minister,  
Govt: of Khyber Pakhtunkhwa.**

Through: **Secretary Communication and Works**


Subject: **REVIEW PETITION IN NQUIRY INTO AWARD OF TENDER OF THE SCHEME  
"REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR  
UPPER" ADP NO. 1139/150829 PROJECT**

Respected Sir,

- 1) With reference to the letter bearing No.SOE/C&WD/8-44/2016 dated 01-03-2018,(photo copy attached) vide which I have been penalized with minor penalty of "Censure" on the grounds of alleged acts/omission in the award of contract of the scheme, "Rehabilitation and Construction of Kumrat Road (8 km) Dir Upper" ADP no. 1139/150829 project"
- 2) Here once again I stick to my position that the tenders/bids from the pre-qualified contractors were called on 08/03/2016 with the bid instruction available on the web site and downloaded by the contractor, "that the successful bidder quoting his rate below up to 10% of the engineer estimate shall provide performance guarantee/insurance coverage or bank guarantee as additional security, equal to 10% of the estimated cost within 21 days", as per time line fixed by the authorities.
- 3) Just opening the bids on 08/03/2016 after its evaluation the bidder who was the lowest was asked to furnish the performance guarantee/insurance coverage or bank guarantee according to the standing instruction of the department in order to fulfill the requisite documentation well before and in time rather to spend the time in paper work, with the follow up notice to the bidder on 11/03/2016 and simultaneously bids were sent to the next higher authority viz Superintending Engineer C&W Circle Dir Lower.
- 4) The time frame to accept or reject the bids by the final authority from the start was defined to 21 days at all.
- 5) Instead to fulfill the requirement in time the successful bidder furnished the insurance coverage in office on 04/04/2016 at 5:00 pm (in late hours). Please take into note that the local MPA was conscious to inaugurate/lay the stone breaking ceremony of the scheme through Senator Sirajul Haq at the most earliest. I therefor forfeited the 2% earnest money of the said bidder on 30/03/2016 due to not fulfilling the requirement of producing the guarantee well in time, within 21 days.

**ATTESTED**

- 6) Thus the next bidder was therefore directed to produce the same guarantee/ insurance coverage and his CDR(Call deposit) was sent for verification to the concerned bank, who in returned remarked, "FAKE", hence his case was sent to chief engineer (N) for penal action as the power of penal action against the contractor is resting with him.
- 7) The bid after its submission to the chief Engineer(N) was under process of approval in his office when the 1st lowest bidder who had failed to deposit the additional security with in the time limit of 21 days i.e. 08/03/2016 to 30/03/2016 and his 2% earnest money was forfeited, complained to your good self and to the Chief Engineer(N) for the withdrawal of orders of forfeiting of his 2% earnest money and processing the tender in his favour. The chief Engineer (N) accorded approval in his favour through a vague inquiry conducted by the Superintending Engineer C&W Circle Swat.
- 8) To furthering the case, I invite your kind attention to the principle guide lines as held in the finance department circular letters dated 03/01/2014 and 05/ 11/2014 (photocopies attached) that:-  
"In case of bids below the rates provided in the PC -1 on Market Rate Basis, the bidders/tenderers shall deposit additional Bank Guarantee, as prescribed, to firm up their bidding".
- 9) I performed and processed the tender utmost according to the laid down rules and government instructions, keeping in mind the government interest all the time.  
**The imposition of the penalty of, "Censure" on me for the baseless and unjustified charges shall mean:-**
- i) **Total denial of natural justice to me.**
  - ii) **Damaging my unblemished record and career.**
  - iii) **I will be deprived of my promotion after serving in the department for long thirty years.**
  - iv) **While calculating the threshold, I will be at the gun point.**
- It is therefore humbly requested that in my case, a second thought may kindly please be applied and the order of "Censure" be recalled, for which I shall be grateful to your this act of kindness.**

  
Yours Faithfully  
(RAHMAT HAKIM)  
SUPERINTENDING  
ENGINEER (OPS) C&W  
Circle Bannu



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/8-44/2016  
Dated Peshawar, the June 05, 2018

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To

Engr. Rehmat Hakeem  
Superintending Engineer (OPS)  
C&W Circle, Bannu

Subject: **REVIEW PETITION IN ENQUIRY INTO AWARD OF TENDER OF THE SCHEME "REHABILITATION AND CONSTRUCTION OF KUMRAT ROAD (8 KM) DIR UPPER" ADP NO.1139/150829 PROJECT**

I am directed to refer your appeal/representation dated 05.03.2018, which was examined and submitted to the Competent Authority (Chief Minister). The Competent Authority did not accede to your review petition on the ground that since nothing new has been added therein and the Authority has already taken lenient view in your case.

(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)

**ATTESTED**



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(2)

Bond No.	2016-03-601-X01002DP0000106
Client Code	10300000010016230
Branch	Peshawar
Date of issue	30-03-2016
Amount of Bond	Rs. 8,463,700/-
Validity	11-03-2016 to 10-03-2017

The Jubilee General Insurance Company Ltd waiving all objections and defences under the contract, do hereby irrevocably and independently guarantee to pay to the Employer without delay upon the Employer's first written demand without cavil or arguments sum or sums up to the amount stated above, against the Employer's written declaration that the Principal (Contractor) has refused or failed to perform the obligations under the contract which payment will be effected by the Guarantor to the Employer.

PROVIDED ALSO THAT, the Employer shall be the sole and final judge for deciding whether the Principal (Contractor) has duly performed his obligations under the contract or has defaulted in fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from the Employer forthwith and without any reference to the Principal (Contractor) or any other person.

This bond will remain in force and valid upto 10-03-2017. Claim if any under this bond must be received by us before 10-03-2017 in writing. If no claim is received by this date we will be no longer liable to make any payment to you.

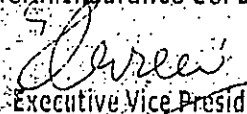
IN WITNESS WHEREOF the above bounden Guarantor has executed this instrument under its seal on the date indicated above, the name and corporate seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESSES:



Muhammad Imran (AVP)  
Jubilee General Insurance Company Ltd

For & on behalf of  
Jubilee General Insurance Co. Ltd.

  
 Executive Vice President  
 SURETY



Aaliya Baig (Assistant Manager)  
Jubilee General Insurance Company Ltd

Received  
 Ann  
 04/04/2016  
 05:00 PM  
 J/K

**VAKALAT NAMA**

NO. \_\_\_\_\_ /2018

IN THE COURT OF Service Tribunal Peshawar

RAHMAT HAKIM (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Ch. Govt. of RPK (Respondent)  
(Defendant)

I/We, Rahmat Hakim

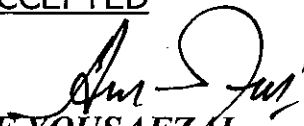
Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 2/7 /2018

  
(CLIENT)


ACCEPTED

  
**M. ASIF YOUSAFZAI**  
Advocate Supreme Court  
Peshawar.

  
**Taimur Ali Khan**  
Advocate High Court

**Syed Nauman Ali Bukhari**  
Advocate

**OFFICE:**  
Room # FR-8, 4<sup>th</sup> Floor,  
Bilour Plaza, Peshawar,  
Cantt: Peshawar  
Cell: (0333-9103240)

  
**ASAD MAHMOOD**  
Advocate

10. 1941 10/11/41

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Fee = 35000/=