



# Securities and Exchange Commission of Pakistan

(Chairman Secretariat)

NIC Building, 63-Jinnah Avenue, Islamabad

PABX 051-9100418 [www.secp.gov.pk](http://www.secp.gov.pk)

May 13, 2015

No.SECP/ED/CS/14/2015

Mr. Sajid Ali  
Dy. Director (Coord),  
A&P Division,  
National Accountability Bureau,  
Atta Turk Avenue, G-5/2,  
Islamabad

**Subject:** Allegation of TIP regarding Violation of Public Procurement Rules, 2004. Complaint against the procurement processes at SECP (Hiring of Record Management Services)

Dear Sir,

1. This is with reference to your letter No. 5-4(81-9)Misc./A&P/NABHQ/2015/356 dated May 05, 2015 wherein it has been requested to forward the comments to you regarding subject matter.
2. At the very outset, it is submitted that allegation of Transparency International ("TI") against the Securities and Exchange Commission of Pakistan ("the Commission") to award the contract for Record Management Services to M/s Agility Logistics ("the Contractor") is against the facts, unfounded and only a frail attempt to malign the reputation of Commission for ulterior motives .
3. The Commission earlier responded to TI in detail regarding aforesaid assertions. Furthermore, a comprehensive reply regarding alleged contravention of Procurement Rules has also been provided to National Accountability Bureau vide letter No.DCS/01/SECP/2015 dated March 31, 2015 the contents of which are reiterated here. Copy of letter dated 31.03.2015 is attached as annexure "A"
4. M/s Archive Technologies Private Limited ("the Complainant") claims to be mainly aggrieved on account of its failure to get Record Management Service contract for year 2015 under the Procurement Policy through competitive process i.e. open bidding of the Commission for approx. Rs.214,000/- per month totaling to approx. Rs.2,570,000 p.a. The Complainant and TI

deliberately withheld the fact that this matter is sub judice before the Civil Court at Islamabad on the petition filed by the Complainant in which it was initially granted stay in its favor.

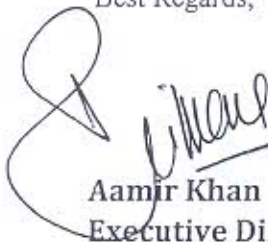
5. Being aggrieved from the order of learned Civil Judge the Commission immediately filed an appeal against the order dated 31.01.2015 before learned District Judge (West) Islamabad (the Appellate Court) and after hearing both the parties at length the learned Appellate Court vide its order dated February 21, 2015 has set-aside the impugned interim order while accepting the appeal of the Commission and observed that *prima facie* the Complainant cannot claim further extension of contract. Copy of appeal and order dated 21.02.2015 is attached as annexure B & B/I respectively.
6. Relevant paragraph of order of learned Appellate Court is reproduced herewith for ease of reference;

*"The para 8 of the plaint shows that the agreement between the appellant and the respondent No. 01 (Complainant) has already been expired and the extension was grant to the respondent No. 1 up to 31.01. 2015. Admittedly the tender was invited and the respondent No. 01 also participated in the said proceeding, now the contract has been awarded to a third party M/s: Agility Logistics (Pvt) Ltd. Prima facie, it appears the respondent No. 01 cannot claim further extension or the award of further contract because it is the appellant who considers the criteria for awarding the new contract. Obviously, the learned trial court should have heard the parties before granting the ad-interim injunction because at present the ad-interim injunction is amount to creating hurdle in the function of the statutory body. The learned trial court has not looked into the averments of the plaint while granting the ad-interim injunction. In view of the above said discussion the impugned order is set-aside." (Emphasis underlined)*

7. Pursuant to the decision of the learned Appellate Court the Commission has filed an application before the learned Civil Court under Order 7 Rule 11 of Civil Procedure Code for rejection of the plaint on the ground that Complainant has no cause of action and instant suit is barred by law. Copy of application is appended as annexure "C".

8. It is also of utmost importance that TI has lodged instant complaint with your good-self on behalf of the Complainant who is illegally and without authorization withholding public record of the Commission which is a deliberate violation of Court decisions, statutory law and is creating impediment in official business of apex corporate regulatory body of the state, which is a criminal offence. NAB is requested to take appropriate action against the Complainant for such illegal act. The Commission reserves its right to file appropriate legal proceedings against the Complainant as well.
9. It is pertinent to mention here that owing to the unlawful action of the Complainant i.e. continuous harassments, illegal confiscation of official record and pending litigation thereto the Contractor vide letter dated March 24, 2015 intimated that they would like to walk away of the contract signed between them and the Commission for provision of record management since the record have not been shifted at their premises. Therefore, the Commission in its 15th meeting held on April 07, 2015 has considered all these aspects and due to protracted litigation decided to develop its own system for storage of its statutory record rather relying on external sources as there is a question of preservation of public record which is the duty of the commission as envisaged under Section 20 (6) (e) of the SECP Act, 1997 and it cannot afford any controversy in the matter.
10. In view of aforesaid decision of the Commission, neither contract is being awarded to any third party including the Complainant and Contractor nor any payment has been made to any person regarding the subject matter. On the contrary, it is Complainant that is demanding monies from the Commission for illegally keeping the record without any contract or authorization, in flagrant violation of court order. We urge NAB to take serious notice of misguiding the esteemed organization of state.

Best Regards,



**Aamir Khan**  
**Executive Director**

Copy for the information to:

1. AD (Coord) Cn. Sectt, NAB HQ
- ✓ 2. Chairman, TIP, Pakistan



GOVERNMENT OF PAKISTAN  
NATIONAL ACCOUNTABILITY BUREAU  
ATTA TURK AVENUE, G-5/2  
ISLAMABAD

**SAY NO TO CORRUPTION**

Awareness & Prevention  
Division

No: 5-4(81-9) Misc/A&P/NABHQ/2015/356  
05<sup>th</sup> May, 2015

**Chairman**  
Securities & Exchange Commission of Pakistan (SECP)  
Islamabad

**Subject:** Allegation of TIP regarding Violation of Public Procurement Rules 2004, complaint against the Procurement Processes at SECP (Hiring of Record Management Services)

With reference to the contract mentioned above, Transparency International Pakistan has alleged that (copy of TIP complaint enclosed) SECP intends to award the subject contract to M/s Agility Logistics which is reportedly, in international arbitration with FBR on termination of PACCS contract, involving an initial claim of \$ 62 million and subsequent claim of \$ 432 million (including initial claim and damages) against the Govt. of Pakistan. In addition to this, SECP claims that Public Procurement Regulatory Authority Ordinance 2002 and Public Procurement Rules 2004 are not applicable to them being an independent body.

- Foregoing above in view, it is requested to forward your comment to this Bureau regarding allegation of TIP by 8<sup>th</sup> May, 2015 for further necessary action.
- This issues with the approval of Competent Authority, please.

  
**Sajid Ali**  
Dy. Director (Coord)  
A&P Division  
Tel: 051-9208279  
Fax: 051-9245908

**Copy for information to:**

- AD (Coord) Cn. Sectt, NAB HQ
- Chairman TIP, Karachi

*Ali Aslam*  
*M. Aslam ASIP*  
*07/5/15*

*Copy 6/5*  
*Commissioner*  
*HOD*  
*Adm*

Dy. No. 33 Date 06-5-15  
Director/HOD SSD (P&A)  
Islamabad

Dy. No. 218 Date 06/5/15  
Commissioner (CID & IS&T)  
SECP, Islamabad

Dy. No. 1132 Date 06/05/15  
Chairman's Office  
NAB, Islamabad



**TRANSPARENCY  
INTERNATIONAL-PAKISTAN**

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Defence Housing Authority, Karachi.  
Tel: (92-21)-35390408, 35390409, Fax: 35390410  
E-mail: ti.pakistan@gmail.com  
Website: www.transparency.org.pk

24<sup>th</sup> April, 2015

Senator Ishaq Dar,  
Minister of Finance,  
Government of Pakistan,  
Pak Secretariat,  
Islamabad.

Chairman Office	
Chairman	
Dy Chairman	
Dir.Cn Sectt.	On tracing
DD (Coord)	
Dy. No.	4473
Date:	27-04-2015

*[Handwritten signature]*  
28/4  
A&P  
Dy

Sub: Violation of Public Procurement Rules 2004. Complaint against the Procurement Processes at SECP (Hiring of Record Management Services).

Dear Sir,

This is with reference to Transparency International Pakistan's letter sent to the Chairman, SECP dated 9.3.2015 on the complaint of violation of PPRA Rules received against M/s Agility Logistics (Annexure A).

After two communications between SECP dated 26.3.2015, and TIP letter dated 7.4.2015, SECP vide its letter dated 23.4.2015 has refused to accept the Laws of Pakistan on Procurement, i.e Public Procurement Regulatory Authority Ordinance 2002 and Public Procurement Rules 2004 (Annexure B).

SECP was pointed out few irregularities/issues on the non acceptance of the negotiated award of contact to t M/s Agility Logistic, objecting also on the eligibility of M/s Agility Logistics, which is in international arbitration with FBR on termination of PACCS contract, involving an initial claim of \$62.4 million and subsequent claim of \$432 million (including initial claim and damages) against the government of Pakistan.

Contradicting PPRA, Mr. Amir Khan, ED, SECP in his reply to TIP has stated

*Quote "It is again clarified that the Commission is an independent body established under a special statute having its own procurement policy formulated under the powers conferred by the Securities and Exchange Commission of Pakistan Act, 1997 which is at par with the principles laid out in PPRA Rules. As per Chapter 7 Clause 12 of SECP Procurement Policy 2011 negotiation with the "best evaluated bidder" is permissible, based on technical and financial evaluation, in order to secure maximum benefit for the organization." Unquote*

Whereas, Rule No 40 of PPRA forbids all negotiations with any bidder.

*40. Limitation on negotiations.-*

*Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder:*



SECP is not over and above the laws enacted by the Government of Pakistan, and is a procuring agency, and has to follow Public Procurement Rules 2004.

Transparency International Pakistan would like to inform the Minister that vide letter dated 14 September 2007, SECP also tried to get away from the application of PPRA Law and Order (Annexure C).

However, SECP was advised by PPRA vide its letter dated 28<sup>th</sup> January, 2008 that SECP is a procuring agency and shall follow Public Procurement Rules 2004. Following are the exact wordings; (Annexure D),

*In this regard, it is pointed out that as the Commission has been established under an Act of the Federal Government and is owned and controlled by the Federal Government, therefore, PPRA Ordinance 2002 and Public Procurement Rules, 2004 are applicable on the Commission. A copy of the reply on the same issue sated 1<sup>st</sup> July, 2006 sent to the Commission is enclosed for ready reference.*

*In view of the above position SECP is advised to follow Public Procurement Rules, 2004 in letter and spirit in all the cases of the procurement.*

This is also to point out that M/s Agility has been involved in corruption in US Contracts , and were blacklisted.

*M/s Agility has been barred from receiving government contracts since November 2009, when a federal grand jury indicted the company for overcharging the U.S. military on \$8 billion in contracts to supply food for troops in Iraq, Kuwait and Jordan. Agility was accused of "intentionally failing to purchase less expensive food items, knowingly manipulating and inflating prices, and receiving product rebates and discounts that it did not pass on to the government as required." The prospect of additional charges still exists.*

*In November 2009 Agility was added to the U.S.'s Excluded Party List System (EPLS), which prevents them from procuring contracts from any government agency. The EPLS designation has been extended to over 125 related organizations as the investigation has continued; all of them have been indefinitely barred.*

Minister is requested to take immediate action on this violation against the officers responsible for violation of PPRA in award of negotiated contract to M/s Agility Logistics, who may again start International Arbitrations against Pakistan Government due to SECP illegal contract warded to them.



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

With Regards,

Sohail Muzaffar  
Chairman

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

1. Secretary to Prime Minister, Islamabad.
2. ✓ Chairman, NAB, Islamabad.
3. Chairman, Prime Minister's Inspection Commission, Islamabad.
4. Registrar, Supreme Court of Pakistan, Islamabad.
5. Managing Director, PPRA, Islamabad.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Chairman Secretariat

Ref No; DCS/01/SECP/2015

March 31, 2015

Mr. Sardar Adnan Alam  
Deputy Director (Coord)  
(A&P Division) NAB HQ  
National Accountability Bureau,  
Atta Turk Avenue, G-5/2  
Islamabad

Subject: Violation of Procurement Rules 2004 in the SECP Contract for Hiring of Record Management Services filed by Archive Technologies (Pvt) Limited

Dear Sir,

This is with reference to your letter No. 5-4(81-9) Misc./A&P/NABHQ/2015, dated March 20, 2015, wherein the Securities and Exchange Commission of Pakistan ("the Commission") is asked to furnish the comments on the complaint submitted by Archive Technologies Private Limited ("the Complainant") on subject matter.

The Commission and the Complainant had signed a contract on 16.07.2012 for Record Management Services which had expired on July 15, 2014. After the expiry of agreement, the Commission initiated fresh procurement procedure under the Procurement Policy of the Commission which is in par with PPRA Rules and invited open bids for hiring of Record Management Services. After following the procurement procedure, M/s Agility Logistics was evaluated as Best Evaluated Bidder and similarly contract was awarded to M/s Agility Logistics. It is relevant to mention here that the Complainant has also participated in said bidding process and could not succeed to secure the contract for lack of requisite requirements and it is also clarified that he was not the lowest bidder.

Therefore, the Complainant being aggrieved from the decision of the Commission for award of the Contract to best evaluated bidder has filed civil suit for declaration and permanent injunction against the Commission and on 31.01.2015 obtained the restraining order against the Commission to the extent of fulfilment of the proceedings of award of the contract till next date. Copy of plaint and order dated 31.01.2015 is attached as annexure A & A/I.



