



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Chairman's Secretariat

No: M&C/CS/ 4 /2015

April 23, 2015

Mr. Sohail Muzaffar
Chairman,
Transparency International-Pakistan
5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defense Housing Authority,
Karachi

Subject: **Violation of Public Procurement Rules, 2004. Complaint against the procurement processes at SECP (Hiring of Record Management Services) filed by Archive Technologies (Pvt) Limited**

Transparency International Pakistan's letter dated 9th March 2015 and SECP reply dated 26th March 2015

Dear Sir,

This is with reference to your letter No. Nil dated April 07, 2015 and our comprehensive reply dated March 26, 2015 wherein a complete detail regarding subject matter and reasons for award of contract to M/s Agility Logistics ("the Contractor") has been provided and same are reiterated and are not being reproduced for sake of brevity. Copy of letter dated March 26, 2015 is once again attached herewith as annexure "A".

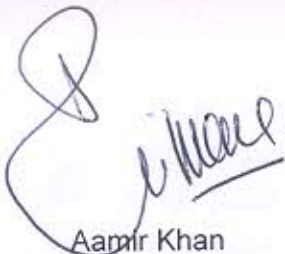
It is again clarified that the Commission is an independent body established under a special statute having its own procurement policy formulated under the powers conferred by the Securities and Exchange Commission of Pakistan Act, 1997 which is at par with the principles laid out in PPRA Rules. As per 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. Furthermore, the complaint of the M/s Archive Technologies (Pvt.) Limited ("the Complainant") regarding the procurement process received in this office on January 14, 2015 has been processed and decision to that effect has duly been communicated to the Complainant through letter dated January 27, 2015 accordingly. Copy of the letter is appended as annexure "B".

We have already categorically mentioned in our aforementioned letter that the Complainant has been illegally refusing to hand over statutory record in spite of repeated reminders despite decision of the Appeal by learned Court of Session against the stay order obtained by the Complainant. Copy of order of appellate court is appended as annexure "C".

Be that as it may, owing to the unlawful action of the Complainant and pending litigation thereto vide letter dated March 24, 2015, the Contractor intimated that they would like to walk away/get out of the contract signed between them and SECP for provision of services of storage as record have not been shifted at their premises. 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. Copy of letter from the Contractor is appended as annexure "D".

Without prejudice to above, it is once again reemphasized that matter regarding extension of contract of Complainant is already sub-judice before learned Civil Judge (West) Islamabad and it is not lawful to pass any remarks on *lis* which is pending.

Regards,



Aamir Khan
Executive Director

Copy forwarded for the information 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

March 26, 2015

Ref No:

Mr. Sohail Muzaffar
Chairman
Transparency International – Pakistan
5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defense Housing Authority,
Karachi.

Subject: Violation of Public Procurement Rules 2004. Complaint against the Procurement Processes at SECP (Hiring of Record Management Services) filed by Archive Technologies (Pvt) Limited

Dear Sir,

This is with reference to your letter No. Nil, dated March 9, 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 15.07. 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.

Being dissatisfied 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 21.02. 2015 has set-aside the impugned interim order while accepting the appeal of the Commission and observed that *prima facia* 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.

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 granted 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)

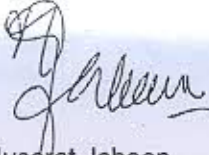
Pursuant to the decision of the learned Appellate Court the Commission has filed an application before the learned Civil Court under Order 7 Rule 11 of Civil Procedure Code for rejection of the plaint on the ground that Complainant has no cause of action and suit is barred by law hence liable to be rejected. Now the case is fixed for argument on said application for 26.03. 2015. Copy of application is appended as annexure "C".

It is pertinent to mention here that the Complainant has filed instant complaint with yourself, in order to achieve his ulterior motives, by concealing aforesaid material facts from you wherein the similar matter is *sub judice* for adjudication before learned Civil Judge (West).

Be that as it may, it is also of utmost importance that after the order of learned Appellate Court the Complainant cannot illegally and without authorization, withhold the record of the Commission which is

currently lying at his warehouse. However, in spite of our repeated requests the Complainant refused to hand over the record and his instant conduct is tantamount to flagrant and deliberate violation of Court decisions, statutory law and creating impediment in official business of apex corporate regulatory body of the state. Copies of letters sent to Complainant are attached as annexure "D".

Regards,



Musarat Jabeen
Director

For Information:

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.