



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

*Chairman Secretariat*

March 26, 2015

Ref No:

Mr. Sohail Muzaffar  
Chairman  
Transparency International – Pakistan  
5-C, 2<sup>nd</sup> 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 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.

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.

Archive Technologies vs Securities and Exchange Commission  
and another

31.1.2015

Be submitted after report.

C  
31/01/15  
Civil Judge 1st Class  
Islamabad

Respected Sir,

It is submitted that plaintiff has filed suit for declaration, permanent and mandatory injunction. Alongwith the plaint, application for grant of temporary injunction, list of documents alongwith copies of other documents Fard pata, Wakalat nama, Fard Talbana and copy of plaint have also been submitted.

Report is submitted. (Reader)

31.1.2015

Present: Mr. Sheikh Muhammad Khizer Advocate learned counsel for the plaintiff/petitioner.

Suit is fresh, let it be registered and admitted for regular hearing.

Heard, record perused.

The learned counsel for the plaintiff/petitioner argued that the plaintiff/petitioner was the contractor of the subject agreement between him and the respondent No.1, thereafter another bid was submitted by him wherein he was declared as lowest bidder, but the respondent No.1 instead of awarding the contract to the petitioner/plaintiff and shown their <sup>inclination to</sup> negotiations with M/S Agility Pvt. Limited through letter dated 27.01.2015 addressed to the plaintiff/petitioner without mentioning any cogent reason. It is, therefore, the point raised by the learned counsel for the petitioner/plaintiff needs consideration, the plicant and application is supported with affidavit and other documents; it is, therefore, relying upon the same, the defendants/respondents are restrained from fulfillment of the proceedings of the award <sup>of contract</sup> till next date of hearing and in the meanwhile status quo be also maintained till next date of hearing. However, this order will have no effect upon any other legal or court proceedings.

Summon/notices be issued in the name of defendants/respondents subject to deposit of process fee, registered Post A.D for 06.02.2015.

Announced  
31.01.2015

(Rasool Bakht Memon)  
Civil Judge 1st Class,  
Islamabad-West

