



7th April, 2015

Mr. Zafar Hijazi,
Chairman,
The Securities and Exchange Commission of Pakistan's (SECP),
Islamabad.

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

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

Dear Sir,

Transparency International Pakistan has received the clarification dated 26th March, 2015 on the complaint on M/s Archive Technologies (Pvt.) Ltd. The complaint and SECP clarification have been examined and prima facie it appears that SECP has violated Public Procurement Rules 2004 in processing the award of the contract to M/s Agility Logistics.

Following irregularities/issued have been noted which needs immediate action by Chairman, SECP as well as Secretary, Finance, the Principal Accounting officer.

1. The credentials of M/s Agility Logistics should have been checked by SECP, as the firm it has executed a contract 'PACS' with FBR, for custom clearance. M/s Agility Logistics developed serious dispute with Government of Pakistan, due to which, Pakistan Customs suffered huge losses as PACS was discontinued by M/s Agility Logistics and FBR could not perform proper clearance procedure till new software for FBR was developed by PRAL. M/s Agility Logistics has filed a case in the International Arbitration Court, and the litigation is still in process. This aspect should have been reviewed by SECP, before allowing them to participate in such a sensitive contract.
2. Under the Public Procurement Rules 2004, the complaint should have been processed within 15 days and a copy of the decision should have been provided to the complainant, which SECP seems to have violated. Rule No. 48 (3) (Stated as under);

48. Redressal of grievances by the procuring agency.- (3) The committee shall investigate and decide upon the complaint within fifteen days of the receipt of the complaint.

3. The Grievances committee report according to PPRA notification No. 3(5) DD-II/PPRA/2009 dated 10.2.2010 is mandatory to be reviewed by the Principal Accounting officer, which in case of SECP is ex-Secretary, Finance, and which SECP has violated (Annexure A).
4. Under the Public Procurement Rules 2004, Rule No. 40, no negotiation is allowed with the bidder. However SECP has negotiated with the bidder that was not the lowest, which is serious and amounts to collusion under PPRA Rules 2004. Rule No. 40, stated as under;

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:

Provided that the extent of negotiation permissible shall be subject to the regulations issued by the Authority.



The Chairman is requested to kindly clarify these violations, take action against those found responsible for committing them under the administrative rules, cancel the contract and re-tender as per Public Procurement Rules 2004.

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.



No. 3(5)/DD-II/PPRA/2009
GOVERNMENT OF PAKISTAN
PUBLIC PROCUREMENT REGULATORY AUTHORITY
(CABINET DIVISION)
FBC BUILDING, SECTOR G-5/2

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Islamabad the February 10, 2010

Subject:- GRIEVANCES REDRESSAL AND PRINCIPAL
ACCOUNTING OFFICERS

My dear

Pivotal position of Principal Accounting Officer in our system of governance needs no underscoring nor can the importance of transparency in procurement process be minimized. Part and parcel of transparency is the mechanism to redress grievance.

PPRA has sufficiently brought out the rule position of grievance handling along with the requirement to form Grievance Redressal Committees. This request did not meet a resounding response; the result can be viewed at www.ppra.org.pk where Committees stand uploaded for the benefit of aggrieved bidders and the public to meet the tenets of transparency.

To strengthen the mechanism as provided under Rule 48 of Public Procurement Rules 2004, the Principal Accounting Officer as a next logical step should conduct an administrative review on the findings of complaint and take action in accordance with conduct rules in the event of unfair and non-transparent procurement process. The decision of administrative review shall be communicated to PPRA, the aggrieved bidder and the procuring entity prior to the award of contract without retarding the procurement process.

The intent is to complete the first tier grievance redressal mechanism. The second tier is under active deliberation.

Yours sincerely

Sd/-
Hafeez ur Rehman

All Federal Secretaries