

केन्द्रीय सूचना आयोग  
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File No. CIC/IARMY/A/2017/171292/SD

Date of Hearing: 27/07/2017

Date of Decision: 31/07/2017

**Relevant facts emerging from the Appeal:**

Appellant	:	S C Sharma No. 14/15 2 <sup>nd</sup> Cross 2 <sup>nd</sup> Main Electronic City Phase – I Bangalore Karnataka – 560100
Respondent	:	CPIO RTI Cell, Addl DG MT (AE) G- 6 D – 1 Wing Sena Bhawan IHQ of MoD(Army) New Delhi – 110011
RTI application filed on	:	29/02/2016
PIO replied on	:	11/04/2016
First appeal filed on	:	14/06/2016
First Appellate Authority order	:	15/07/2016
Second Appeal dated	:	24/08/2016

सूचना आयुक्त : दिव्य प्रकाश सिन्हा  
INFORMATION COMMISSIONER : DIVYA PRAKASH SINHA

**Information sought:**

The Appellant sought inspection of records and documents pertaining to the Staff Evaluation as defined in DPP-2011 page 14, para 43 of the PMO Suraj (IW Sys & Sp) project of Voice Recognition & Analysis System, initiated vide TM (M&S) RFP No. B/50393/Voice Recognition/SURAJ/DIR(L) dated 26.07.2012 and take notes, extracts or certified copies of documents thereof and copy of

policy in vogue as mentioned in DG WE letter no. 76349/VRAS/SURAJ/GS/WE-7/1162 dated 19.10.2015, which prevents equipment from being returned till commencement of Contracts Negotiation Committee (CNC).

### **Grounds for the Second Appeal:**

The CPIO has not provided the desired information.

### **Relevant Facts emerging during Hearing:**

The following were present:-

**Appellant:** Present in person.

**Respondent:** Col R Balaji, Director (RTI Cell) & CPIO and Col A. Thanji, Dir. WE7, IHQ of MoD (Army) present in person.

Appellant stated that he is aggrieved with the denial of information and wanted that the records which are exempt under Section 8(1)(d) be severed and information sought be provided to him limited to his proposal. He also contended that as such the staff evaluation will entail no trade secret or intellectual prospects. He also relied on para 37 of Defence Procurement Policy (DPP), 2011 wherein it is mandated that *"after each stage of trial, debriefing of vendors carried in a common meeting (wherever feasible) as regards performance of their equipment. Compliance or otherwise, vis-a-vis the RFP parameters, would be specifically communicated to all the vendors at the trial location itself."* It is his contention that none of these have been followed in his case, and in general also, that is to say that the vendors are entitled to know the reasons for withdrawal of Request For Proposal (RFP), however the same is not being conveyed to them. It is in this context he has desired to inspect and take copies of the staff evaluation. He also expressed his objection for any in-camera hearing in the matter to decide the suitability of Section 8(1)(d) of the RTI Act, or alternatively wanted him to be allowed to be present for the in-camera hearing when the Commission will peruse the relevant files. His other contention is with regard to reply provided on para 5(b) of the RTI Application, wherein he had specifically asked for copy of policy in vogue which prevents vendor equipment from being returned till commencement of CNC, he states that he is being given interpretation of para 42 of Chapter-I of DPP-2011 instead of the actual policy.

CPIO submitted that information on para 5(a) of the RTI Application has been rightly denied under Section 8(1)(d) of the RTI Act as staff evaluation records

contain comparative analysis of various vendors. It was further stated that GS Evaluation Report of said equipment of other vendors could have prejudicially divulged the capability of the equipment and other technical parameters harming their competitive position. CPIO also expressed that severing the records is not possible as such.

## Decision

In the facts of the present matter, Commission relies on its decision in another Appeal of the same Appellant filed on a similar subject matter, wherein the following information was sought:

*“The Appellant vide both the RTI Applications sought inspection and copy of all relevant records pertaining to the withdrawal of Request for Proposal (RFP) of Bird Detection and Monitoring Radar Systems (BDMRS) Project as per Director Technical (Air) Letter No. MoD ID No. MoD/2361/DPB/AW-Air (T) /BCAR/Vol-V dated 10 April 2015.”*

And the following decision was passed based on an in-camera perusal of relevant files by the Commission.

*“..Commission observes from the records that the CPIO’s reliance on Section 8(1)(d) of the RTI Act is largely appropriate in as much as these contain specific comparisons of different RFPs, which includes both Indian & Foreign bidders and is not individually pertaining to Bird Detection & Monitoring Radar Project (BDMR) alone. Further, it also contains deliberations on vendor(s) submitting their bids in multiple currencies in cases other than BDMR. Furthermore, these records also contain information regarding discussions on Court Cases of other projects as well. A bare perusal of the records reveal that all of this information is structured in a manner which do not appear conducive for severing as per Section 10 of the RTI Act. It is also opined that asking the CPIO to sever the records for inspection (as sought in the RTI Application) will result in disproportionate diversion of resources of the public authority and it is seemingly impractical...”*

### **“FINAL DECISION:**

*Commission agrees with the contention of the CPIO during the hearing on 20.02.2017 that “all the points are interlinked and the case of withdrawal*

*cannot be isolated from the overall processing of the bid". Further, application of Section 8(1)(d) is appropriate since disclosure of these records will affect the competitive position of third parties and as such no larger public interest is apparent in the facts of the case for the exemption to not subsist.*

*In view of the aforesaid, Commission upholds the submissions of the CPIO. No further action lies."*

It is observed that the Appellant's contention is not applicability of Section 8(1)(d) per se, but non-applicability of Section 10 of the RTI Act by the CPIO. It follows then, CPIO submissions in the present matter squarely falls under the above said rationale and Commission is in agreement with the averment that records cannot be severed to extract the information which pertains to the Appellant.

As regards, Appellant's objection regarding reply of the CPIO on para 5(b) of the RTI Application, CPIO is directed to provide copy of specific policy in vogue which prevents vendor equipment from being returned till commencement of CNC. If no such policy exists, the same should be stated in the CPIO reply.

**Commission's directions should be complied within 15 days from the date of receipt of this order.**

## **ADVISORY**

Commission is of the considered opinion that there should be greater transparency and accountability in the process of Defence Procurement, in as much as the vendors should be apprised of the reason for withdrawal of proposals or rejection of proposals. The earlier Appeal and the present case reflect on the lack of any such mechanism in place which leaves the vendors aggrieved and wanting for information from all channels. Although, RTI Act allows for the exemption of Section 8 (1)(d) to deny the information, but as a common proposition, more and more disclosure should be encouraged in such cases to avoid casting aspersions on the procurement process.

What is alarming is the fact that **para 37 of DPP, 2011** itself stipulates that *"compliance or otherwise, vis-a-vis the RFP parameters, would be specifically communicated to all vendors at the trial location itself"*. Despite this, when cases such as these come up wherein, it is brought on record that vendors are completely oblivious to the reasons for withdrawal of RFP, it raises a reasonable doubt that policy guidelines are being flouted.

The need for transparency is even more crucial in present times when several scams and kickbacks are being reported in public domain questioning the credibility of procurement processes undertaken by the Ministry of Defence.

**A copy of this order is hereby marked to the Defence Secretary to take note of the said advisory and for taking steps as may be deemed fit to bring in probity in the functions of Defence Procurement.**

**The appeal is disposed of accordingly.**

**(Divya Prakash Sinha)  
Information Commissioner**

**Authenticated true copy**

**(H P Sen)  
Dy. Registrar/Designated Officer**

**Copy to:**

Defence Secretary  
101-A, South Block,  
New Delhi