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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය  
எனது இல.  
My No.

ඔබේ අංකය  
உமது இல.  
Your No.

දිනය  
திகதி  
Date

2016.10.04

**Complainant** : A. Fonseka  
Fonny's Private Limited,  
No : 550, Galle Road,  
Colombo 03.

**Respondent** : The Commander  
Sri Lanka Air Force,  
Air Force Headquarters,  
Colombo 02.

**Complaint No** : HRC/4691/14/I14

**Complaint**

The Complainant is a Company which supplies item to the three Armed Forces, the Police Department and other Government Departments. The Complainant specializes in the supply of items such as Automotive Batteries, Tires, Tubes and Flaps and etc.

The Company is Registered with the Registrar of Companies under Registration No: PV 21007 and registered with the Ministry of Defence.

The Complainant has filed this complaint before HRCSL on 28<sup>th</sup> November 2014 saying that despite requesting for necessary particulars of quantities of public tenders called by Sri Lanka Air Force in 2014. He has deliberately been denied this important and necessary information.

The Complainant also says that when the Sri Lanka Air Force called for annual tender bids in 2014 the quantity of the goods has not been specified. He has requested the quantities to be specified by his letter dated 18<sup>th</sup> August, 2014 and this request has been ignored without giving any reasons.

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### Seeking Relief

The Complainant requests the Human Rights Commission to direct the SLAF to specify quantities for the year 2014 in respect of public tenders called by SLAF and to accept complainant's tenders and duly evaluate complainant's bids for 2014.

Complainant also requests the HRCSL to direct the SLAF to specify the quantities required by the tenders for goods supplied to the SLAF in the future.

The HRCSL called observations of the SLAF by the letter dated 09<sup>th</sup> December 2014 and finally held inquiry with regard to the complaint.

Further to the oral submission made at the hearing which was fixed for 26<sup>th</sup> February 2015, the respondent submitted the report dated 08<sup>th</sup> June 2015.

The Respondent says in his report that under the right to equality (under Article 12 of the Constitution of Sri Lanka) no violation has been caused by the respondent against the claimant. The claimant has been treated in an equal manner with the other bidders and hence no discrimination has taken place as claimed by complainant.

Also the Respondent says that Complainant's main contention was that the respondent (Sri Lanka Air Force) shall adhere to the SBD 01 (NPA/Goods/SBD 01) issued by the National Procurement Agency with regard to the procurement of goods. Further the complainant went on to mention that the price schedule contains a column with regard to quantities and hence the purchaser (Respondent) shall mention the quantity based on such requirement. As per the section V (Schedule of Requirement) of SBD 01 document (Standard Bidding Document Procurement of General Goods National Competitive Bidding).

In response to the complainant, the respondent says in the report itself that SLAF (Sri Lanka Air Force) uses the method of Rate Running Contract to procure goods for annual requirements due to the reasons given under para b (iii) of this same submission. No requirement exists to mention quantities in the tender inquiries under such method. Hence it is of the view that the SBD 01 documents does not apply to SLAF for tender purposes.

Para b (iii) of the report says as follows:

- (a) The Respondent being a military service has to procure the goods as per the instructions issued by the Government of Sri Lanka. Military service shall be treated differently to an individual purchaser when it comes to the issue of procurement of goods on annual basis.
- (b) The Respondent is not in a position to demand goods as and when required as the time incurred for the procedures i.e. advertising etc is very time-consuming and the cost of such procedures is very high.

- (c) Further, the Respondent does not procure goods at the beginning of the year as the cost of the storage could be saved by not doing so, especially items like tyres have to be stored using special ways and means which is unique for such items.
- (d) Further, the liquidity position of the SLAF cannot be predicted at the beginning of the year and hence, some leverage has to be left to the purchaser to decide what quantity of items is needed for the particular time period.
- (e) Further, the Respondent is adhering to the policy that the requirement of the item for particular year is not being disclosed to the public prior to the particular year due to the sensitivity of the information.
- (f) Further, in the event the exact quantity is mentioned in the tender inquiry the purchaser (Respondent) is bound to purchase such quantity during that year. Otherwise an issue may arise to pay compensation/ damages to the contractor for not purchasing whole quantity during that period. In other words, the government money may be wasted either procuring unwanted quantity of item during the particular year or else facing a risk of being a respondent party in civil litigation.
- (g) Further, under the regulations nowhere is it stated that indicating the quantity in the invitations to bid is a mandatory requirement.
- (h) Further, the Respondent is not in a position to keep excess stocks as the deterioration of such items may lead to unwanted loss. Especially the items like batteries carries shelf life which may expire during the storage period.

For further clarification in this regard the HRCSL sought an observation from Director General, Public Finance by letter dated 26.02.2016. Accordingly the HRCSL received a response by fax message No: Defence/Misec/issu 2015 and dated 05.04.2016. However, the fax was received by the Human Rights Commission of Sri Lanka only on 15<sup>th</sup> July 2016.

The Director General states in this instant letter that standard Bidding Document (SBD) NPA/SBD/GOODS/02 shall be used for procurement of goods under National Competitive Bidding procedure for contracts of the Government of Sri Lanka, since the Procurement Guidelines 2006 requires procuring entities to use the appropriate SBDs approved by the National Procurement Agency/CIDA.

The Complainant says in his submission tendered to the Commission on 26.03.2015 that the Complainant is acting according to law and relying on the Financial Regulations and

National Procurement Guidelines of 2006. The Complainant also says that there is a very specific guidelines in instances such as this, given by the Department of Finance and Ministry of Finance and Planning under procurement of Goods under National Shopping Procedures NPA/SBD/Goods/01.

### **Findings**

- The Complainant filed this Complaint on 28<sup>th</sup> November 2014.
- The Complainant has bid to supply items to Sri Lanka Air Force based on the Tender Notification.
- The Complainant requested the SLAF to specify the quantities of items by the letter.
- The Respondent published Tender notification calling application from the supplies of item without mentioning the quantities.
- The Respondent says that SLAF uses the method of Rates Running Contract to procure good for annual requirement.
- The Respondent is of the view that the SBD 01 documents does not apply to SLAF for tender purpose.
- The Director General of Public Finance has advised that Standard Bidding Documents (SBD), NPA/SBD/GOODS/01 shall be used for procurement of goods under national competitive bidding procedure for contracts of Government of Sri Lanka.
- There are very specific guidelines given by the Department of Finance and Ministry of Finance & Planning under procurement of goods under National Shopping procedure NPA/SBD/Goods.02. The price schedule of national competitive biddings has provided the format indicating among other things the quantities required. The schedule itself says that in Note No: 3 purchase is advised to fill the columns 1,2 and 3 before issuing the bidding document. The column 3 is about the Quantity also in the list of goods and delivery schedule. The purchase should fill the table including the column of quantity.

### **Conclusion**

By considering above circumstances the Commission is of the opinion that Sri Lanka Air Force should adhere to standard Bidding Document (SBD) NPA/SBD/GOODS/02 for procurement of goods under National Bidding Procedure for contract of Government of Sri Lanka since the Procurement Guidelines 2006 requires all procuring entities to use the appropriate SBDs approved by the National Procurement Agency/CIDA. The Human Rights Commission of Sri Lanka finds that therefore the Complainant's fundamental right to equal protection of the Law guaranteed under Article 12(1) of the Constitution is violated by the SLAF.

**Recommendation**

Hence the Human Rights Commission of Sri Lanka recommends the Sri Lanka Air Force to specify the quantities for goods supplied to Sri Lanka Air Force in future and to refrain from imposing requirements to stock goods to be ordered in advance of placing the confirmed orders/awarded to the contract.

Further in terms of Section 15 of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the Commission directs the respondent to send a report back to the Commission on or before 4.11.2016 informing the HRC that steps have been taken to implement this recommendation.

*N. D. Udagama*  
Chairman  
Human Rights Commission of Sri Lanka.

*Anilika Sathurathnan*  
Commissioner  
Human Rights Commission of Sri Lanka.

**Commissioner**  
**Human Rights Commission of Sri Lanka**  
**No. 165, Kynsey Road,**  
**Colombo 08.**

**Dr. N. D. Udagama**  
Chairperson  
Human Rights Commission of Sri Lanka