



(FOR ROSSINGTON Dam Only)

# चेतना



सतर्कता विभाग  
टीएचडीसी इंडिया लिमिटेड  
VIGILANCE DEPARTMENT  
THDC INDIA LIMITED  
Vigilance Awareness Period  
25<sup>th</sup> October to 1<sup>st</sup> November 2010

2010-11



सरदार बल्लभ भाई पटेल  
31.10.1875 – 15.12.1950

**"I can not speak anything but the truth. I can not turn back on my duty just to please some one."**

## *Our Vision :*

*A major global player in Power Sector, providing quality, affordable and sustainable power with commitment to environment, ecology and social values.*

*Create work ethos of growth through professionalism and achievement of excellence.*

## *Our Mission:*

*To plan, promote and develop hydro as well as other energy resources from concept to commissioning and operate power stations to meet the growing energy demand, ensuring environment and ecological balance, contributing to national prosperity.*

*To accept Corporate Social Responsibility (CSR), including Rehabilitation and Resettlement of Project Affected Persons (PAPs) with a human face.*

*To meet the challenges of dynamically transforming business environment and setting global benchmarks.*

*To build sustainable and value based relationships with stake holders for mutual benefit and growth.*

*To achieve performance excellence by inspiring a dedicated work force in an environment of organizational learning and mutual trust.*



राष्ट्रपति  
भारत गणराज्य  
PRESIDENT  
REPUBLIC OF INDIA

MESSAGE

I am happy to know that the Central Vigilance Commission is observing Vigilance Awareness Week from 25<sup>th</sup> October to 1<sup>st</sup> November, 2010.

The observance of such events is a way of developing awareness over the menace of corruption. It is commendable that the Commission has been making efforts to educate people about the negative effects of corruption on the economy as well as our society. A corruption free society is only possible if basic tenets of righteousness are deeply ingrained in our hearts and minds of every citizen of the country.

On this occasion, let us all join together and attempt to create such a society. I extend my greetings and felicitations to all those associated with the Central Vigilance Commission and wish the Awareness Week every success.

*Pratibha Patil*  
(Pratibha Devisingh Patil)

New Delhi  
October 7, 2010

Telegraphic Address :  
"SATARKTA: New Delhi

E-Mail Address  
cenvigil@nic.in

Website  
www.cvc.nic.in

EPABX  
24651001 - 07

फैक्स/Fax : 24616286



सत्यमेव जयते

केन्द्रीय सतर्कता आयोग  
CENTRAL VIGILANCE COMMISSION



सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,  
ब्लॉक-ए, जवाहर नगर, नई दिल्ली-110023  
Satarkta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi 110023

सं./No.

15<sup>th</sup> October, 2010

MESSAGE

दिनांक / Dated

The Central Vigilance Commission is observing Vigilance Awareness Period from 25<sup>th</sup> October to 1<sup>st</sup> November, 2010.

2. The annual observance seeks to reaffirm the commitment and to rededicate ourselves to the cause of fighting corruption. Corruption cannot significantly come down unless all stakeholders – Government Ministries, Departments and Agencies, PSUs and Banks, the Private Sector and the Civil Society at large are involved in the process. There is a need for greater all round awareness. With this in view, the Commission has decided that the theme for this year's Awareness Period will be "Generation of Awareness and Publicity against Corruption".

3. The underlying aim is to enlist the support and participation of the people and regain their faith in the system in the fight against corruption. There is a dire need to sensitise and motivate them through intensive publicity campaigns, in creating a corruption free environment, about the areas of corruption, known modus operandi of the corrupt and departmental / organizational remedies available for anti-corruption work as well as providing assurance to the citizens to the effect that prompt deterrent action would be taken against the delinquents. All heads of Government organizations may therefore re-dedicate themselves to devise strategies for public awareness and disseminate widely among the citizens initiatives taken for tackling corruption and information on grievance redressal mechanism. This could be through the use of print & electronic media; interactive web-portals; banners & posters; vocal campaigns etc.

4. Recognising that Vigilance Management promoted by the Commission during the Vigilance Awareness period should facilitate good governance and the pursuit of excellence and be capable of being measured so that meaningful performance evaluation can take place, and recalling that ISO 9000:2000 places special emphasis on "Measurement, Analysis and Improvement" to facilitate continual improvement in quality of service rendered, the Commission has set for itself a metric to measure the vigilance awareness pursued by it in the year following the conduct of the Vigilance Awareness period this year, which is available on its website: [www.cvc.nic.in](http://www.cvc.nic.in).

5. The Commission hopes that such an ethos would be adopted by all to promote a corruption free society in India.

  
( K Sri Kumar )  
Vigilance Commissioner

  
( F J Thomas )  
Central Vigilance Commissioner

  
( J M Chag )  
Vigilance Commissioner



भारत. इव. टी. साई  
अध्यक्ष एवं प्रबंध निदेशक  
R.S.T. Sai  
Chairman & Managing Director

टीएचडीसी इंडिया लिमिटेड

(एक संयुक्त उद्योग भारत सरकार एवं उत्तर प्रदेश सरकार)

**THDC INDIA LIMITED**

(A Joint Venture of Govt. of India & Govt. of U.P.)



**MESSAGE**

I am pleased to know that Vigilance Awareness Period is being celebrated from 25<sup>th</sup> October 2010 to 1<sup>st</sup> November 2010 by THDCIL. Vigilance Awareness Period gives us opportunity to sensitize all our employees against corruption in all spheres of their activities.

For the purpose of spreading awareness amongst officials of THDCIL, Vigilance bulletin titled "Chetna" is being published by Vigilance Department. It is hoped that this Booklet will be useful for the officials at all levels of the Corporation. I congratulate the Vigilance Department of THDCIL for coming out with booklet on the occasion of Vigilance Awareness Period-2010.

  
(R.S.T. Sai)

Place: Rishikesh  
Dt. 28.10.2010



HIMANSU BADONI  
IRSE  
Chief Vigilance Officer

# टीएचडीसी इंडिया लिमिटेड

(भारत सरकार एवं उत्तर प्रदेश सरकार का संयुक्त उपक्रम)

## THDC INDIA LIMITED

(A Joint Venture of Govt. of India & Govt. of U.P.)

(A Mini Ratna Company)

### प्राक्कथन

सतर्कता बुलेटिन "चेतना" के प्रकाशन का मूल उद्देश्य टीएचडीसी कर्मियों में सतर्कता जागरूकता को बढ़ावा देना तथा नियमों के सम्बन्ध में शिक्षित करना है, ताकि नियमों के पालन में होने वाली सम्भावित त्रुटियों से बचा जा सके। इस बुलेटिन में महत्वपूर्ण मामलों, विभाग द्वारा जांचों में पाई गई त्रुटियों एवं प्रणाली सुधारों का भी प्रकाशन किया गया है, जिससे निगम के समस्त कर्मचारी व अधिकारी निश्चित रूप से लाभान्वित होंगे।

"चेतना" बुलेटिन आपको रूचिकर एवं नवीन लगेगा ऐसी हमें आशा है। सुधार के लिए पाठकों के सुझावों का स्वागत है।

  
(हिमांशु बडोनी)  
मुख्य सतर्कता अधिकारी

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## स्वत्व त्याग/Disclaimer

इस बुलेटिन का उद्देश्य पूर्ण रूप से मार्गदर्शन करना है और यह केवल सरकारी उपयोग के लिए है। इसे न तो किसी सरकारी संदर्भ में उपयोग किया जाये और, न ही साक्ष्य हेतु न्यायालय में पेश किया जा सकता है। जहाँ कहीं इसका संदर्भ देना आवश्यक हो विषय के मूल क्रम में ही दिया जाये।

*This bulletin is purely for the purpose of providing guidelines and is intended for official use only and should not be quoted as authority in any official reference or produced in a Court. A reference, whenever necessary, should always be made to the original orders on the subject.*

*Any inadvertent mistake may please be excused.*

## Corruption Perception Index- WHERE DO WE STAND

- The Corruption Perceptions Index (CPI) table shows a country's ranking and score, the number of surveys used to determine the score, and the confidence range of the scoring.
- The rank shows how one country compares to others included in the index. The CPI score indicates the perceived level of public-sector corruption in country/ territory.
- The CPI is based on 13 independent surveys. However, not all surveys include all countries. The surveys used column indicates how many surveys were relied upon to determine the score for that country.
- The confidence range indicates the reliability of the CPI scores and tells us that allowing for a margin of error, we can be 90% confident that the true score for this country lies within this range.
- Corruption Perceptions Index 2009 of score of the countries who tax best & worst are as given below. India ranks 84 out of 180 nations.

Rank	Country/Territory	CPI 2009 Score	Surveys Used	Confidence Range
1	New Zealand	9.4	6	9.1 - 9.5
2	Denmark	9.3	6	9.1 - 9.5
3	Singapore	9.2	9	9.0 - 9.4
84	India	3.4	10	3.2 - 3.6
179	Afghanistan	1.3	4	1.0 - 1.5
180	Somalia	1.1	3	0.9 - 1.4

- **India has come down to Rank 87 with CPI score of 3.3 in CPI 2010.**  
Source : Transparency International

*Wealth consists not in having great possessions, but in having few wants.*

*-Epicurus*

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## Integrity Pact

# THE INTEGRITY PACT

A powerful tool for clean bidding

By- Kumar Sharad, DGM/Vigilance

## A. WHAT IS AN INTEGRITY PACT?

The Integrity Pact (IP) is a tool developed during the 1990s by Transparency International (TI) to help governments, businesses and civil society intent on fighting corruption in the field of public contracting. It consists of a process that includes an agreement between a government or government department (hereafter referred to as the Authority) and all bidders for a public sector contract.

The IP sets out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract, or while carrying it out. In addition, bidders are required to disclose all commissions and similar expenses paid by them to anybody in connection with the contract. If violations occur then sanctions will apply. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government.

Companies and governments alike stand to benefit from IPs. Companies can refrain from bribing in the knowledge that their competitors are bound by the same rules, while governments can reduce the high cost of corruption on procurement, privatisation and licensing.

The IP has shown itself to be adaptable to many legal settings and flexible in its application. Since its conception, the IP has been used in more than 15 countries worldwide and has benefited from feedback from a variety of individuals and organisations.

## B. HOW DO THE INTEGRITY PACTS OPERATE?

### 1. What are they for?

In a specific contracting process, the IP is intended to accomplish two primary objectives:

- (a) To enable companies to abstain from bribing by providing assurances to them that
  - (i) their competitors will also refrain from bribing, and

- (ii) government procurement, privatisation or licensing agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures;
- (b) To enable governments to reduce the high cost and the distorting impact of corruption on public procurement, privatisation or licensing.

Beyond the individual impact on the contracting process in question, the IP is also intended to create confidence and trust in the public decision-making, a more hospitable investment climate and public support for the government's own procurement, privatisation and licensing programmes.

## 2. To what types of contracts can, they be applied?

The IP concept is suitable not just for construction and supply contracts, but equally for the ;election of:

- the buyer/recipient of state property as part of a government's state asset privatization programme,
- (engineering, architectural or other) consultants,
- the beneficiary of a state license or concession (such as for oil or gas exploration or production, mining, fishing, logging or other extraction rights), or for government-regulated services (such as telecommunications, water supply or rubbish collection services).

The contract and the IP may cover the planning, design, construction, installation or operation of assets by the Authority, the privatisation sale of assets, the issuing by the Authority of licenses and concessions, as well as the corresponding services such as consulting services and similar technical, financial and administrative support. Whenever possible, the IP should cover all the activities related to the contract from the pre-selection of bidders, the bidding and contracting proper, through the implementation, to its completion and operation.

## 3. When are they useful?

The IP can and should be applied to the full range of activities concerning a particular investment, sale, license or concession:

- beginning with the feasibility and preparatory stage: Even the preparation of the earliest alternative choice and design documents should be covered -if not, a dishonest consultant can misdirect the entire preparation process for the benefit of some contractors or suppliers;

- continuing with the selection of the main contractors/ suppliers/ licensees;
- and extending to the implementation of the main activity (execution of the construction or supply contract, especially the compliance with all the contract specifications agreed and all change and variation orders); indeed, for projects such as big dams or toxic plants (such as nuclear power plants), the protection by the IP should continue until the decommissioning and disposal of the project assets.

### C. WHAT MAKES AN INTEGRITY PACT AN INTEGRITY PACT?

The essential elements of the Integrity Pact are:

- a pact (contract) among a government office (the principal) inviting public tenders for any type of contracts related to goods and services and the bidders.
- an undertaking by the principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
- a statement by each bidder that it has not paid, and will not pay, any bribes in order to obtain or retain the contract;
- an undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen as well as family members etc.);
- the explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation, as well as the corresponding sanctions, remain in force for the winning bidder until the contract has been fully executed;
- bidders are advised to have a company Code of Conduct (clearly rejecting the use of bribes and other unethical behaviour) and a compliance programme for the implementation of a Code of Conduct throughout the company;<sup>3</sup>
- the use of arbitration as a conflict resolution mechanism and the instance to impose sanctions;
- a pre-announced set of sanctions for any violation by a bidder of its commitments or undertakings, including (some or all):

- denial or loss of contract,
- forfeiture of the bid security and performance bond,
- liability for damages to the principal and the competing bidders, and -d-barnment of the violator by the principal for an appropriate period of time.
- an independent monitoring system, which can be performed with active civil society participation or any other structure with independence, accountability and credibility.

Maximum **transparency** at every step leading to the contract and throughout its implementation is the basis for the successful design, setup and implementation of an IP. Such transparency, in turn, calls for extensive and easy public access to all the relevant information including design, justification of contracting, pre-selection and selection of consultants, bidding documents, pre-selection of contractors, bidding procedures, bid evaluation, contracting, contract implementation and supervision.

It is highly desirable that there be a forum in which representatives of civil society can discuss the official steps taken in the context of the contract. At the present time, the Internet provides a nearly ideal platform. Public hearings are also an effective tool. However, access to legitimately proprietary information should remain restricted. If necessary, a representative of civil society could be granted the same access as the Authority, but the right of this representative to refer publicly to the proprietary aspects should be strictly specified in close relation to the danger, the suspicion and the degree of substantiation of corrupt practices.

#### **D. IS THERE A ROLE FOR CIVIL SOCIETY**

From the outset it has been expected that civil society in the respective country would play a key role in overseeing and monitoring the correct and full implementation of the IP. The legitimate confidentiality of proprietary information, to which civil society representatives would gain access, can be protected adequately through an appropriate contractual stipulation.

#### **E. INTEGRITY PACTS AT WORK**

##### **1. Application**

**ABOUT THE SANCTIONS.** One common question is: "What kind of evidence is required to be certain of a violation by a bidder so as to trigger sanctions?" Suspicion alone cannot be enough. Clearly, a criminal conviction for bribery is the most persuasive evidence, but a criminal conviction is rarely obtained, and in the

event that one is, it usually comes much too late to be of any help in administering prompt sanctions. German practice, for example, is to treat a no-contest statement or an admission of guilt as equally persuasive. Recently the practice is emerging of considering it as adequate evidence of a violation if "on the basis of the facts available there are 10 material doubts". In any case, "sufficient evidence" is enough to trigger action, especially if non-reparable damages want to be avoided.

**ARBITRATION.** The venue for collecting damages should be arbitration under national or international auspices. Why arbitration rather than normal national jurisdiction?

- By relying on the jurisdiction of a Northern country it is likely to be unacceptable to principals in a Southern country; similarly, relying on the national jurisdiction of a Southern country is likely to give little comfort to bidders from Northern countries; thus the consensual choice of arbitration.
- Where a well functioning national system of arbitration exists, which commands the confidence of international companies, submitting a dispute to it will save time and costs.
- Where such an accepted national arbitration system does not exist, the parties should provide for "international arbitration by the ICC Arbitration Court under the rules of the International Chamber of Commerce" (or a similar internationally accepted arbitration institution).

Normally, the parties would stipulate from the outset the place of session, the applicable law and the number of arbitrators.

**PAYMENT AND ASSET DISCLOSURE AND ITS LIMITS.** Considering that "agents" and "middlemen" are often used (sometimes primarily) as instruments for paying bribes, the model contains a stipulation that payments to agents must not exceed "appropriate amounts for legitimate services". This language stems from the ICC Rules of Conduct ("Extortion and Bribery in International Business Transactions", 1996 Revision). In fact, many globally active companies have begun to refrain from using such agents or middlemen.

- "Officials" of the principal will be required, on a regular basis, to disclose their own and their family assets, so as to offer a handle if such officials acquire wealth from a source that cannot be explained.
- Consultants that commit themselves not only not to pay bribes in order to



obtain a contract, but also to design the project or project components in a manner that is totally nondiscriminatory, assure wide competition and will not offer advantages to a specific bidder.

**ABOUT MONITORING.** While a clear and unrestricted oversight and monitoring role for civil society is highly desirable in any country, it is understood that in some countries the government will not, at this time, be prepared to allow civil society to play such a role. In those cases the oversight and monitoring function could be performed in one of several ways :

- The government employs what in some US cases has been called an "Independent Private Sector Inspector General" (or IPSIG). The IPSIG, a private sector company or individual, would come with the necessary expertise. Such an arrangement can be acceptable provided the IPSIG is given not only full access but also the contractual right to seek correction of any procedural problems or improprieties and, if no correction takes place, to inform the public of the impropriety.

or:

- The government commits itself to provide full public disclosure of all relevant data regarding the evaluation of the competing bids. This would include a statement, that the evaluation criteria announced in the invitation to tender were fully applied, a list of the bidders and their prices; a list of the bids rejected, including the grounds for rejection, the major elements and aspects of the evaluation process and the specific reasons for selecting the winning bidder. The government should also at this time announce its own cost estimate for the project.

## 2. Other issues regarding its application

- It is important to note that the IP can function only if all bidders submit to it. It is therefore highly desirable to make the signing of the IP mandatory. Some countries have chosen to make the signing voluntary, and then begin a campaign to convince all bidders of the advantages of having an IP in place; however, bidders will only be prepared to sign the IP provided all the competitors also sign. If only one bidder refuses to sign, all the others will withdraw their commitment, since after all the objective is the creation of a level playing field  
– for all players.
- A fascinating and highly relevant recent development is the use in

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several countries of the Internet for total transparency of procurement. In Mexico, all public procurement activities countrywide are recorded and made available in great detail through a website that is accessible to all. In Colombia, a State Contracting Information System is meant to be widely accessible. Similar electronic information systems are being applied in Brazil, Chile, Ecuador, Pakistan and South Korea. The high degree of transparency achieved through this real-time access to public decision-making clearly reduces the opportunity for manipulation and should enhance the willingness of officials and bidders alike to commit to a corruption-free contracting procedure, such as through the IP.

- Finally, experience shows that the political will to reduce corruption and to revive honesty and integrity in government contracting is an indispensable condition for success. That's why TI recommends starting any IP process by establishing the existence of that political will -at the highest available political level. Experience to date shows that it may be easier to establish and nail down that political will at the municipal level than at national government level.
- In judging the suitability of the IP model one should take into account that since 1999, the OECD Anti-Bribery Convention makes bribing a foreign official a criminal act in all states that have ratified the Convention and in most of those be prepared to enter into agreements designed to provide a "level playing field" for all competitors, irrespective of whether they come from countries bound by the OECD Convention rules or not.
- Why is an-IP valuable if there are existing laws in place? Despite the existence of laws that forbid corruption, the persistence of corruption problems in public contracting show the need to develop mechanisms that increase compliance with the law and make it harder to ignore. In this sense, the IP does not duplicate the law, but enables its compliance by levelling the playing field, and assuring the contenders that all will behave under the same conditions.

There are an increasing number of cases where all the essential principles of the IP are being applied. While there is some variety in the approach, the documents and the process, TI greatly appreciates the many efforts by TI-members worldwide to introduce the IP concept as fully as possible and encourages further experimentation with modified applications rather than insisting *on* a "purist" approach.

However, in order to assure consistency, TI national chapters are requested to maintain close contact with TI International Secretariat while they discuss and develop "customised" versions of the IP. TI is setting up a group of Resource Persons who can provide the necessary expertise in response to calls for help from individual national chapters when promoting the IPs.

### **3. Experiences**

Integrity Pacts in a more complete form have been used and are currently being used in Argentina, Colombia, Ecuador, Germany and Mexico, as well as in Indonesia and Pakistan. They have been introduced as a general model in complete sectors (Construction in China), groups of public institutions (public sector undertakings in India) or local governments (Milan, Italy). Essential elements of the IP (e.g. monitoring for example) are being used in other applications elsewhere, among them Bulgaria, Paraguay and Peru. In total, over 15 countries through the efforts of TI national chapters have implemented adapted versions of Integrity Pacts. Further information about them can be found in TI's website ([www.transl2arenc.org](http://www.transl2arenc.org)).

The global overview of experience indicates that the IP concept is sound and workable. One of the strengths of the concept seems to be that it is flexible enough to adapt to the many local legal structures and requirements as well as to the different degrees in which governments are willing to proceed along the lines set forth here. Nevertheless, TI's experience is that these lines contain the essentials that must appear in an IP in order to be designated as such and supported by TI.

### **4. Results**

**SAVINGS.** For example, the tender process for the technological turnaround of the state-owned "B-co Agrario" in Colombia during the first semester of 2002, finished with an awarding price 30 percent below the budgeted price, in part, due to the introduction of an IP. Also, savings of 75 percent were achieved in 2002 in Pakistan, when the Karachi Water and Sewerage Board (KW &SB) included the application of the IP concept in the contracting process for consultants for its K-II Greater Karachi Water Supply Scheme.

**TRUST.** During case evaluation exercises, bidders who participated in processes where the IP had been used mentioned that they might be unhappy that they lost, but know they lost fairly. This element is also very important. It can save unnecessary judicial claims, and create trust in Government action.

**SANCTIONS.** In some countries, companies have been blacklisted for violating the Pact (e.g. Italy, Korea).

## F. STATUS OF INTEGRITY PACT IN THDCIL-

1. CVC has asked for fixing the threshold value for the contracts to be covered through integrity pact. Limits are to be decided after conducting ABC analysis so as to cover 90-95% of total procurements of the organization in monetary terms.
2. Presently the limits fixed for incorporation of integrity pact are \* 50 Cr. for supply and services contracts, , 100 Cr for works contracts. (Except World Bank aided contracts). In respect of contracts/projects being executed with World Bank Aid, as adequate provisions of transparency and prevention of corrupt practices etc. are included in standard bidding documents, Integrity Pact is not followed.
3. The format for integrity pact has been finalized for THDCIL. Copy is annexed at Annexure- 1 for ready reference. Role of IEM has been clearly defined in section 8 of the format for integrity pact. The Central Vigilance Commission vide their letter No. 008/VGL/ 001/17726 dated 06.08.2008 has approved following two names for appointment of Independent External Monitors in THDCIL.
  - (i) Shri Ramesh Chandra, Ex. Chairman, CWC
  - (ii) Shri Kanwal Nath, Ex. Dy. CAG..
4. However, it was noted that because of present limits Integrity Pact could not be introduced in any works awarded in past 2 years. Accordingly analysis of the contracts awarded in past 3 years is being carried out by Vigilance in coordination with Contracts Department and if warranted revised limits as per CVC guidelines would be suggested for adoption as per CVC guidelines.
5. So far Integrity Pact has been adopted only in one tender detailed below:

a- EPC/Turnkey execution of Tehri PSP

Source- Transparency International

No.007/VGL/033  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block-A  
GPO complex, INA,  
New Delhi-110023  
Dated the 4<sup>th</sup> December 2007

Office Order No.41/12/07

**Subject: Adoption of Integrity Pact in major Government Procurement Activities- regarding.**

Ensuring transparency, equity and competitiveness in public procurement has been a major concern of the Central Vigilance Commission and various steps have been taken by it to bring this about. Leveraging technology specially wider use of the web-sites for disseminating information on tenders, tightly defining the pre-qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission in order to bring about greater transparency and competition in the procurement/award of tender.

2. In this context, Integrity Pact, a vigilance tool first promoted by the Transparency International, has been found to be useful. The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any corrupt influence on any aspect of the contract. Only those vendors/bidders who have entered into such an Integrity Pact with the buyer would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification. The Integrity Pact in respect of a particular contract would be effective from the stage of invitation of bids till the complete execution of the contract.
3. The Integrity Pact envisages a panel of Independent External Monitors (IEMs) approved for the organization. The IEM is to review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. He has right of access to all project documentation. The Monitor may examine any complaint received by him and submit a report to the Chief Executive of the organization, at the earliest. He may also submit a

report directly to the CVO and the Commission, in case of suspicion of serious irregularities attracting the provisions of the PC Act. However, even though a contract may be covered by an Integrity Pact, the Central Vigilance Commission may, at its discretion, have any complaint received by it relating to such a contract, investigated.

4. The Commission would recommend the Integrity Pact concept and encourage its adoption and implementation in respect of all major procurements of the Govt. organizations. As it is necessary that the Monitors appointed should be of high integrity and reputation, it has been decided that the Commission would approve the names of the persons to be included in the panel. The Government Organizations are, therefore, required to submit a panel of names of eminent persons of high integrity and repute and experience in the relevant field, through their administrative Ministry, for consideration and approval by the Commission as Independent External Monitors. The terms and conditions including the remuneration payable to the Monitors need not be a part of the Integrity Pact and the same could be separately communicated. It has also to be ensured by an appropriate provision in the contract, that the Integrity Pact is deemed as part of the contract in order to ensure that the parties are bound by the recommendation of the IEMs, in case any complaint relating to the contract, is found substantiated.
5. A copy of the Integrity Pact, which the SAIL got vetted by the Addl. Solicitor General is available on the Commission's web-site i.e [www.cvc.nic.in](http://www.cvc.nic.in) as an attachment to this Office Order in downloadable form, which may be used in original or may be suitably modified in order to meet the individual organization's requirements.

Sd/-  
(Vineet Mathur)  
Deputy Secretary

All Secretaries to the Govt. of India  
All CMDs of PSUs  
All CMDs of PSBs  
All CVOs

**FORMAT FOR INTEGRITY PACT  
INTEGRITY PACT**

Between

Tehri Hydro Development Corporation Ltd., (THDC) hereinafter to as "The Principal"

and

..... hereinafter referred to as "The Bidder/ Contractor"

**Preamble**

The Principal intends to award, under laid down organizational procedures, Contracts for... The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder (s) and / or Contractor (s). In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

**Section 1 -Commitments of the Principal.**

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
  - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder( s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - c. The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

## Section 2 -Commitments of the Bidder(s)/ contractor (s)

- (1) The Bidder(s) / Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
- a. The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
  - b. The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non- submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
  - c. The Bidder(s) / Contract(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d. The Bidder(s) / Contractor(s) of foreign origin shall disclose the name and address of the Agents / representatives in India, if any. Similarly the Bidder(s)/ Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s) / Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is annexed and marked as Annex-A.
  - e. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder(s)/ Contractor(s) will not instigate third persons to commit



offences outlined above or be an accessory to such offences.

### **Section 3 -Disqualification from tender process and exclusion from future contracts**

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process *and/or declare the bidder (s)/contractor(s) ineligible to be awarded a contract either indefinitely or for a stated period of time.*

### **Section 4-Compensation for Damages**

(1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to *Bid Security*

or

(2) if the Principal is entitled to terminate the contract *during execution according to Section 3, the Principal shall be entitled to demand and recover* from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

### **Section 5- Previous transgression**

(1) The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the anti corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per section-3.

### **Section 6 -Equal treatment of all Bidders ! Contractors! Subcontractors.**

(1) The Bidder(s)/ Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.

(2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors,

(3) The Principal will disqualify from the tender process any bidder who do not sign this Pact or violate its provisions.

**Section 7 -Criminal charges against violating Bidder(s)! Contractor(s)! Subcontractor(s).**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

**Section 8 -Independent External Monitor! Monitors.**

- (1) The Principal appoints competent and credible Independent External Monitor for this pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, THDC.
- (3) The Bidder(s)! Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)! Contractor(s)! Subcontractor(s) with confidentiality..
- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to make other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (6) The Monitor will submit a written report to the Chairman, THDC within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

- (7) Monitor shall be entitled to compensation on the same terms as being extended to/ provided to Technical Advisory Committee members.
- (8) If the Monitor has reported to the Chairman THDC, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman THDC has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word 'Monitor' would include both singular and plural.

#### **Section 9 -Pact Duration.**

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by Chairman of THDC.

#### **Section 10 -Other provisions.**

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Corporate Office of the Principal, i.e. Rishikesh.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(For & On behalf of the Principal)

(For & On behalf of Bidder/ Contractor)

(Office Seal)

(Office Seal)

Place: .....

Date: .....

Witness 1: .....

(Name & Address)

Witness 2:

(Name & Address)

No.007/VGL/033  
Government of India  
Central Vigilance Commission  
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Satarkta Bhawan, Block-A  
GPO complex, INA,  
New Delhi-110023  
Dated the 28th December 2007

Office Order No.43/12/07

**Subject: Adoption of Integrity Pact in major Government Procurement Activities- regarding.**

Reference is invited to Commission's office order no. 41/12/2007 circulated vide letter of even no. dated 4/12/2007 on the aforementioned subject.

2. The Commission vide para 4 of the aforementioned office order had directed that the organizations were required to forward a panel of names of the eminent persons of high integrity through their administrative ministries for consideration and approval by the Commission as IEMs.
3. The matter has been reconsidered by the Commission and in order to simplify the procedure and avoid delay, it has been decided that the organizations may forward the panel of names of eminent persons for appointment and consideration as IEMs directly to the Commission for approval.
4. Para 4 of the Commission's circular cited above stands amended to this extent.

Sd/-  
(Vineet Mathur)  
Deputy Secretary

All Chief Vigilance officers

No. 008/VGL/001  
Government of India  
Central Vigilance Commission  
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Satarkta Bhawan, Block-A  
GPO Complex, INA,  
New Delhi-110023  
Dated, the 19th May, 2008

**Circular No.18/05/08**

**Sub:- Adoption of Integrity Pact in major Government Procurement Activities  
-regarding.**

The Commission vide its office order no. 41/12/07 dated 4/12/07 had circulated a letter no. 007/vgl/033 emphasizing the need to adopt Integrity Pact (IP) by government organizations in respect of their major procurement activities. The Commission had also directed that in order to ensure compliance with the obligations under the pact by the parties concerned, Independent External Monitors (IEMs) are to be appointed after obtaining approval of the Commission for the names to be included in the panel.

2. As the role of IEMs is very important in ensuring implementation of the IP, it is necessary that the persons recommended for appointment have adequate experience in the relevant fields and are of high integrity and reputation.
3. The Commission would, therefore, direct that the organizations, while forwarding the names of the persons for empanelment as IEMs should send a detailed bio-data in respect of the each of the persons proposed. The bio-data should, among other things, include the postings during the last ten years before the superannuation of the persons proposed as IEMs, in case the names relate to persons having worked in the government sector. The bio-data should also include details regarding experience older than ten years before superannuation of the persons proposed as IEMs, if they have relevant domain experience in the activities of PSUs where they are considered as IEMs.  
This may be noted for future compliance.

Sd/-  
(Rajiv Verma)  
Under Secretary

All Chief Vigilance Officers

Circular No.24/8/08

**Subject:- Adoption of Integrity Pact in major Government procurement activities.**

The Commission, vide its Circulars No. 41/12/07, dated 4.12.07 and 18/5/08 dated 19.5.08, has emphasized the necessity to adopt Integrity Pact (IP) in Government organizations in their major procurement activities. The Commission had also directed that in order to oversee the compliance of obligations under the Pact, by the parties concerned, Independent External Monitors (IEMs) should be nominated with the approval of the Commission, out of a panel of names proposed by an Organizations.

2. As more and more organizations begin to adopt the Integrity Pact, several queries and operational issues have been raised. The Commission has examined these issues and suggested the following guidelines:
- i) Adoption of Integrity Pact in an organization is voluntary, but once adopted, it should cover all tenders/procurements above a specified threshold value, which should be set by the organization itself.
  - ii) IP should cover all phases of the contract i.e., from the stage of Notice Inviting Tender(NIT)/pre-bid stage to the stage of last payment or a still later stage, covered through warranty, guarantee etc.
  - iii) IEMs are vital to the implementation of IP and atleast one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be referred to the full panel of IEMs, who would examine the records, conduct the investigation and submit a report to the management, giving joint findings.
  - iv) A maximum of three IEMs would be appointed in Navratna PSUs and upto two IEMs in other Public Sector Undertakings. The organizations may, however, forward a panel of more than three names for the

Commission's approval. For the PSUs having a large territorial spread or those having several subsidiaries, the Commission may consider approving a large number of IEMs, but not more than two IEMs would be assigned to anyone subsidiary.

- v) Remuneration payable to the IEMs may be similar to the Independent Directors in the organization.
  - vi) In view of limited procurement activities in the Public Sector Banks, Insurance Companies and Financial Institution, they are exempted from adopting IP.
3. It needs no reiteration that all organizations must make sustained efforts to realize the spirit and objective of the Integrity Pact. For further clarifications on its implementation or the role of IEMs, all concerned are advised to approach the Commission.

*Sd/-*  
(Rajiv Verma)  
Under Secretary

AllCVOs

No. 008/CRD/013  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi-110023.  
Dated: 11/8/09

Circular No. 22/08/09

**Subject:- Adoption of Integrity Pact-Periodical regarding**

The Commission in its various circular has emphasized the necessity to adopt Integrity Pact (IP) in Government organisations in their major procurement activities. The Commission had also directed that in order to oversee the compliance of obligations under the Pact, by the parties concerned, Independent External Monitors (IEMs) should be nominated with the approval of the Commission, out of a panel of names proposed by an Organisation.

2. Further, the Commission vide its circular No. 10/5/09 dated 18.5.09 provided a review system for the CVOs wherein and internal assessment of the impact of Integrity Pact are to be carried out periodically and reported to the Commission. In this regard, it is clarified that such review should be on annual basis. The Organisation which has adopted Integrity Pact may report compliance of review system through monthly report.
3. This may be noted for future compliance.

*Sd/-*  
(Shalini Darbari)  
Director

All Chief Vigilance Officers



009/VGL/016  
Government of India  
Central Vigilance Commission  
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Satarkata Bhawan  
GPO Complex, Block-A,  
INA, New Delhi-110023  
Dated: 19th April, 2010

Circular number 17/04/10

**Subject: Integrity Pact -Selection and Recommendation of Independent External Monitors( IEMs).**

The Commission receives a number of requests for implementation of Integrity Pact in Government of India organizations and Public Sector Undertakings, Organizations desirous of implementing Integrity Pact are required to forward at most three names of Independent External Monitors along with the proposal to the Commission for its approval.

2. The Commission would consider names for appointment of Independent External Monitors of only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions. The Commission would not consider the name of an officer /executive, who is either serving or who has retired from the same organization to be an IEM in that organization, although they may have served in the top management. Eminent persons, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors and names recommended to the Commission for approval.
3. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years on a request received in the Commission from the organization appointing the Independent External Monitor. An Independent External Monitor can have a maximum tenure of 5 years in an organization with an initial term of three years and another term of two years.
4. Organizations recommending the names of Independent External Monitors are to select and forward the names to the Commission after due diligence and scrutiny.

(Vineet Mathur)  
Director

All Chief Vigilance Officers

No. 008/CRD/013  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi-110023,  
Dated: 18/5/09

Circular No. 10/5/09

**Subject:- Adoption of Integrity Pact-Standard Operating Procedure-reg.**

The Commission has formulated "Standard Operating Procedure" for adoption of Integrity Pact in major Govt. Department/organisations. A copy of the same is enclosed for information and necessary action.

Sd/-  
(Shalini Darbari)  
Director

All Chief Vigilance Officers

**Subject:- Adoption of Integrity Pact-Standard Operating Procedure-reg.**

**1.0 Background**

1.01 The Central Vigilance Commission has been promoting Integrity, transparency, equity and competitiveness in Government/PSU transactions and as a part of vigilance administration and superintendence. Public procurement is a major area of concern for the Central Vigilance Commission and various steps have been taken to put proper systems in place. Leveraging technology, especially wider use of the web sites for disseminating information on tenders, clearly defining the pre qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission. In this context, Integrity Pact (IP), a vigilance tool conceptualized and promoted by the Transparency International, has been found to be useful. The Commission has, through its Office Orders No. 41/12/07 dated 04.12.07 and 43/12/07 dated 28.12.07 and Circulars No. 18/05/08 dated 19.05.08 and 24.08.08 dated 05.08.2008 (copies appended), recommended adoption of Integrity Pact and provided basic guidelines for its implementation in respect of major procurement in the Government Organizations.

**2.0 Integrity Pact**

2.01 The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- Principal to treat all bidders with equity and reason;
- Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- Bidders not to pass any information provided by Principal as part of

business relationship to others and not to commit any offence under PC/IPC Act;

- Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary.
- Bidders to disclose any transgressions with any other company that may impinge on the anti corruption principle.

2.02 Integrity Pact, in respect of a particular contract, would be operative from the stage of invitation of bids till the final completion of the contract. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

### 3.0 Implementation procedure :

3.01 Adoption of IP is voluntary for any organization, but once adopted, it should cover all tenders/procurements above a specified threshold value.

3.02 The threshold value for the contracts to be covered through IP should be decided after conducting proper ABC analysis and should be fixed so as to cover 90-95% of the total procurements of the organization in monetary terms.

3.03 Apart from all high value contracts, any contract involving complicated or serious issues could be brought within the ambit of IP, after a considered decision of the management

3.04 The Purchase / procurement wing of the organization would be the focal point for the implementation of IP.

3.05 The Vigilance Department would be responsible for review, enforcement, and reporting on all related vigilance issues.

3.06 It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.

3.07 IP should cover all phases of the contract, i.e. from the stage of Notice Inviting Tender (NIT)/pre-bid stage till the conclusion of the contract, i.e. the final payment or the duration of warranty/guarantee.

3.08 IP would be implemented through a panel of Independent External Monitors

(IEMs), appointed by the organization. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.

- 3.09 Periodical Vendors' meets, as a familiarization and confidence building measure, would be desirable for a wider and realistic compliance of the principles of IP.
- 3.10 Information relating to tenders in progress and under finalization would need to be shared with the IEMs on monthly basis.

#### **4.0 Role/Functions of IEMs :**

- 4.01 IEM would have access to all Contract documents, whenever required. Ideally, all IEMs of an organization should meet in two months to take stock of the ongoing tendering processes.
- 4.02. It would be desirable to have structured meeting of the IEMs with the Chief Executive of the organization on a monthly basis to discuss/review the information on tenders awarded in the previous month.
- 4.03 The IEMs would examine all complaints received by them and give their recommendations/views to the Chief Executive of the organization, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/administrative action.
- 4.04 At least one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management
- 4.05 The recommendations of IEMs would be in the nature of advice and would not be legally binding. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 4.06 The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him or directed to him by the Commission.

## **5.0 Appointment of IEM :**

- 5.01 The IEMs appointed should be eminent personalities of high integrity and reputation. The Commission would approve the names of IEMs out of the panel of names, initiated by the organization concerned, in association/consultation with the CVO.
- 5.02 While forwarding the panel, the organization would enclose detailed bio-data in respect of all names proposed. The details would include postings before superannuation, special achievements, experience, etc. in Government sector. It is desirable that the persons proposed possess domain experience of the PSU activities or the relevant field with which they may be required to deal.
- 5.03 A maximum of three IEMs would be appointed for Navratna PSUs and up to two IEMs for others.
- 5.04 Organizations could propose a panel of more than three names for the consideration of the Commission.
- 5.05 Persons appointed as IEMs in two organizations would not be considered for a third organization.
- 5.06 For PSUs having a large territorial spread or those having several subsidiaries, there could be more IEMs, but not more than two IEMs would be assigned to one subsidiary.
- 5.07 Remuneration payable to the IEMs would be equivalent to that admissible to an Independent Director in the organization. This remuneration would be paid by the organization concerned.
- 5.08 The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. They could be communicated individually to the IEMs concerned.
- 5.09 The normal term of appointment for an IEM would be 3 years, and it would be subject to renewal by the Commission thereafter.

## **6.0 Review System:**

- 6.01 An internal assessment of the impact of IP shall be carried out periodically by the CVOs of the organizations and reported to the Commission.
- 6.02 Two additional reviews are envisaged for each organization in due course.
  - (i) Financial impact review, which could be conducted through an independent agency like auditors, and

(ii) Physical review, which could be done through an NGO of tested credibility in the particular field.

6.03 It is proposed to include the progress in the implementation of IP in the Annual Report of the Commission. CVOs of all organizations would keep the Commission posted with the implementation status through their monthly reports or special reports, wherever necessary.

7.0 All organizations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and carry it to its effective implementation.

Enclosures: All earlier guidelines, issued by the Central Vigilance Commission, on the subject.

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## **Examples of Corruption in Construction & Engineering Sector**



## EXAMPLES OF CORRUPTION IN INFRASTRUCTURE CONSTRUCTION AND ENGINEERING SECTOR

### Pre-qualification and tender

#### *Example 1: Loser's fee*

It is a condition (express or implied) of a tender that each unsuccessful tendering contractor will bear its own tender costs. Prior to tender submission, the competing contractors secretly agree that they will each include in their tender price an agreed additional sum of money representing the total estimated tender costs of all the competing contractors. Whichever contractor is awarded the contract will then divide this sum of money between all the unsuccessful contractors who will thereby recover their tender costs. This is known as a 'loser's fee'. This arrangement is not disclosed to the project owner. The project owner believes that the losing contractors are bearing their own tender costs. The project owner is therefore unknowingly paying more than it would have done had the unsuccessful contractors borne their own tender costs.

*Possible offenders:* Contractors and individuals involved.

#### *Example 2: Price fixing*

A group of contractors who routinely compete in the same market secretly agree to share the market between them. They will each apparently compete on all major tenders, but will in advance secretly agree which of them should win each tender. The contractor who is chosen by the other contractors to win a tender will then notify the others prior to tender submission as to its tender price. The other contractors will then tender at a higher price so as to ensure that the pre-selected contractor wins the tender. The winning contractor would therefore be able to achieve a higher price than if there had been genuine competition for the project. If sufficient projects are awarded, each contractor would have an opportunity to be awarded a project at a higher price. This arrangement is kept confidential from the project owners on respective projects who believe that the tenders are taking place in genuine open competition, and that they are achieving the best available price. The project owners therefore pay more for their projects than they would have done had there been genuine competition.

*Possible offenders:* Contractors and individuals involved.

### *Example 3: Manipulation of pre-qualification*

A project owner appoints an engineer to manage a pre-qualification for a project so as to obtain a short-list of five suitable contractors who can then bid for the contract. A contractor who wishes to be short-listed pays a cash bribe to the engineer to ensure that key competitors of the contractor are eliminated from the short-list on artificial grounds. The engineer produces a short-list which does not contain several key competitors. The engineer falsely informs the project owner that it has selected the best five competitors. The project owner relies on the engineer's advice. The contractor who bribed the engineer wins the project.

*Possible offenders:* Contractor, engineer, and individuals involved.

### *Example 4: Bribery to obtain main contract award*

A contractor who is tendering for a project is approached by an agent who claims that he will be able to assist the contractor to be awarded the project. They agree that, if the contractor is awarded the project, the contractor will pay the agent a commission of 5% of the contract price. The agent is appointed under a formal agency agreement which states that the agent will carry out specified services. However, the fee being paid to the agent is grossly in excess of the market value of the legitimate services which the agent is committed to provide. The agent intends to pay part of the commission to a representative of the project owner to ensure that the contractor is awarded the contract. Although the contractor does not actually know that the agent will use the commission for that purpose, the contractor thinks it likely that this will be the case due to the significant disparity between the value of the legitimate services to be carried out by the agent and the amount of the fee. The contractor is awarded the contract. The contractor pays the agent the commission. The agent pays the representative of the project owner a bribe out of the agent's commission. The cost of the commission (and therefore of the bribe) is included in the contract price. The project owner therefore pays more than it would have done had there not been a bribe. The project owner is unaware that one of its representatives has been bribed.

*Possible offenders:* Contractor, agent, and individuals involved.

### *Example 5: Bribery during sub-contract procurement*

A procurement manager of a contractor is managing a competitive tender between sub-contractors. One of the sub-contractors offers a free holiday to the procurement

manager if the procurement manager awards the contract to the sub-contractor. The procurement manager does so.

*Possible offenders:* Procurement manager, sub-contractor, individuals involved.

*Example 6: Corruptly negotiated contract*

A senior government official who is in charge of the construction of new infrastructure projects wishes to enrich himself. He therefore decides to initiate a project which could conceal a major bribe for himself. In order to maximise the bribe potential, he ensures that the design will result in a project which is unnecessarily large and complex. He then informs a major contractor that he will ensure that the contractor is awarded the project on a non-competitive basis if the contractor includes in the contract price a payment for him personally of an amount equal to 30% of the contract price. The contractor agrees. The contract is awarded and the contractor pays the official.

*Possible offenders:* Government official, contractor, and individuals involved.

*Example 7: Manipulation of design*

A project owner appoints an architect to design a project. One of the competing contractors who is tendering for the project bribes the architect to provide a design with which only that contractor can fully comply. The bribe is the promise by the contractor of significant future work for the architect. The architect provides an appropriate design. The contractor submits a price that is higher than it would have been had there been a genuine competitive tender, and higher than several of the other tenders. The architect recommends to the project owner that the relevant design was in the project owner's best interests and that the compliant contractor should be appointed, even though its tender is not the cheapest, as only it fully complies with the tender design. In fact, to the knowledge of the architect, one of the cheaper tenderers bidding to an alternative design would have adequately suited the project owner's needs. The project owner follows the architect's advice and awards the contract to the compliant contractor.

*Possible offenders:* Contractor, architect, and individuals involved.

*Example 8: Specification of overly sophisticated design*

A project owner and a contractor are negotiating a design and build contract. There is no competitive tender and the project owner is, to the knowledge of the contractor,

relying on the contractor to put forward a reasonable proposal. In its written proposal to the project owner, the contractor deliberately specifies an overly sophisticated design. The contractor is aware that an alternative cheaper design would be adequate for the project owner's purposes but does not inform the project owner of this possibility. The contractor's intention is that the project owner will accept the sophisticated design as it will result in a higher overhead recovery and profit for the contractor. The project owner places the contract with the contractor.

*Possible offenders:* Contractor, and individuals involved.

*Example 9: Inflation of resources and time requirements*

A project owner and a contractor are negotiating a contract. There is no competitive tender and the project owner is, to the knowledge of the contractor, relying on the contractor to put forward a reasonable proposal. In its written proposal to the project owner, the contractor deliberately exaggerates the manpower, equipment and time required to complete the project. These exaggerated elements are not a contingency against possible risk. They are deliberate overstatements of the time and resources required in order to support a higher price. The project owner accepts the contractor's proposal. The works are carried out and the project owner pays the excessive contract price.

*Possible offenders:* Contractor and individuals involved.

*Example 10: Obtaining a quotation only for the purpose of price comparison*

A project owner intends to place a contract with a contractor which it frequently uses. It wishes to ensure that the price obtained from the contractor is a market price. It therefore requests quotations from two other contractors. It leads these contractors to believe that they have a chance of winning the project. However, the project owner always intends to award the contract to its favoured contractor. The price of one of the other bidding contractors is the lowest. The project owner discloses this lowest price to its favoured contractor and requires it to match the price. The favoured contractor does so and is awarded the contract. The other contractors therefore waste their tender costs.

*Possible offenders:* Project owner and individuals involved.

### *Example 11: Concealment of financial status*

A project owner places a contract with a contractor. At the time of placing the contract, the project owner is in serious financial difficulty. It believes that it is quite likely that it will go into receivership prior to completion of the contract and will therefore be unable to pay the contractor in full for work done. The project owner does not disclose its financial status to the contractor at the time of placing the contract. The project owner is aware that if it does disclose its financial difficulties, the contractor is unlikely to commence work.

*Possible offenders:* Project owner and individuals involved.

### *Example 12: Intention to withhold payment*

A project owner places a contract with a contractor. At the time of placing the contract, the project owner intends, in order to increase the profitability of the project for the project owner, to refuse to pay the contractor the retention of 10% upon completion of the project and to concoct artificial counterclaims to set-off against the retention.

*Possible offenders:* Project owner and individuals involved.

### *Example 13: Submission of false quotation*

A procurement manager of a contractor is required to organise the hire of cranes for one of the contractor's projects. Crane hire companies are at that time giving discounts of approximately 25% off their published hire prices for long-term hires. The procurement manager and two friends set up a company ('Craneco') which is registered in the names of the two friends. Half the shares in Craneco are secretly held as nominee for the procurement manager. Craneco obtains a quote including discount from a crane hire company. The procurement manager obtains the published rate sheets (excluding discounts) from two other crane companies. Craneco supplies a written quote to the contractor to supply the cranes at a rate slightly lower than the published rates of the two other crane companies, but at a higher rate than the rate quoted to Craneco. The procurement manager uses the two rate sheets and the quote from Craneco as three competitive quotes, and awards the contract for the supply of cranes to Craneco. These documents are placed on the procurement file, creating the false impression that there has been genuine competitive pricing, and that the hire

contract has been awarded to the cheapest supplier. Craneco makes a profit. The procurement manager does not disclose to the contractor his interest in Craneco. The contractor pays more for the hire than it would have done if the contract had been awarded, including discount, to one of the other crane hire companies.

*Possible offenders:* Procurement manager and friends.

### **Project Execution**

#### *Example 14: False invoicing: supply of less equipment*

A scaffolding sub-contractor contracts to provide a specified quantity of scaffolding to a project for a fixed price and for a fixed duration. Before the contract period for supply has expired, the scaffolding sub-contractor, without the knowledge of the contractor, removes part of the scaffolding. The scaffolding sub-contractor does not inform the contractor that some scaffolding has been removed nor does it make any deduction for the scaffolding removed. It invoices the contractor for the full fixed price. The contractor pays in full.

*Possible offenders:* Sub-contractor and individuals involved.

#### *Example 15: False work certificates*

An earth-moving sub-contractor signs a contract with the contractor to remove unsuitable material from site and to replace it with suitable material. The earth-moving sub-contractor will be paid by the load. The contractor appoints a quantity surveyor to count on site the number of loads removed and replaced by the earth-moving sub-contractor. Each load will have a written load certificate which will be signed by the earth-moving sub-contractor and counter-signed by the quantity surveyor. The manager of the earth-moving sub-contractor agrees with the quantity surveyor that the quantity surveyor will falsely certify more loads than the earth-moving subcontractor actually undertakes. In return, the earthmoving sub-contractor will pay the quantity surveyor 30% of the payment received by the earth-moving sub-contractor for each false load. The quantity surveyor certifies 20 false removals and 20 false replacements. The earth-moving sub-contractor submits both its genuine and its false certificates to the contractor for payment. The contractor pays in full, resulting in an illicit profit to the earthmoving sub-contractor. The earthmoving sub-contractor pays the quantity surveyor his share.

*Possible offenders:* Sub-contractor, quantity surveyor, and individuals involved.

*Example 16: Overstating man-day requirements*

A sub-contractor is appointed by a contractor on a day-works basis to undertake work which the sub-contractor knows will take approximately 100 man-days to complete. The sub-contractor informs the contractor that the work will require 150 man-days. The sub-contractor deliberately over-states the man-day requirement in order to achieve a higher price from the contractor. The contractor accepts the sub-contractor's estimate of 150 days. The sub-contractor completes the work using 100 man-days. The sub-contractor invoices the contractor for 150 man-days of work and attaches time-sheets for the work. 100 man-days of time-sheets are correct. 50 mandays of time-sheets are falsified so as to support the amount invoiced. The contractor pays the invoiced amount.

*Possible offenders:* Sub-contractor and individuals involved.

*Example 17: Inflated claim for variation (1)*

A contractor is instructed by the architect appointed by the project owner to carry out a variation to the works. The contract entitles the contractor to an extension of time and additional payment in this circumstance. The contractor submits a written claim in respect of the variation to the architect which deliberately exaggerates the manpower, materials, equipment and time required to carry out the variation.

*Possible offenders:* Contractor and individuals involved.

*Example 18: Inflated claim for variation (2)*

The facts are as in Example 17 except that, when the architect indicates to the contractor that he is inclined to reduce the contractor's claim, the contractor offers the architect a bribe if he will approve the full claim. The architect does so.

*Possible offenders:* Contractor, architect, and individuals involved.

*Example 19: False variation claim*

A contractor carries out work which is not in compliance with the contract specification. Under the contract, the architect is responsible for issuing variations. The contractor offers the architect a bribe if he confirms in writing that the work was carried out pursuant to a variation issued by the architect, and is therefore acceptable. The architect does so.

*Possible offenders:* Contractor, architect, and individuals involved.

*Example 20: Issue of false delay certificate*

A contract entitles the contractor to an extension of time and payment of loss and expense in the event of specified delays caused by the project owner. The contract also provides that the contractor should pay liquidated damages to the project owner in the event of specified delays caused by the contractor. Under the contract, the engineer appointed by the project owner determines questions of delay and loss and expense. The works are delayed by the project owner. The contractor applies to the engineer for an extension of time and ascertainment of loss and expense. The project owner and engineer are aware that the contractor is entitled to both. The project owner agrees with the engineer that the engineer should refuse the contractor's claim and should instead issue a certificate requiring the contractor to pay the project owner liquidated damages for delay. The engineer does so.

*Possible offenders:* Project owner, engineer, and individuals involved.

*Example 21: False extension of time application*

A contractor has been delayed in completing the project. Two reasons could account for the delay. The first is the delayed delivery of materials by one of the contractor's suppliers for which delay the contractor is responsible under the contract and for which he would be liable to pay liquidated damages to the project owner. The second is a change to the specification for which delay the project owner is responsible under the contract and for which the contractor would be entitled to receive an extension of time and additional cost. The contractor is aware that the whole or part of the actual cause of the delay is the supplier delay. However, the contractor submits a written claim to the architect appointed by the project owner which alleges that the whole delay was attributable to the change in specification. The architect accepts the contractor's claim, and awards the contractor an extension of time and additional payment. The project owner pays the additional payment.

*Possible offenders:* Contractor and individuals involved.

*Example 22: Delayed issue of payment certificates*

The project owner offers the architect a future appointment on another project if the architect delays the issue of payment certificates which are due to the contractor. The architect agrees.

*Possible offenders:* Project owner, architect, and individuals involved.



*Example 23: Concealing defects (1)*

A contractor accidentally omits some structural steel from the foundation works. The contractor discovers the omission after the foundations have been completed. Neither the architect nor the project owner realises the omission. The contractor decides not to disclose the omission to the architect or project owner. The contractor invoices the project owner in full for the foundation works (including the omitted structural steel). The project owner pays the contractor in full.

*Possible offenders:* Contractor and individuals involved.

*Example 24: Concealing defects (2)*

A roofing sub-contractor installs a waterproof roof membrane. The membrane is accidentally perforated during installation which means that it could leak. The membrane needs to be approved by the contractor's supervisor before it is covered over. The membrane should be rejected and replaced owing to the perforations. The subcontractor offers to make a payment to the supervisor if he certifies that the subcontractor's defective membrane is water-tight. The supervisor accepts. The payment is made by the sub-contractor to the supervisor and the supervisor issues the certificate. The sub-contractor submits the certificate to the contractor, and obtains full payment for the defective membrane. Neither the sub-contractor nor supervisor discloses to the contractor that the membrane is defective.

*Possible offenders:* Sub-contractor, supervisor, and individuals involved.

*Example 25: Set-off of false rectification costs*

A contractor has completed the works and applies for final payment. Under the contract, the architect appointed by the project owner is required to specify outstanding defects. The project owner persuades the architect to include, in the schedule of defects, additional purported defects which in fact are not outstanding. The project owner then sets off the alleged cost of rectification of these defects against the balance due to the contractor. The contractor disputes the deduction. The project owner informs the contractor that, if the contractor does not accept the reduced sum, then he will have to litigate or arbitrate to get the remainder from the project owner. The contractor cannot afford litigation, so he accepts the reduced amount.

*Possible offenders:* Project owner, architect, and individuals involved.

*Example 26: Refusal to issue final certificate*

A contractor has properly completed the works and is entitled to receive a final certificate. The engineer appointed by the project owner refuses to issue the final certificate to the contractor unless the contractor pays him 5% of the final certificate value. The contractor refuses to pay.

*Possible offenders:* Engineer and individuals involved.

*Example 27: Extortion by project owner's representative*

A contractor is due the final payment on a project. The project owner's representative informs the contractor that he will not authorise the release of the final payment unless the contractor makes an extra payment to the project owner's representative personally. The contractor makes the payment. The project owner's representative authorises the release of the final payment.

*Possible offenders:* Project owner's representative, contractor, and individuals involved.

*Example 28: Facilitation payment*

A customs official demands a payment from a contractor in return for the customs official speeding up the issue of an import permit to which the contractor is entitled. The contractor makes the payment.

*Possible offenders:* Customs official, contractor, and individuals involved.

*Example 29: Overstating of profits*

In the project accounts, a project manager deliberately overstates the profitability of the project he is overseeing in order to enhance his performance bonus.

*Possible offenders:* Project manager.

**Dispute resolution**

*Example 30: Submission of incorrect or misleading contract claims, pleadings or particulars*

In a contract claim, or during dispute resolution proceedings (such as mediation, adjudication, arbitration or litigation), the claimant submits claims, pleadings or particulars which he knows to be false, or does not believe to be true, or of which he is reckless as to their accuracy. These include:

- A claim for an extension of time (in circumstances where the contract permits an extension of time based on actual delay) where the extension claimed is greater than the actual delay caused, or where the stated cause of delay is not the true cause of delay;
- A loss and expense claim where the extension of time claim on which the loss and expense claim is based is incorrect or the amount of loss and expense claimed is overstated;
- A claim for payment for the supply of work, equipment or materials where the work, equipment or materials are defective, or are not in accordance with the specification, or are not supplied.
- A claim containing false or misleading statements as to the parties' understanding at the time the contract was made;
- A claim containing false or misleading statements regarding representations made concerning scope of work, quality, timing, or limitations of liability.

*Possible offenders:* Claimant and individuals involved.

*Example 31: Concealment of documents*

In a contract claim, or dispute resolution proceedings, a claimant deliberately does not disclose to his opponent, or to the dispute resolution tribunal, documents which are, or may be, damaging to the claimant's case. Such documents include:

- Timesheets which would undermine the claimant's case that labour and equipment were working on a particular item of work;
- Work records which would show that the claimant's claim document overstates or incorrectly describes equipment or material;
- Work records which would show, contrary to the claimant's case, that the works were not completed by a particular date, or were defective, or were not in accordance with the specification;
- Programmes which would establish that the delay claimed by the claimant was in fact due to a different reason from that claimed, or was not as long as that claimed;
- Cost records which would show that claimed costs have been incorrectly stated;

- Photographs which would show an activity occurring at a different time or in different circumstances to that alleged by the claimant;
- Correspondence and other records which would undermine the claimant's case.

*Possible offenders:* Claimant and individuals involved

*Example 32: Submission of false supporting documents*

In a contract claim, or dispute resolution proceedings, a claimant submits the following supporting documents as genuine and accurate when he knows that they are false, or does not believe them to be true, or is reckless as to their accuracy:

- Timesheets which are not genuine and which have been created to show falsely that labour and equipment was used for a particular item of work when in fact it was not;
- Work records which are not genuine and which have been created to overstate or incorrectly describe equipment and materials supplied;
- Programmes which purport correctly to state dates and events, but which do not and which have been deliberately amended to attribute delay falsely to a stated cause;
- Cost records which incorrectly state the cost of items, or include items or work which were not provided;
- Photographs which have been created to show falsely that an activity occurred at a certain time or location, when in fact it did not.

*Possible offenders:* Claimant and individuals involved.

*Example 33: Supply of false witness evidence*

In dispute resolution proceedings, a witness as to fact gives evidence on behalf of the claimant (whether by way of affidavit, witness statement or orally) that he knows to be false, or does not believe to be true. Such evidence by the witness includes the following:

- Confirming that supporting documents (such as those referred to in Example 32) are genuine and accurate, when he knows that they are false, or is not sure whether or not they are accurate;
- Stating that an event occurred, when he knows that it did not occur, or is

not sure that it occurred;

- Stating that the opponent's action was the sole cause of delay to the works, when he knows that there were other causes of delay, or is not sure that it was the sole cause of delay;
- Stating that the claimant's loss was a certain figure, when he knows that the figure has been inflated above the true figure, or is not sure that the claimed figure is correct;
- Stating that a fact had been orally agreed between representatives of the claimant and the opponent, when he knows that this fact had not been agreed, or is not sure whether or not it had been agreed;
- Giving an incomplete account of events, knowing that, or being reckless as to whether, the incomplete account may be misleading.

*Possible offenders:* Claimant, witness, and individuals involved.

**Example 34: Supply of false expert evidence**

In dispute resolution proceedings, a claimant appoints an expert to provide an opinion on an aspect of the claimant's case. The expert's initial report, prepared confidentially for the claimant, is unsupportive of the claimant's case. The claimant makes it clear to the expert that his appointment will continue only if the expert amends his report to make it favourable to the claimant's case. The expert does so. He believes the amended view to be arguable, but presents it in the report as his most favoured view, and as the correct view, when this is not his belief. The report is then submitted as expert evidence in the proceedings and the expert witness gives oral evidence in accordance with it. Both the expert and the claimant are aware that the expert does not believe his evidence to be true. The success of the claim and counterclaim in the proceedings depends on the outcome of the expert evidence.

*Possible offenders:* Claimant, expert, and individuals involved.

**Example 35: Bribery of witness**

A claimant offers a witness a percentage of any future award by the arbitrator in the claimant's favour if the witness gives false evidence in support of the claimant in the arbitration. The witness accepts, and provides a false witness statement and false oral evidence both of which support the claim and undermine the counterclaim.

*Possible offenders:* Claimant, witness, and individuals involved.

*Example 36: Blackmail of witness*

The respondent in an arbitration owes money to the claimant. The respondent tells a witness that he will be dismissed as an employee of the respondent unless he gives false evidence in support of the respondent in the arbitration. The employee gives the false evidence and as a result the respondent wins the arbitration, and does not need to pay the claimant.

*Possible offenders:* Witness, respondent, and individuals involved.

*Example 37: False information as to financial status*

Under a settlement agreement, a project owner agrees to pay a contractor a certain amount. The project owner is late in paying and meets with the contractor to discuss payment. At the meeting, the project owner falsely informs the contractor that the project owner is in financial difficulty. The project owner offers the contractor a lower amount than the contractor is due and states that, if the contractor does not accept the lower amount, the project owner would have to be put into liquidation and the contractor may in that event get even less than the amount offered, or nothing at all. The contractor accepts the reduced payment.

*Possible offenders:* Project owner and individuals involved.

*Example 38: False statement as to settlement sum*

A contractor has reached a confidential settlement with the project owner. The settlement amount includes an amount for payment in full to all sub-contractors on the project. The contractor then meets with the subcontractors, and falsely states that he received a smaller amount from the project owner under the settlement agreement than he actually received. The sub-contractors believe the contractor and, as a result of what they believe to be an underpayment under the settlement between the contractor and the project owner, they agree to accept a reduced payment of sums due under their sub-contracts.

*Possible offenders:* Contractor and individuals involved.

*Example 39: Over-manning by law firm*

A contractor appoints a law firm to act in an arbitration on its behalf. The partner in the law firm who is head of construction sees the arbitration as a major opportunity to make money and allocates four lawyers to the arbitration when he knows that two lawyers would be sufficient. The partner advises the contractor that this number of lawyers is necessary owing to the complexity of the case and the volume of the work. The contractor accepts this advice. The partner quotes the contractor an hourly rate for each of the lawyers. Monthly bills are submitted by the law firm to the contractor

and these are paid by the contractor.

*Possible offenders: Partner.*

*Example 40: Excessive billing by lawyer*

A lawyer working on an arbitration for a project owner bills more hours to the project owner than the lawyer actually spent working on the case.

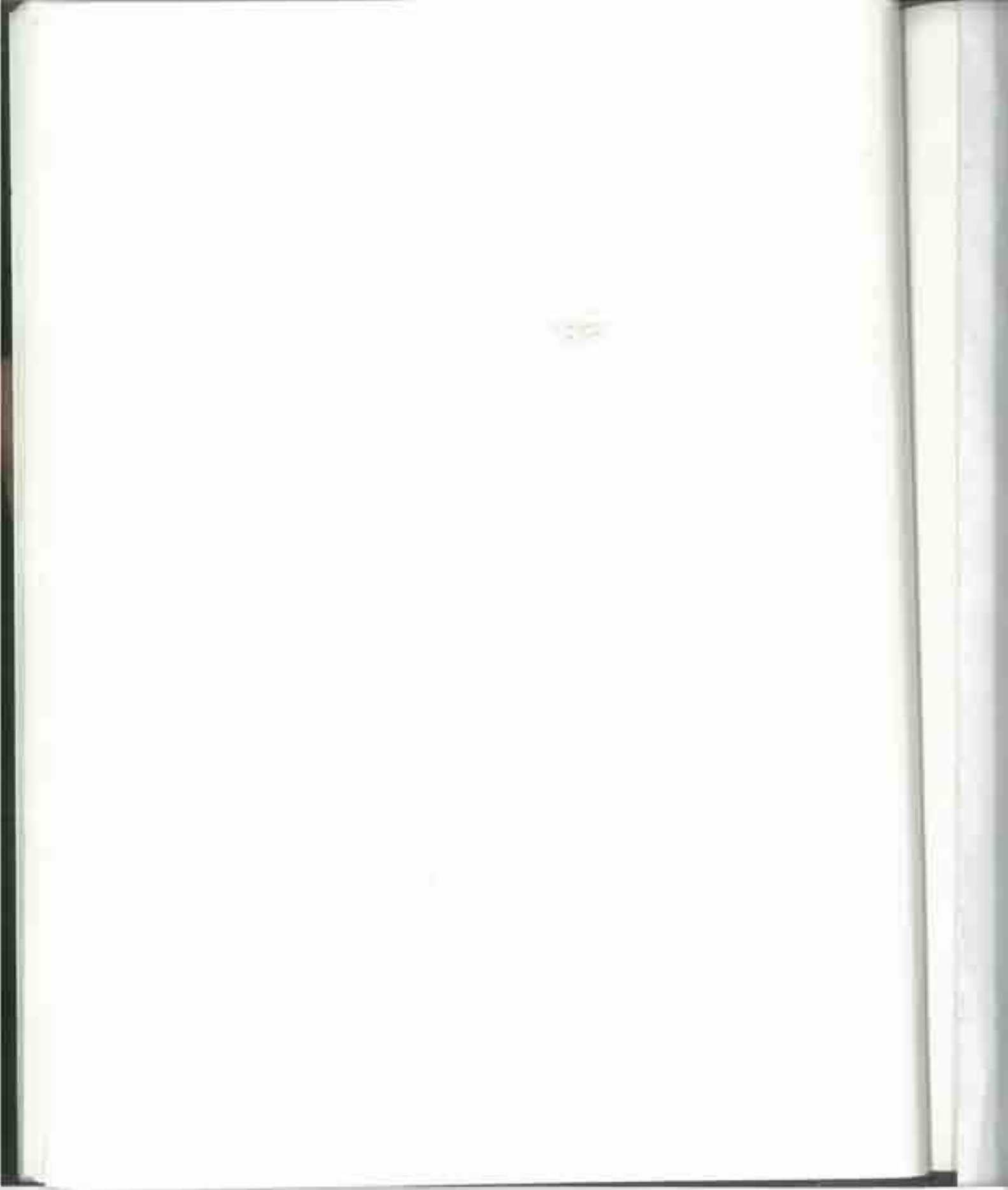
*Possible offenders: Lawyer.*

*Example 41: Complicity by lawyer*

In relation to Example 34, the lawyer involved in drafting the witness statement is aware that the witness does not believe his evidence. However, despite this knowledge, the lawyer continues to draft the witness statement on the basis that it is true, and allows the witness statement to be put forward in support of the claimant's case.

*Possible offenders: Lawyer.*

*Source - Transparency International*





## **Important recent CVC Circulars**

No. 009/VGL/055  
Government of India  
Central Vigilance Commission

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Satarkta Bhawan, Block-A  
GPO Complex, INA,  
New Delhi-11 0023  
Dated, the 09<sup>th</sup> Nov., 2009

**Circular No.- 31/10/09**

**Sub:- Review of Purchase Preference Policy for Products and Services of Central Public Sector Enterprises (CPSEs) in view of the judgement of the Supreme Court of India in the matter of M/s Caterpillar India Pvt. Ltd. v/s Western Coalfields Ltd. and Ors dated 18.5.2007.**

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The Department of Public Enterprises has issued guidelines vide O.M. No. DPE/13(15)/2007-Fin, Dated 21.11.2007 on the subject cited above which reiterates DPE's earlier guidelines dated 18.07.2005 to the effect that the Purchase Preference Policy would stand terminated w.e.f. 31.03.2008. Further, it also provides that Preferential Policy framed for the specific sectors by the concerned Ministry/Department within relevant Act of Parliament or otherwise don't come within the purview of these guidelines. However, the DPE OM, Dated 21/11/2007, lays down that the concerned Ministry/Department may independently evolve/review preferential policies for the sectors of their concern as per their requirement. A copy of OPE's O.M dated 21/11/2007 is enclosed for reference.

2. The Commission has desired that if any Ministry/Department has evolved a Purchase Preference Policy pursuant to the DPE Guidelines, the same may be brought to the notice of the Commission.

(Shalini Darburi)  
Director

Encl: As above.

All CVO's of Ministries/Departments

## CHAPTER VI

### PRICE/PURCHASE PREFERENCE

#### 12. DPE/Guideline/VI/12

**Review of Purchase Preference Policy for Products and Services of Central Public Sector Enterprises (CPSEs) in view of the judgement of the Supreme Court of India in the matter of M/s Caterpillar India Pvt. Ltd. v/s Western Coalfields Limited and Ors dated 18.5.2007**

The undersigned is directed to refer to this Department's OM no. DPE.13(12)/2003-Fin. Vol. II dated 18-7-2005 regarding extension of Purchase Preference Policy for Products and Services of CPSEs for a further period of three years beyond 31.3.2005 with certain modifications.

2. The Supreme Court of India in its judgement in the transferred Civil Petitions of 2004 from the different High Courts in the matter of M/s Caterpillar India Pvt. Limited v/s Western Coalfields Limited and Ors. Observed that imposing a condition like purchase preference no option is left and a monopoly is being created. Any increase in the effectiveness of PSEs cannot be done on a uniform basis without examination as to whether such protection is necessary for a particular PSE. Further, it has to be examined on a case to case basis as to whether any differential treatment is called for. There may not be any competition left if 10% margin is allowed. It was also contended that the preference should be given PSE specific and the margin to be allowed should be examined rationally. Because of the substitution of the word 'may' by 'will' there is essentially a reversal of the policy. While giving its judgement, the Supreme Court also expressed its views which inter-alia includes the following:
  - a) Industry-wise assessment to be done by the concerned Ministries and in case of cost effectiveness is achieved by any PSEs there may not be any need for extending preference to such PSEs. Such examination should be done on the line as to whether any preference is at all called for and the extent of margin of preference to be allowed, which would also ensure level playing field for others. Further, while splitting the tenders, the minimum quantity/amount should be so fixed as to ensure that it is rational and there is no element of uncertainty. In other words, there should not be any rigid/inflexible purchase preference policy without examination as to whether such protection is necessary for a particular

PSE;

- b) Present practice of allowing uniform margin of 10% over the L-1 bidder, as purchase preference to CPSEs, has to be reviewed and margin should be fixed PSE specific by the concerned Ministry on a rational basis;
- c) The overall impact of such preference to be allowed on foreign direct investment has also to be assessed/considered.

The Supreme Court through its judgement dated 18.5.2007 inter alia directed that the exercise, as noted above shall be undertaken by the concerned Ministry of the Central Government within a period of 4 months from the date of the judgement.

3. In view of the above mentioned judgement of the Supreme Court of India, the Government again reviewed the Purchase Preference Policy for Products and services of Central Public Sector Enterprises on 25.10.2007 and decided to reiterate its decision dated 30.6.2005 that the purchase preference policy will be terminated with effect from 31.3.2008. The Government also decided that the preferential purchase policies framed for the specific sectors by the concerned Ministries/Departments within relevant Act of Parliament of otherwise do not come within the purview of this decision. The concerned Ministry/Department may independently evolve/review preferential policies for the sectors of their concern, as per their requirement.
4. All the administrative Ministries/Departments are requested to take note of the above mentioned decision of the Government and also bring it to the notice of the CPSEs under their administrative control for information and necessary compliance.

**(DPE OM No. DPE/13(15) / 2007-Fin dated 21st November 2007)**

Satarkta Bhawan,  
GPO Complex, INA,  
New Delhi-110023  
Dated, 19th May, 2010

**OFFICE ORDER No. 19/05/10**

**Sub:- Transparency in Works/Purchase/Consultancy contracts awarded on Nomination basis.**

\*\*\*\*\*

Commission vide Circular No. 15/05/06 dated 09/05/2006 had prescribed certain measures to be followed on works/purchase/consultancy contracts awarded on nomination basis by PSUs. These instructions have since been reviewed in the Commission and the Commission is of the view that the Board of the PSU is not required to scrutinize or post facto vet the actions of the operational managers and their decisions to award work on nomination basis.

2. Therefore, the following amendment is being made in sub-para (i) of Para 2 of Commission's above circular :-

"All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for scrutiny and vetting post facto"

**Read as**

"All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for information"

(Vineet Mathur)  
Director

All Chief Vigilance Officers of CPSUs.

Copy to

- (i) All Secretaries of Govt. of India
- (ii) All CEOs/Heads of Organizations

No.005/VGL/4  
Government of India  
Central Vigilance Commission  
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Satarkta Bhawan, Block 'A',  
GPO Complex, INA, New Delhi- 110 023  
Dated the 14th July, 2009

**CIRCULAR No. 17/7/09**

**Subject: Posting of details on award of tenders/contracts on websites.**

1. The Commission vide circulars dated 16.03.2005, 28.07.2005 and 18.04.2007 had directed all organisations to post on their web-sites a summary, every month, containing details of all the contracts/purchases made above a threshold value (to be fixed by the organisations) covering atleast 60% of the value of the transactions every month to start with on a continuous basis. CVOs were required to monitor the progress and ensure that the requisite details were posted regularly on respective websites, and also to incorporate compliance status in their monthly report to the Commission.
2. On a review of the status of implementation by the organisations, it is observed that some organisations have not adhered to the instructions and implemented the same. Further, such information being posted on the websites are not being regularly updated on a continuous basis by certain organisations and, in some cases, the information published is disjointed and not as per the prescribed format laid down by the Commission. It is also seen that a few organisations have placed such information on restricted access through passwords to registered vendors/suppliers etc. which defeats the basic purpose of increasing transparency in administration.
3. The Commission, therefore, while reiterating its aforementioned instructions would direct all organisations/departments to strictly adhere and post summary of details of contracts/purchases awarded so as to cover 75% of the value of the transactions without any further delay. Any failure on the part of the organisations on this account would be viewed seriously by the Commission.
4. All Chief Vigilance Officers should reflect the compliance status in their monthly reports to the Commission after personally verifying the same.

(Shalini Darbari)  
Director

To  
All Secretaries of Ministries/Departments  
All CEOs/Heads of Organisations  
All Chief Vigilance Officers

Telegraphic Address :  
"SATARKTA: New Delhi"

E-Mail Address  
cenvigil@nic.in

Website  
www.cvc.nic.in

EPABX  
24651001 - 07

केलन/Fax : 24616286

सं. / No. 005/CRD/012

भारत सरकार  
केन्द्रीय सतर्कता आयोग  
GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, लो.सं.सं. कॉम्प्लेक्स,  
ब्लॉक-ए, जहाँ एन.ए., नई दिल्ली-110023  
Satarkta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi 110023

दिनांक / Date  
20 January, 2010

- (i) The Secretaries of all Ministries/Departments of Government of India
- (ii) The Chief Secretaries to All Union Territories
- (iii) The Comptroller & Auditor General of India
- (iv) The Chairman, Union Public Service Commission
- (v) The Chief Executives of all PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies.
- (vi) The Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies.
- (vii) President's, Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO

CIRCULAR No.01/01/10

Attention is invited to the Commission's circular No. 4/3/07 dated 3.3.07 on the issue of "Tendering Process - Negotiations with L1".

In the said circular it has, among other things, been stated "As post tender negotiations could often be a source of corruption, it is directed that there should be no post tender negotiations with L1, except in certain exceptional situations". It has come to Commission's notice that this has been interpreted to mean that there is a ban on post tender negotiations with L1 only and there could be post tender negotiations with other than L1 i.e. L2, L3 etc. This is not correct.

It is clarified to all concerned that - there should normally be no post tender negotiations. If at all negotiations are warranted under exceptional circumstances, then it can be with L1 (Lowest tenderer) only if the tender pertains to the award of work/supply orders etc. where the Government or the Government company has to make payment. However, if the tender is for sale of material by the Government or the Govt. company, the post tender negotiations are not to be held except with H1 (i.e. Highest tenderer) if required.

2. All other instructions as contained in the circular of 3.3.2007 remain unchanged.

3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.

  
[V. Ramachandran]  
Chief Technical Examiner

Telegraphic Address :  
\*SATARKTA: New Delhi)

E-Mail Address  
cenvigil@nic.in

Website  
www.cvc.nic.in

EPABX  
24651001 - 07

वेबसाइट/फैक्स : 24616286

सं. / No. No. 009/VGL/002

भारत सरकार  
केन्द्रीय सतर्कता आयोग  
GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,  
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023  
Satarakta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi 110023

दिनांक / Date: 06<sup>th</sup> April, 2010.....

Circular No 18/04/2010

**Subject: - Implementation of e-tendering solutions - check list.**

Guidelines were prescribed in this office OM of even number, dated 17.08.2009, on the above-cited subject, advising organisations to take due care to see that effective security provisions are made in the system to prevent any misuse. It has been observed during security audit carried by CTEO that e-procurement solutions being used by some of the organisations lack security considerations as envisaged in the Commission's guidelines dated 17.08.2009. Some of the shortcomings / deficiencies are of repetitive nature.

A check list to achieve security considerations in e-Procurement solutions is enclosed for information. Organisations concerned may follow the same while implementing e-tendering solutions to address the security related concerns.

*V. Ramachandran*  
(V. Ramachandran)  
Chief Technical Examiner

To:

All CVOs of Ministries/Departments/PSUs/Banks/Insurance Companies/  
Autonomous Organisations/Societies/UTs.



**CHECK POINTS TO ACHIEVE SECURITY CONSIDERATIONS  
IN E-PROCUREMENT SOLUTIONS**

S.N.	SECURITY CONSIDERATIONS	Please Tick	
		Yes	No
1.	Whether the application is secure from making any temporary distortion in the electronic posting of tender notice, just to mislead certain vendors?	Yes	No
2.	If yes at 2 above, then whether any automatic systems alert is provided in the form of daily exception report in the application in this regard?	Yes	No
3.	Whether application ensures that the tender documents issued to / downloaded by bidders are complete in shape as per the approved tender documents including all its corrigendum?	Yes	No
4.	Is there any check available in the application to detect & alert about the missing pages to the tenderer, if any?	Yes	No
5.	Whether application ensures that all the corrigendum issued by the Competent Authority are being fully communicated in proper fashion to all bidders including those who had already purchased / downloaded the bid documents well ahead of the due date & before uploading the corrigendum?	Yes	No
6.	Whether system is safe from sending discriminatory communication to different bidders about the same e-tendering process?	Yes	No
7.	Whether e-procurement solution has also been customised to process all type of tenders viz Limited / Open / Global Tenders?	Yes	No
8.	Whether online Public Tender opening events feature are available in the application?	Yes	No
9.	Whether facilities for evaluation / loading of bids, strictly in terms of criteria laid down in bid documents are available in the application?	Yes	No
10.	Whether sufficient safeguards have been provided in the application to deal with failed attempt blocking?	Yes	No
11.	Whether application is safe from submission of fake bids?	Yes	No
12.	Whether encryptions of bids are done at clients end?	Yes	No
13.	Whether safety against tampering and stealing information of submitted bid, during storage before its opening, is ensured?	Yes	No
14.	Whether application is safe from siphoning off and decrypting the clandestine copy of a bid encrypted with Public key of tender opening officer?	Yes	No
15.	Whether application is safe from mutilation / sabotage or otherwise rendering the encrypted bid in the e-tender box during storage, to make it unreadable / invalid in any form, before opening of the bids?	Yes	No

16.	Whether introduction of special characters / executable files etc by users are restricted in the application?	Yes	No
17.	Whether validity check of DSC is being done at server end?	Yes	No
18.	Whether system supports the feature that even though if a published tender is being deleted from the application, system does not allow permanent deletion of the published tender from the Database?	Yes	No
19.	Whether sufficient security features are provided in the application for authentication procedure of the system administrator like ID, password, digital signature, biometric etc?	Yes	No
20.	Whether audit trails are being captured in the application on media not prone to tampering, such as optical write once?	Yes	No
21.	Whether log shipping feature is available, where a separate dedicated server receives the logs from the application over a web service in real time?	Yes	No
22.	Whether integrity and non-tampering is ensured in maintaining the server clock synchronisation & time stamping?	Yes	No
23.	Whether application generates any exception report / system alerts etc to indicate the resetting of the clock, in case the application for time stamping is killed at the server level and time is manipulated?	Yes	No
24.	Whether application ensures that the quotes from various bidders with their name are not being displayed to any one including to the Organisation during carrying out of the e-reverse auctioning process?	Yes	No
25.	Whether application is fit for usage complying with the requirements of tender processing viz Authenticity of tenderer, non-repudiation and secrecy of information till the actual opening of tenders.	Yes	No
26.	Whether any comprehensive third party audit (as per statutory requirement and also as per the requirements of e-tender processing (compliance to IT Act 2000)) was got conducted before first putting it to public use?	Yes	No
27.	Whether application complies with the Commission's Guidelines dated 17.09.2009 on Security considerations for e-procurement Systems.	Yes	No

No.010/VGL/035  
Central Vigilance Commission

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Satarkta Bhawan, GPO Complex  
INA, New Delhi  
Dated 23 June, 2010.

Circular No. 23/06/010

Sub: Leveraging of Technology for improving vigilance administration in the National E-Governance Plan.

The Commission observes that e-procurement software, security and implementation is a new area and needs improvement. E-procurement provides a platform for the collaborative procurement of goods, works and services using electronic methods at every stage of the procurement process. The e-procurement platform transacts confidential procurement data and is exposed to several security threats. Department of Information Technology could be best placed to address issues relating to e-procurement. In order to ensure proper security of the e-procurement system all Departments/Organizations are advised to get their system certified by Department of Information Technology.

  
(Shafini Darbari)  
Director

To,

All Secretaries of Depts / Ministries,  
All CMDs / Chief Executives of CPSUs / Banks / Insurance Companies etc.  
All Chief Vigilance Officers

Satarkta Bhawan, GPO Complex,  
INA, New Delhi  
Dated 28<sup>th</sup> September, 2010

Circular No. 33/09/10

**Sub: Guidelines for checking delay in grant of sanction for prosecution – reg.**

Attention is invited to Department of Personnel & Training's Office Memorandum No.399/33/2006-AVD-III dated 06/11/2006 and dated 20/12/2006 and Commission's Circular No.22/06/10 dated 23/06/2010 regarding guidelines for checking delay in grant of sanction for prosecution. It has been prescribed that Ministries/Deppts./Orgns. are required to formulate their tentative views within three weeks of receipt of CBI's requests seeking sanction for prosecution and seek the advice of the Commission.

2. It has come to the notice of the Commission that the provisions of the DoPT circular referred above, are not strictly adhered to. It is therefore, decided that in case the Commission does not receive communication/comments on CBI report from the competent authority within 3 weeks, the Commission would suo moto tender its advice. Any communication/comments received from competent authority after three weeks but before 31 days will be entertained by the Commission as a reconsideration request and CVC within a fortnight, after consulting experts, will tender its advice. Any communication/comments received from the competent authority after 31 days of receipt of CBI's report will not be entertained by the Commission and will be sent to DoPT for a final decision.



(Vineet Mathur)  
Director

To

1. All Secretaries of all Ministries/Departments of Govt. of India
2. All CMDs/CEOs of all PSEs/PSBs/Financial Institutions/ Autonomous Orgs
3. All CVOs
4. CBI

Satarkata Bhawan,  
Block A, GPO Complex,  
INA, New Delhi - 110023  
Dated 07-10-2010

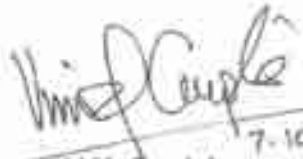
Circular No. 34/10/10

**Subject: Design Mix Concrete**

During inspection of works of many organisations, it has been observed that provisions of IS 456:2000 are neither being followed for designing the concrete mix nor for acceptance criteria. Instances of acceptance of concrete on basis of false certification and without actually testing the cubes for 28 days strength have also been observed. The following deficiencies are brought to the notice of all organisations for immediate corrective action:

1. Minimum cement content, maximum water cement ratio and minimum grade of concrete for different exposures are not adopted as per the details given in Table 5 of above code.
2. Value of standard deviation is not being established on the basis of results of 30 samples as provided in Table 11 of the above code even for works where more than 30 samples have been tested.
3. For acceptance criteria mean of a group of 4 non overlapping consecutive test results is not being calculated.
4. The samples where individual variations are more than  $\pm 15\%$  of average of three specimens are not declared invalid as per the provisions of clause 15.4 of the Code.
5. The concrete is being declared meeting the acceptance criteria which is not in conformity of codal provisions.

Most of the organisations are not even aware about the amendment No. 3 of 2007 modifying clause 15.1.1 of IS 456:2000. All organisations are directed to ensure that provisions of IS 456:2000 read with amendment No. 3 should be followed scrupulously for cement concrete and reinforced cement concrete. Non compliance of the provisions shall be viewed seriously.

  
7.10.10  
(V.K. Gupta)  
Chief Technical Examiner

All CVOs

**Initiatives taken by the  
Commission (CVC)**

2.  
10-10

## **1. National Anticorruption Strategy**

The Central Vigilance Commission has taken the initiative of formulating a National Anticorruption Strategy which would serve as a concerted and coordinated approach to fighting corruption in India. The strategy recognizes that corruption cannot be reduced by mere governmental action unless the citizens and private business entities refrain from indulging in corrupt practices. Corruption is a form of human behaviour which is reflective of the decline in professional ethics and social values. Anticorruption efforts over the last five decades were largely focussed on the demand side of corruption ignoring the equally culpable supply side. The proposed strategy therefore prescribes a participative and holistic approach to address corruption from all sides. The draft strategy has been forwarded to the government and all other stakeholders for their comments and suggestions. After obtaining the response and endorsement of the stakeholders, the final strategy would be recommended for adoption.

## **2. Leveraging Technology to Prevent Corruption**

Corruption in the delivery of public services occurs due to the exercise of discretionary powers and the need for the citizens to approach public officials. Therefore the use of technology and e-governance to minimize discretion and human intervention is the most effective means of preventing corruption in the delivery of public services which affects the ordinary citizens the most. The Commission had therefore adopted the strategy of "Leveraging Technology to Prevent Corruption" since 2004, wherein organizations are persuaded to adopt e-governance measures and computerize on priority all those activities which are vulnerable to corruption. The progress of various organizations in this regard has not been very assuring. The commission proposes to recommend to the government to adopt a mission mode approach towards computerizing all delivery of public services.

## **3. Integrity in Public procurement**

Public procurement being the government activity most vulnerable to corruption, has been a priority concern of the commission. The commission has adopted the following measures to mitigate corruption in public procurement:

- a. Issuing guidelines to promote integrity in public procurement.
- b. Persuading organizations to adopt e-procurement.
- c. Since 2007, Commission has been promoting the concept of Integrity

Pact developed by the Transparency International. It involves the signing of a pact between the procuring organization and the bidders that they will not indulge in corrupt practices in the tendering, award and the execution of the contract. Only those bidders who sign the pact can participate in the bidding process. An independent external monitor is nominated by the commission to monitor the adherence to the pact by the two sides. More than 50 organizations including the ministries conducting major procurements have adopted the Integrity Pact so far and the experience has been satisfactory.

**4. Awareness Campaign**

The Commission has initiated a project to create awareness and educate the public on anti-corruption. The aim is to reduce people's tolerance for corruption and reduce its social acceptability. Media agencies are being engaged to create the campaign in the electronic and print media besides various outreach activities. The campaign is slated to start from January, 2011.

**5. Provision for Whistle Blowers**

The provision for whistle blowers and their protection is already in place since 2004 under the Public Interest Disclosure & Protection of Informers' Resolution (PIDPIR) wherein CVC is the designated authority to handle the "whistle blower complaints" and provide protection to the "whistle blowers". Commission has been paying especial attention to complaints received under this Resolution to investigate them in a time bound manner with due protection to the complainants. A bill has been initiated in the Parliament to convert the Resolution into an Act which would further empower the CVC in protecting the whistleblowers.

**6. Improving the Standard of Vigilance Work**

To make the work of vigilance more objective and scientific the Commission is developing and adopting various standards to regulate vigilance investigations and reporting. While the reporting standard was adopted in August, 2009, a standard procedure for conduct of vigilance investigation has been developed and would be adopted shortly.

**7. Computerization of Commission's Work**

A project for workflow automation and IT enabling of the functioning of the Commission has been completed on 31- August, 2010 and is in the process of full roll out. The project is targeted to be fully operational by November, 2010. This would enhance the efficiency of the Commission in handling



complaints and processing of investigation reports.

## **8. Modern Preventive Vigilance Framework**

Anti-corruption efforts consist of a two pronged approach – punitive and preventive. While the vigilance efforts so far were largely punitive and reactive, Commission is now focusing on prevention which is a more efficient and effective means of checking corruption. Much of the prevailing preventive vigilance practices were developed in the 1970s which need to be reviewed in the present day context. A new preventive vigilance framework is being developed by the Commission which aims at aligning the vigilance work with the modern day approach of risk management and corporate governance. Standing Conference Of Public Enterprise (SCOPE) has been assigned the task of developing a new framework on pilot basis.

## **9. International Cooperation**

The Commission gives due importance to international cooperation in anti-corruption which also helps in exchange of best global practices as well as capacity building of the personnel involved in anti-corruption work. The important developments pertaining to international cooperation are listed below:

- a. Though India had signed the United Nations Convention against Corruption in 2005, it has not been ratified till date. The CVC had recommended the ratification of the Convention.
- b. As a result of the interaction between the Commission and the Anti-Corruption Division of the Organization for Economic Cooperation and Development (OECD), India has been granted the 'Observer' status in the Anti-Bribery Working Group of OECD. The Commission is in the process of studying the implications of the Convention for India.
- c. The Central Vigilance Commissioner of India has been a member of the Executive Board of International Association of Anti Corruption Agencies (IAACA) since 2007.
- d. The anti-corruption commissions of various countries and multilateral anti-corruption bodies have shown keen interest in the working of the Commission.

## CASE STUDIES

**I- Case-1**

- 1.1 Investigations were carried out by Vigilance in one of the Construction projects. The aspect of check was interpretation of clause 36.00 of General Conditions of Contract (GCC), regarding Price Adjustment.
- 1.2 As per clause 36.00 of General Conditions of Contract (GCC), regarding Price Adjustment, the base date for indices for price adjustment was 01-04-1996. The Consumer Price Index for "Labour" and Wholesale Price Index of all commodities for "Material" are published by concerned ministries on monthly/weekly basis and are valid for all days in month/week. Clause further specified base date index as on 01-04-1996 for WPI to be taken, as published in monthly bulletin issued by GOI, indicating use of monthly indices for calculations. This was also a general practice being followed in other contracts also in THDCIL to use monthly index of corresponding month for base date.
- 1.3 For calculating price adjustments base price index for "Labour" as on 01.04.1996 was calculated by taking average of CPI for the months of March 1996 & April 1996 and base price index for "Material" was calculated by taking average of WPI for the weeks ending 30.03.1996 and 06.04.1996. Whereas, CPI & WPI for the month of April 1996, should have been taken as base price indices, as being applicable indices as on 01-04-1996, as per the provisions of Contract Agreement.
- 1.4 Base price index for Labour and material as on 01-04-1996 were 324 and 302.80 respectively, (CPI & WPI for April 1996), which were higher than the calculated base price index of 321.5 for Labor and 299.55 for Material. This wrong interpretation of calculating base price indices resulted in excess payments of more than Rs 8 crores to contractor.
- 1.5 Thus by wrong interpretation of the clause No. 36.00 of General Condition of Contract related with price adjustment, a loss of Rs 8 cr was caused to THDCIL.
- 1.6 This discrepancy was pointed out by internal auditors during execution well before final payments were made to contractor. While making the final payment there was possibility of recovery of this excess payment from contractor by taking recourse relevant clauses of agreement. Officials involved in the decision making exercise of final payment also failed to recover excess payment from contractor against relevant clauses.
- 1.7 **Issues related with System Improvement-** WPI is being published on weekly as well as monthly basis. It is suggested for working out price index on

base date either the week or month of the base indices (WPI & CPI) or value of base indices should be clearly indicated in the Tender document/ Contract Agreement. There is also need for periodic review of provisions of GCC with fast changing world of rules & regulation. A suitable mechanism needs to be instituted in this regard.

## 2.0 Case-2

In one of the cases related with Execution of construction work, it was observed that the work has been awarded on higher rates than estimated rates with the explanation that the nature of work was very urgent. But looking at the whole process from planning to execution, it was observed that the work of three months completion periods, the finalization tender itself took about six months period. Contractor could complete only 15% of work within stipulated three months. Time extension has also been granted to the contractor without liquidated damages. The contractor does not mobilized required costly machineries on site as mentioned in contract agreement.

## 3.0 Case-3

In one case related to Execution of work, the Insurance clause states as follows:

*"The goods supplied under the contract shall be properly and fully insured by the contractor of the contract against loss or damages incidental to manufacture or acquisition, inland transportation upto project site. Storage & handling at project site and erection, testing & commissioning and upto taking over by the Owner."*

As per clause, expected applicability of policy is for the entire period of the contract as the clause further states as follow:

*"The insurance policy shall be taken for the period of the contract. The insurance policy remain with the contractor for further operation. The contractor shall be responsible for preferring and handling all claims till settlement with insurance company."*

The provision of clause are ambiguous as the contractor is likely to take insurance policy for goods, after its purchase/placing of order for the same. Therefore, covering of the product with insurance policy from date of issue of letter of acceptance to contractor by THDCIL (i.e. award of contract) to actual procurement of product by contractor would be tricky issue and have huge financial repercussions if the cost of product is high. Recoveries of

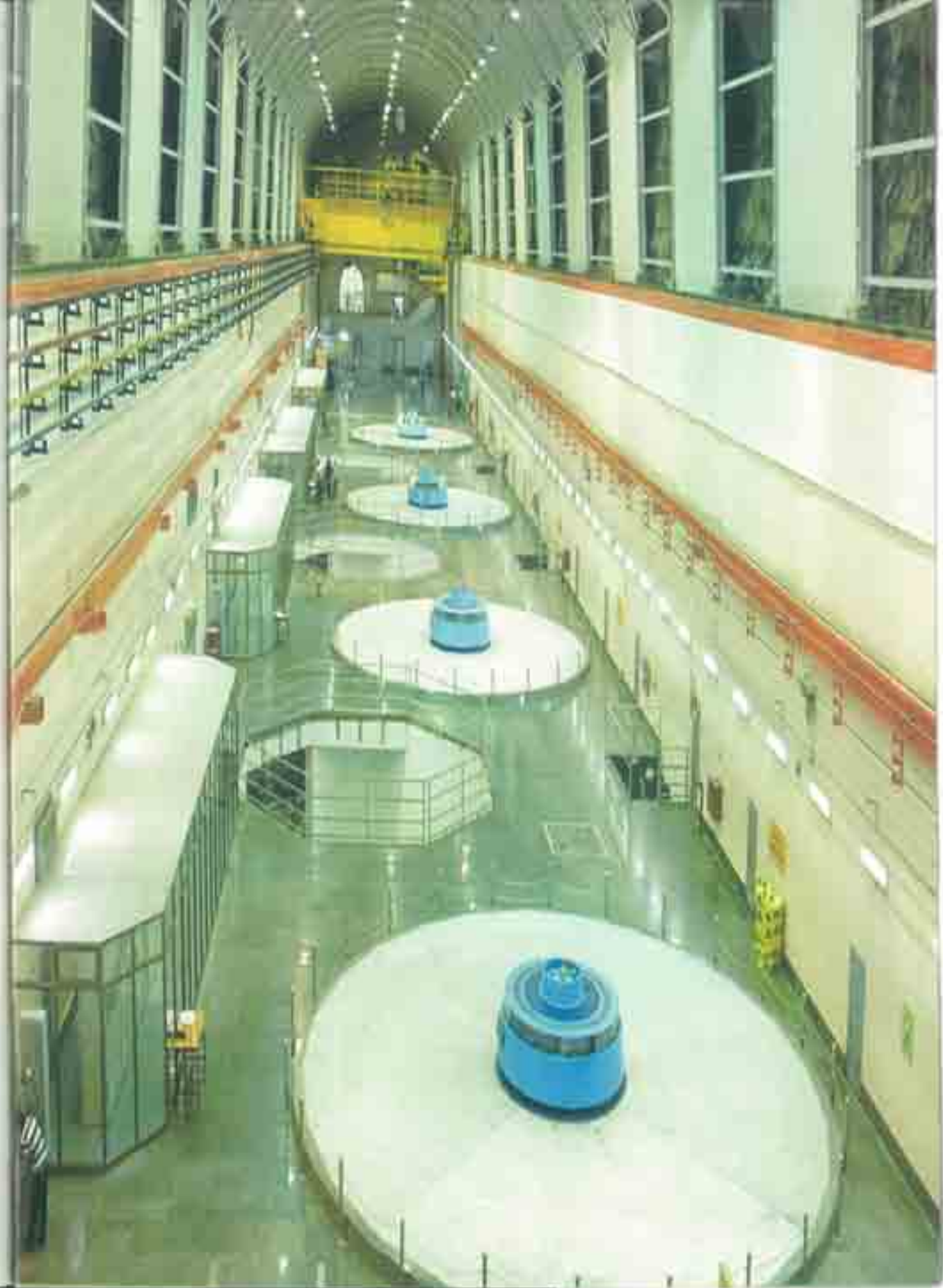
approximately Rs 8 lacks from contractor were made in this case after CTEO's intensive examination.

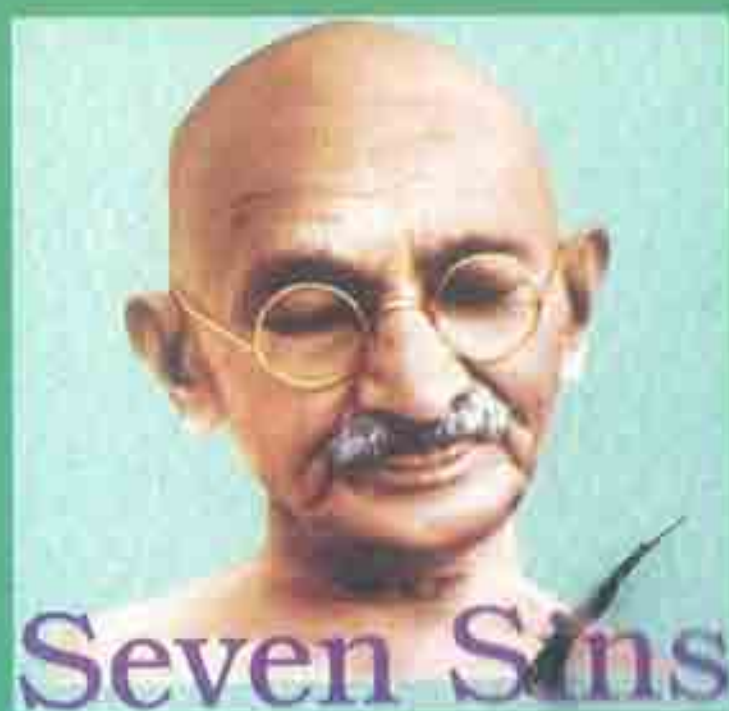
#### 4.0 Case-4

During the intensive examination of a work, the CTE's Organization observed that several conditions were kept in the contract agreement, but all of them were not being complied at site. No action was taken against the contractor by executives for non compliance of these contract conditions. Some of the discrepancies noticed are as follows:

- i) As per provisions of the contract, the contractor was supposed to establish an indoor ward and to maintain an ambulance room with ambulance which had not been provided/maintained at site of work.
- ii) As per provisions of the contract, the contractor was supposed to assign an experienced engineer to site of work as full time Quality Control Officer. The same was employed by the contractor on 23.09.2005 instead of 31.08.2002 (i.e. date of physical start of work). Also the said engineer could not produce any document/ record of having done the quality control work. All the tests etc. required at site had been conducted by THDC staff only. This shows that deployment of Quality Control Officer was only on records.
- iii) As per provisions of contract, first quality control should have taken place at the cement factory for which the contractor should have posted one of his officials at the factory to fulfill the requirement of contract, but the same exercise was not done.
- iv) Labour license had not been obtained by the contractor as observed at the time of inspection.

Non-compliance of provisions stipulated in agreement and insensitivity of field officials towards vital agreement conditions has been viewed with concern. Conditions of contract should be judiciously framed at the planning/ pre-tendering stage, but once the conditions have been published to prospective bidders and subsequently made part of contract agreement, these should be religiously complied with. Field executives should ensure compliance as well as documentation in support of compliance of conditions of contract. For every contract, executives/officers should have proper mechanism for documentation and check list for compliance of Vital contract agreement provisions (including GCC and special condition).





*Wealth without work  
Pleasure without conscience  
Knowledge without character  
Commerce without morality  
Science without humility  
Worship without sacrifice  
Politics without principle*

*- Mahatma Gandhi*