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2017-18

CVC GUIDELINES ON PIDPT, PREVENTIVE VIGILANCE & COMMON IRREGULARITIES IN PUBLIC PROCUREMENT.



Vigilance Awareness Week
30th Oct. to 4th Nov. 2017

VIGILANCE DEPARTMENT
THDC INDIA LIMITED

(A Joint Venture of Govt. of India & Govt. of U.P.)
Ganga Bhawan, Pragatipuram, Bye-Pass Road, Rishikesh-249201- Uttarakhand)

Vision

A world class energy entity
with commitment to environment
and social values.

Mission

- To plan, develop and operate energy resources efficiently.
- To adopt state of the art technologies.
- To achieve performance excellence by fostering work ethos of learning and innovation.
- To build sustainable value based relationship with stakeholders through mutual trust.
- To undertake rehabilitation and resettlement of project affected persons with human face.



सत्यमेव जयते

राष्ट्रपति
भारत गणतंत्र
PRESIDENT
REPUBLIC OF INDIA

MESSAGE

I am glad to learn that the Central Vigilance Commission is observing Vigilance Awareness Week this year from 30th October to 4th November, 2017 on the theme "My Vision - Corruption Free India".

Corruption impedes the rate of economic growth, distorts competition, adversely impacts the rate of investment and undermines the moral fibre of society. In order to eliminate corruption there is a need for all stakeholders to work together to develop and implement effective anti-corruption mechanisms. Active participation of individuals and civil society members, who pledge to abide by principles of honesty and integrity, is of utmost importance in the fight against corruption. All sections of society should ensure that greater emphasis is laid on generating awareness among the public regarding the existence, causes and threat posed by corruption. This is an effective and sustainable means of fighting corruption.

I wish the Vigilance Awareness Week 2017, all success and extend my greetings to the vigilance fraternity.


(Ram Nath Kovind)

New Delhi
September 29, 2017



भारत के उपराष्ट्रपति
VICE-PRESIDENT OF INDIA

MESSAGE

I compliment the Central Vigilance Commission for choosing 'My Vision-Corruption Free India' as the main theme of Vigilance Awareness Week being observed from October 30 to November 04, 2017.

Corruption is a canker and the biggest obstacle for the rapid progress of the country. It has to be combated ruthlessly at all levels and eliminated totally for the country to achieve growth in every sphere, including economic, social and political.

My best wishes to the Commission for its endeavors to eliminate corruption.


(M. Venkaiah Naidu)

New Delhi
28th September, 2017

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सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



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दिनांक / Date: 31/10/2017

MESSAGE

Vigilance Awareness Week 30th October to 4th November, 2017

The Central Vigilance Commission observes Vigilance Awareness Week every year to bring awareness and to reaffirm the commitment of public servants and public at large to the cause of promotion of integrity and eradication of corruption. The theme for this year is "My Vision - Corruption Free India".

Apart from recommending action against delinquent officers, the Commission works on improving the systems and for bringing out Standard Operating Procedures so that the scope for corrupt practices is minimized.

The Commission believes that corruption can be eliminated with the active and committed involvement of the citizens only. Unless the citizens are aware of the ill effects of corruption, the means to fight them and public opinion is generated as a mass movement against corruption and lack of integrity, far reaching changes cannot be brought. Keeping in view this wider objective, the Commission has initiated many activities to reach public at large and in particular students, groups of juveniles directly and indirectly through various means. The Commission has designed voluntary Integrity Badges so that citizens and organisations can reaffirm their commitment to the cause of integrity and motivate others to be a part of the fight against corruption.

The Commission appeals to all to pledge to be honest and not be a part of any corrupt practice.


(T.M. Biswas)
Vigilance Commissioner


(K.V. Chowdhary)
Central Vigilance Commissioner


(Rajiv)
Vigilance Commissioner



डी.वी. सिंग
अध्यक्ष एवं प्रबंध निदेशक
D.V. SINGH
Chairman & Managing Director

टीएचडीसी इंडिया लिमिटेड THDC INDIA LIMITED

(भारत सरकार एवं उ.प्र. सरकार का संयुक्त उपक्रम)
(A Joint Venture of Govt. of India & Govt. of U.P.)

FOREWORD

Vigilance Awareness Week is to be observed from 30th October to 04th November 2017. The vigilance department of THDCIL is publishing a booklet on guidelines issued by Central Vigilance Commission on various subjects. Some of the issue raised by Vigilance department for Systemic corrections for information of all concerned have also been incorporated in the booklet.

This year, the theme of the Vigilance Awareness Week is, "My vision-Corruption Free India". Corruption can be tackled only by sustained and coordinated effort. In the context of Government organizations and PSUs it is imperative and there is integrity, transparency and accountability in governance. A corruption free society is only possible, if basic tenets of righteousness are deeply ingrained in hearts and minds of every citizen of the country.

I congratulate the Vigilance Department of THDCIL for releasing the booklet on the occasion of Vigilance Awareness Week – 2017. I am sure that this booklet will be useful for Executives at all levels of the Corporation.


11.10.2017
(D. V. Singh)

Place : Rishikesh
Dated : 11.10.2017



टीएचडीसी इंडिया लिमिटेड THDC INDIA LIMITED

(सहज संस्थापक एवम विदेशी संस्थापक का संयुक्त उद्योग)
(A Joint Venture of Govt. of India & Govt. of U.P.)



Dr. Sunita Singh
IFS
Chief Vigilance Officer

PREFACE

The Central Vigilance Commission has been issuing circulars and guidelines to bring in free, fair and transparent system in tendering and procurement. On the occasion of Vigilance Awareness week to be observed from 30th October to 4th November 2017, the Vigilance department of THDCIL is publishing a booklet of Vigilance related guidelines to create awareness amongst the officials. This booklet will be of immense help in familiarizing the Officials of THDCIL about CVC guidelines viz. PIDPL, Preventive Vigilance & Common irregularities in publish procurement. I am sure that this booklet will be very useful tool in bringing more transparency and help in efficient decision making.

Theme of the Vigilance Awareness Week is, "My vision-Corruption Free India". Corruption is a scourge and a matter of prime concern to all. Its eradication is necessary for peace, development and progress. Strategically the aim of Vigilance organization is to shift priority of vigilance functioning from punitive to preventive and eventually to proactive & predictive vigilance by creating awareness, bringing about systemic change and using vigilance in curbing corruption. Systemic improvements have been recommended from time to time to reduce opportunities for corruption in any shape.

Cooperation of each and every employee of the Corporation is of immense importance in this regard. Let us all join together and work untiringly for eradication of corruption from all spheres of life.


(Dr. Sunita Singh)

Date:

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स्वत्व त्याग/Disclaimer

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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.

CONTENTS

Sl. No.	Subject	Page No.
1.	PIDPI Complaints	2-7
2	Preventive Vigilance	8-18
3	Common Irregularities in public procurement	19-21
4	Check list for public procurement process:	22-32
5	Systemic Improvement Issued	33-37

Chapter I

PIDPI Complaints

INTRODUCTION :

Department of Personnel and Training's Resolution No. 89 dated 21st April, 2004, commonly known as Public Interest Disclosure and Protection of Informers Resolution, 2004, envisages a mechanism by which a complainant can blow a whistle by lodging a complaint and also seek protection against his victimisation for doing so. The Central Vigilance Commission is the designated agency to receive complaints from whistle blowers under the PIDPI Resolution.

1. PIDPI RESOLUTION

1.1. The PIDPI Resolution has the following main provisions: -

- (a) The Commission is authorised as the Designated Agency to receive written complaints or disclosure on any allegation of corruption or of misuse of office by any employee of the Central Government or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government;
- (b) Any public servant or a person including an NGO can make written disclosure to the designated agency except those referred in clauses (a) to (d) of Article 33 of Constitution;
- (c) The designated agency may call for further information or particulars from the persons making the disclosure;
- (d) Anonymous complaints shall not be acted upon;
- (e) The identity of the complainant will not be revealed unless the complainant himself has disclosed his identity;
- (f) The Head of the Department / Organisation to keep the identity of informant secret if he comes to know about it;
- (g) The designated agency may call the comments / explanation of the Head of Department / Organisation on the disclosure made;
- (h) The designated agency may seek the assistance of CBI or the police authorities to complete the investigation pursuant to the complaint received;
- (i) The designated agency on finding the allegation of misuse of office or corruption substantive, shall recommend appropriate action to the concerned Department or Organisation;

- (j) If the informant feels he is being victimised, he may make an application before the designated agency seeking redress in the matter. The designated agency may give suitable directions to the concerned public servant or the public authority;
 - (k) If on an application or on the basis of information gathered, the designated agency is of the opinion that the complainant or the witness need protection, it shall issue appropriate directions to the concerned Government authorities; and
 - (l) In the event of the identity of the informant being disclosed in spite of the designated agency's directions to the contrary, the designated agency is authorised to initiate appropriate action as per extant regulations against the person or agency making such disclosure.
- 1.2. Pursuant to the PIDPI Resolution, 2004, the Commission vide Office Order No. 33/5/2004 dated 17.05.2004 issued guidelines and Public Notice on the procedure to be followed for filing whistle-blower complaints under the PIDPI Resolution, 2004.
- 1.3. Subsequent to the Resolution of 2004, the DoPT vide Notification No. 371/4/2013-AVD.III dated 14.08.2013 partially amended the PIDPI Resolution. The amendment, inter alia, authorised the Chief Vigilance Officer of the Ministries or Departments of Government of India to act as the designated Authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or Department. The amendment also authorised the Central Vigilance Commission to supervise and monitor the complaints received by the designated authority. The amendments have the following provisions: -
- (a) Para 1A- The Chief Vigilance Officers of the Ministries or Departments of the Government of India are also authorised as the designated authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.
 - (b) Para 7A- Either on the application of the complainant, or on the basis of the information gathered, if the designated authority is of the opinion that either the complainant or the witnesses need protection, the designated authority, shall take up the matter with the Central Vigilance Commission, for issuing appropriate directions to the Government authorities concerned.

- (c) Para 11A- The Central Vigilance Commission (CVC) shall supervise and monitor the complaints received by the designated authority.

2. HANDLING OF COMPLAINTS RECEIVED UNDER PIDPI RESOLUTION

2.1. The Commission has the responsibility of keeping the identity of the complainant secret. Hence the Public Notice was issued by the Commission, informing the general public that any complaint, which is to be made under this Resolution should comply with the following conditions:-

- (a) The complaint should be in a closed / secured envelope.
- (b) The envelope should be addressed to Secretary, Central Vigilance Commission and should be super-scribed "Complaint under The Public Interest Disclosure". If the envelope is not super-scribed and closed, it will not be possible for the Commission to protect the complainant under the above Resolution and the complaint will be dealt with as per the normal complaint handling policy of the Commission. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter.
- (c) Commission will not entertain anonymous / pseudonymous complaints.
- (d) The text of the complaint should be carefully drafted so as not to give any details or clue as to the complainant's identity. However, the details of the complaint should be specific and verifiable.
- (e) In order to protect identity of the person, the Commission will not issue any acknowledgement and the whistle-blowers are advised not to enter into any further correspondence with the Commission in their own interest. The Commission assures that, subject to the facts of the case being verifiable it will take the necessary action, as provided under the Government of India Resolution mentioned above. If any further clarification is required, the Commission will get in touch with the complainant.
- (f) The Commission can also take action against complainants making motivated/vexatious complaints under this Resolution.

2.2. At present the procedure being followed in the Commission for handling complaints received from whistle blowers under PIDPI Resolution is as follows:-

- (a) Complaints received under PIDPI Resolution are opened in the Confidential Section and parallel files (separate file for each complaint) are created after concealing the name and address of the complainant.

- (b) The complaints which have been addressed to other / several authorities are not treated as complaint under PIDPI Resolution and are forwarded by the Confidential Section to the section concerned of the Commission for taking necessary action. Anonymous and Pseudonymous complaints received under PIDPI Resolution are also sent directly to the section concerned of the Commission for taking necessary action under Complaint Handling Policy of the Commission.
- (c) In respect of those complaints which are considered fit for processing under PIDPI Resolution, a letter is sent to the complainant to obtain (a) confirmation as to whether he / she has made the complaint or not and (b) a certificate that that he / she has not made similar / identical allegation of corruption / misuse of office to any other authorities to qualify as a Whistle Blower complainant. Prescribed time limit for receiving the confirmation and the certificate from the Complainant is 30 days from the date of receipt of Commission's letter by the complainant. In case of no response within the prescribed time limit, a reminder is issued, giving additional two weeks' time to the complainant for sending confirmation and the certificate to the Commission. If there is still no response from the complainant, the complaint is sent to the Branch concerned of the Commission for necessary action under Complaint Handling Policy of the Commission.
- (d) In case the matters are personal in nature or it is very difficult to hide the name / identity of the complainant, a No Objection Certificate (NOC) is also obtained from the complainant. In case the complainant refuses to give NOC, the complaint is filed in the Confidential Section without any further action.
- (e) After receiving necessary confirmation along with the certificate and NOC (if applicable) from the complainant, the complaint is placed before the Screening Committee for decision.
- (f) The Screening Committee is headed by the Secretary and the Additional Secretaries of the Commission are members. The Screening Committee examines all complaints and recommends complaints for Investigation and Report (I & R) / Necessary Action (NA) / Filing. The complaints, where necessary action has been recommended by the Screening Committee, are referred to the concerned Branch for further action. Complaints recommended for investigation and report are sent to the concerned Branch for further action after approval of the Commission. The Commission, vide Office Order No. 4/2/09 dated 27.02.2009, has prescribed a period of one month from the date of receipt of reference of the Commission for submitting report to it.

- (g) The complaints, where necessary action has been recommended by the Screening Committee, are referred to the concerned Branch for further action. Complaints recommended for investigation and report are sent to the concerned Branch for further action after approval of the Commission. The Commission, vide Office Order No. 4/2/09 dated 27.02.2009, has prescribed a period of one month from the date of receipt of reference of the Commission for submitting report to it.

3. PROTECTION TO WHISTLEBLOWERS

- 3.1. According to the PIDPI Resolution, following provisions have been made for protection of Whistle Blowers:-
- (a) Clause 6 - If any person is aggrieved by any action on the ground that he is being victimized due to the fact that he had filed a complaint or disclosure, he may file an application before the designated agency (CVC) seeking redress in the matter, who shall take such action as deemed fit. The designated agency may give suitable directions to the concerned public servant or the public authority as the case may be.
 - (b) Clause 7 - Either on the application of the complainant, or on the basis of the information gathered, if the designated agency is of the opinion that either the complainant or the witnesses need protection, the designated agency shall issue appropriate directions to the concerned Government authorities.
 - (c) Clause 11 - In the event of the identity of the informant being disclosed in spite of the designated agency's directions to the contrary, the designated agency is authorised to initiate appropriate action as per extant regulations against the person or agency making such disclosure.
- 3.2 The Commission, after receipt of representation(s) from Whistle Blowers about threat to their life, takes up the matter with the Ministry of Home Affairs, the Nodal Agency, to undertake the responsibility of providing security cover to the genuine Whistle Blowers. On the advice of the Ministry of Home Affairs, State Governments / UTs have appointed Nodal Officers and details of such officers nominated by State Governments are furnished to the Commission from time to time by the Ministry of Home Affairs.
- 3.3 As regards protection against victimisation or harassment within the Department, the Commission forwards such complaints of Whistle Blowers to the CVO of the concerned organisation for appropriate action.

4. SUPERVISION AND MONITORING OF DESIGNATED AUTHORITY

Keeping in view the Clause 11A of Resolution dated 14.08.2013 (amendments to its earlier PIDPI Resolution) which says that the Commission shall supervise and monitor the complaints received by the designated authority, a report on PIDPI complaints including cases of alleged harassment / victimisation received by the Chief Vigilance Officers of the Ministries or Departments of the Government of India are required to be sent to the Commission by the CVOs of the Ministries/ Departments.

5. WHISTLE BLOWERS ACT

The Whistle Blowers Protection Act, 2011 (originally introduced as PUBLIC INTEREST DISCLOSURE AND PROTECTION OF PERSONS MAKING THE DISCLOSURE BILL 2010) has been notified on 12.05.2014. However, the provisions of the Act have not come into force as some amendments to the Act were proposed and a bill to this effect is pending before the Parliament.

Chapter II

Preventive Vigilance

1. THE CONCEPT OF PREVENTIVE VIGILANCE

- (i) Concept: It is adoption of a package of measures to improve systems and procedures to eliminate / reduce corruption, promote transparency and ease of doing business.
- (ii) Who is required to implement preventive vigilance measures? Preventive vigilance involves systemic improvements which besides reducing corruption also lead to better operational results. It is a tool of management and good governance and therefore, it is the duty of the management as a whole, and not of the CVO alone. Indeed, it can be said that it is the duty of every employee.

2. CAUSES OF CORRUPTION:

Preventive vigilance is aimed at identifying, tackling / addressing the root cause of corruption within the organisation. The common causes of corruption, inter alia, could be:

- (a) Excessive regulation & licensing.
- (b) Complicated rules and regulations.
- (c) Monopoly over delivery of goods / services.
- (d) Lack of transparency.
- (e) Lack of accountability.
- (f) Too much discretionary power.
- (g) Poor regulatory framework.
- (h) Poor grievance redressal mechanism.
- (i) Very low rate of detection of corruption.
- (j) Lack of condemnation of corrupt practices by the public.
- (k) Absence of a formal system of inculcating values, ethics & integrity.
- (l) Inadequacy of regular / periodic / surprise checks.
- (m) Rigid bureaucratic framework / processes.
- (n) Lack of awareness about rights, duties, procedure to complain, rules, laws, etc.

3. POTENTIAL AREAS OF CORRUPTION

Preventive vigilance is aimed at tackling the areas vulnerable to corruption within the organisation. Although potential areas of corruption

are specific to organisations / sectors, there are some broad areas common to all organisations, which need special attention while putting in place a system of preventive vigilance. These relate to: -

- (a) **Procurement:** Procurement is a vast area ranging from procurement of store materials & services to execution of infrastructure projects. It is one of the major corruption prone areas in all organisations.
- (b) **Sale of goods and services:** The disposal of goods (the reverse of procurement) and services is also a major area of corruption in some organisations. Similarly, allocation of scarce and / or precious natural resources is an area of corruption.
- (c) **Human resource management:** Human resource management is common to all organisations and the processes relating to recruitment, promotion, transfer and posting are prone to manipulation and corruption.
- (d) **Delivery of services to public:** Although not common to all Public Sector Organisations, major Government Departments are involved in delivery of services which are a potential area of corruption.
- (e) **Enforcement:** The enforcement of Acts, Rules and Regulations is also an area vulnerable to corruption mainly due to lack of awareness among citizens and ineffective grievance redressal mechanism.

4. PREVENTIVE VIGILANCE MEASURES:

Preventive vigilance measures can broadly be categorized as: -

(a) Simplification and standardisation of rules:

Simplification and standardisation of rules and procedures results in elimination of discretion and arbitrariness, which in turn reduces corruption. Identifying areas involving exercise of discretion which are not governed by guidelines together with a complete review of existing rules and regulations needs to be undertaken to introduce clarity and accountability. Similarly, simplification and standardisation of forms / application also reduces scope for corruption.

(b) Leveraging technology:

Technology as an enabler for fighting corruption has been effectively demonstrated. E-procurements, E-payments, use of websites for dissemination of information and creating awareness, use of CCTV in places of public dealing, use of GPS enabled devices / RFIDs, use of appropriate analytical tools, computer assisted audit techniques for detecting frauds are examples of how technology strengthens the system of preventive vigilance.

(c) Automation:

Using IT as an enabler for reducing corruption along with business process re-engineering is recognized as an effective tool of preventive vigilance. Automation reduces interface / interaction between public officials and common public. It also removes monopoly in delivery of services and personal discretion, reducing the opportunities for discretion thus leading to reduction in corruption. Therefore, the organisations should strive to reduce interface of officials with common public / customers by way of automation / online services. However, IT systems are not an end in themselves; they are the means to an end. It follows therefore that there is a need to develop a system of alerts as also a response mechanism.

(d) Business Process Re-engineering (BPR):

BPR is very important as it helps the organisations rethink how they do their work and in the process, encourages a full-scale re-creation of processes in order to meet the objectives of the organisation. Existing processes may be re-engineered to even prevent leakage of revenue.

(e) Transparency:

Transparency removes the information gap between the public and public officials which in turn reduces corruption. The website of the Department / Organisation should contain rules & regulations, contact details of officials and all other information useful for common public / customers.

(f) Accountability:

There is no fear of punitive action due to lack of accountability. A system with clear accountability and assigned responsibility at each level is necessary not only for smooth functioning but increased transparency, efficiency and for ensuring effective punitive action in case of misconduct.

(g) Control & Supervision:

Regular and routine inspections, surprise inspections, audit and reviews keep a check on aberrant and corrupt behaviour. A list of points and areas prone to corruption will facilitate the purpose of organising checks and streamlining procedures. A structured interaction between vigilance and internal audit will enable better monitoring and also help identify potential problem areas.

(h) Early detection of misconducts:

Early detection of misconducts apart from bringing to light the damages to the system, will enable recouping the loss wherever possible and facilitate control of further damage.

(i) Time-bound and effective punitive action:

Punitive (disciplinary or criminal) action within short period of occurrence of misconduct and finalisation of such cases in a time-bound manner resulting in award of exemplary and adequate (commensurate with gravity of misconduct) punishment deters others from committing such misconduct. Delays and inefficiencies in such proceedings encourages and emboldens others to take risk of committing misconduct under the belief that nothing would happen to them.

(j) Providing necessary infrastructural facilities:

Non-provision of adequate infrastructural facilities such as accommodation, conveyance, utilities, etc. also induce corruption.

(k) Training & Awareness:

Capacity building and sensitization at all levels and across all functional areas is important. Public officials should be made aware of their duties and responsibilities, code of conduct, rules and regulations through regular training and awareness programmes. A list of Dos & Don'ts for employees / officials is a simple yet effective tool. Likewise, familiarization with Standard Operating Procedures relating to different spheres of activity will enhance awareness and reduce procedural violations / inadvertent errors arising out of a lack of awareness. Knowledge sharing initiatives such as publishing / circulating information relating to areas where fraud / misconduct has been detected and sharing information on best practices are other effective awareness generation methods for more effective preventive vigilance. There should also be an effort to create awareness among all stakeholders.

(l) Conducive work environment:

Conducive work environment for preventive vigilance may include drawing up a list of sensitive posts, rotation policy for sensitive posts, identification of persons of doubtful integrity and keeping them away from sensitive posts / public dealing. It would be necessary also to create an environment that promotes ethical behaviour. Protection to Whistle Blowers must be ensured in order to bring to light cases of corruption.

(m) Awareness among public:

If public is made aware of their rights, and also of the rules and regulations, then they are able to resist unfair treatment and arbitrary behaviour by public officials. Public should be encouraged to demand the services due to them and to raise their voice when their rights are denied or powers are misused by public officers. Organisations should prominently display information relevant / useful to the common public on their office notice board / website.

(n) Inculcating Moral Values:

Inculcating ethical behaviour among public, particularly the younger generation is an important tool of preventive vigilance. Vigilance Awareness Week (VAW), celebrated every year during the last week of October is aimed at creating such awareness. This opportunity should be utilized by all CVOs / Organisations to create awareness among public as well as among its own officials regarding need for imbibing right values.

5. INTEGRITY PACT

Integrity Pact (IP) is an important tool of preventive vigilance which is aimed at preventing corruption and ensuring integrity in public procurement. The Central Vigilance Commission is the nodal authority for the implementation of Integrity Pact in India. It addresses not only bribery, but also other corrupt practices such as collusion and bid rigging. IP is a written agreement between the Government / Government Department / Government Company, etc. and all the bidders agreeing to refrain themselves from bribery, collusion, etc. If the written agreement is violated, the pact describes the sanctions that shall apply. These include:-

- (i) Loss or denial of contract;
- (ii) Forfeiture of the bid or performance bond;
- (iii) Liability for damages;
- (iv) Exclusion from bidding on future contracts (debarment); and
- (v) Criminal or disciplinary action.

5.1. Integrity Pact has a monitoring system which provides for independent oversight. The Central Vigilance Commission nominates Independent External Monitors (IEMs) to monitor implementation of Integrity Pact. Thus, IP in its present form has three players –

- (i) The Principal or the Company / Department,
- (ii) The Vendor, and
- (iii) The Independent External Monitor (IEM)

5.2. Adoption of Integrity Pact–Standard Operating Procedure; Independent External Monitor:

The Commission has issued a revised Standard Operating Procedure for adoption of Integrity Pact in Government Departments / Organisations. The salient points are as under:

(A) Integrity Pact

- (1) 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:

- (a) Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- (b) Principal to treat all bidders with equity and reason;
- (c) Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- (d) Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- (e) Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC Act or IPC;
- (f) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- (g) Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary;
- (h) Bidders to disclose any transgressions with any other company that may impinge on the anti-corruption principle.
- (i) Integrity Pact, in respect of a particular contract, would be operative from the date IP is signed by both the parties till the final completion of the Preventive Vigilance contract. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

(B) Implementation procedure

- (a) As stated in Department of Expenditure O.M. dated 20.07.2011, Ministries/ Departments may, in consultation with the respective Financial Adviser and with the approval of the Minister-in-Charge, decide on and lay down the nature of procurements / contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions / contracts concluded by them or their attached / sub-ordinate offices.
- (b) The above provision is also applied for procurements made by autonomous bodies for which also the concerned administrative Ministry / Department may lay down the nature of procurements / contracts and the threshold value above which the Integrity Pact would be used.

- (c) The provision for the Integrity Pact is to be included in all Requests for Proposal / Tender documents issued in future in respect of the procurements / contracts that meet the criteria decided in terms of subpara (a) and (b) above.
- (d) Tenders should specify that IEMs have been appointed by the Commission. In all tenders, particulars of all IEMs should be mentioned instead of nominating a single IEM in the tender as far as possible.
- (e) The purchase / procurement wing of the organisation would be the focal point for the implementation of IP.
- (f) The Vigilance Department would be responsible for review, enforcement, and reporting on all related vigilance issues.
- (g) 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.
- (h) IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organisation. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.
- (i) Periodical Vendors' meets, as a familiarization and confidence building measure, would be desirable for a wider and realistic compliance of the principles of IP.
- (j) A clause should be included in the IP that a person signing IP shall not approach the Courts while representing the matters to IEMs and he / she will await their decision in the matter.
- (k) In case of sub-contracting, the principal contractor shall take the responsibility of the adoption of IP by the sub-contractor.
- (l) Information relating to procurements / contracts covered under IP and its progress / status would need to be shared with the IEMs on monthly basis.
- (m) The final responsibility for implementation of IP vests with the CMD/ CEO of the organisation.

(C) Role and Duties of IEMs

- (a) The IEMs would have access to all contract documents, whenever required.
- (b) It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organisation on a quarterly basis including an annual meeting to discuss / review the information on tenders awarded during the previous quarter. Additional sittings, however, can be held as per requirement.

- (c) The IEMs would examine all complaints received by them and give their recommendations / views to the Chief Executive of the organisation, 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. IEMs are expected to tender their advice on the complaints within 10 days as far as possible.
- (d) The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. 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 organisation.
- (e) Issues like warranty / guarantee, etc. should be outside the purview of IEMs.
- (f) A person acting as an IEM shall not be debarred from taking up other assignments such as consultancy with other organisations or agencies subject to declaring that his / her additional assignment does not involve any conflict of interest with existing assignment. In case of any conflict of interest arising at a later date from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse himself / herself from that case.
- (g) In case of any misconduct by an IEM, the CMD / CEO should bring it to the notice of the Commission detailing the specific misconduct for appropriate action at the Commission's end.
- (h) The role of the CVO of the organisation 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 / her or directed to him / her by the Commission.

(D) Appointment of IEMs

- (a) The IEMs appointed should be eminent personalities of high integrity and reputation. The Commission would invite applications from willing interested persons and maintain a panel of persons eligible to be appointed as IEM. The Commission may make independent and discreet background check before including a name in the panel.
- (b) The choice of IEM should be restricted to officials from the Government and Public Sector Undertakings who have retired from positions of the level of Additional Secretary to the Government of India and above or equivalent pay scale, and for Public Sector Undertakings, Board level officers and above in

Schedule 'A' Companies, Public Sector Banks, Insurance Companies and Financial Institutions. Officers of the Armed Forces who have retired from the rank equivalent of Lt. General and above may also be considered for appointment.

- (c) For appointment as IEM, the Organisation has to forward a panel of suitable persons to the Commission. This panel may include those who are in the panel maintained by the Commission or they may propose names of other suitable persons for appointment as IEM. While forwarding the panel of suitable persons, the Organisation would enclose detailed biodata in respect of all names proposed. The details would include postings during the last ten years 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.
- (d) The Commission would not consider the name of an officer / executive who is either serving or who has retired from the same organisation to be an IEM in that organisation, although they may have served in the top management.
- (e) A maximum of three IEMs may be appointed in Navratna PSUs and a maximum of two IEMs in other Public Sector Undertakings, Public Sector Banks, Insurance Companies and Financial Institutions.
- (f) A person may be appointed as an IEM in a maximum of three organisations at a time.
- (g) The appointment of IEM would be for an initial tenure of three years and could be extended for another term of two years on a request received by the Commission from the organisation appointing the IEM. An IEM can have a maximum tenure of 5 years in an organisation with an initial term of three years and another term of two years.
- (h) Age should not be more than 70 years at the time of appointment / extension of tenure.
- (i) Remuneration payable to the IEMs by the organisation concerned would be equivalent to that admissible to an Independent Director in the organisation and in any case, should not exceed Rs. 20,000/- per sitting. Remuneration being paid to existing IEMs may not be changed to their detriment for the duration of their tenure.
- (j) The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. This may be communicated individually to the IEMs concerned.

(E) Review System

All organisations implementing IP would undertake a periodical review and assessment of implementation of IP and submit progress reports to the Commission. CVOs of all organisations would keep the Commission posted with the implementation status through their annual reports and special reports, wherever necessary.

(F) Advisory

All organisations 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.

(G) Empanelment as IEM

The Scheme for empanelment of persons for appointment as Independent External Monitors (IEMs) is described in detail in CVC Circular No. 015/VGL/091 dated 13.01.2017.

(H) The role of CVO

The role of CVO of the organisation 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, 2003 or of the Vigilance Manual. (CVC Office Order No. 41/12/07 dated 04.12.2007)

6. INTEGRITY INDEX

6.1. Commission is working on the development of a Comprehensive Integrity Index for organisations. It will be launched shortly. Through the Integrity Index for public organisations the Central Vigilance Commission has decided to adopt a strategy which will ensure transparent, accountable and efficient governance. The Index will be based on bench marking internal processes and controls within an organisation as well as management of relationship and expectation of outside stake holders. The main objectives for which the Integrity Index is to be established are:

- (i) Define what constitutes Integrity of Public Organisations
- (ii) Identify the different factors of Integrity and their inter-linkages
- (iii) Create an objective and reliable tool that can measure the performance of organisations along these above factors
- (iv) Validate the findings over a period of time to improve upon the robustness of the tool that measures Integrity
- (v) Create an internal and external ecosystem that promotes working with Integrity where public organisations lead the way.

- 6.2. The Commission has appointed Indian Institute of Management, Ahmadabad as a Consultant for a period of one year to develop the Integrity Index. Based on the survey and extensive consultation with the organisation, the Consultant will:
- (i) Provide a benchmark of good governance mechanisms needed to combat corruption.
 - (ii) In the preparation of the index effort will be made to check the existence of rules, SOPs and transparency mechanisms designed to deter, prevent or curb corruption and their implementation and enforcement.
- 6.3. The project is designed to cover all the CPSEs and Central Government Ministries / Departments in five years. It is expected that while expansion will take place in the first 2-3 years, the mechanism will stabilise in 2-3 years following that.
- 6.4. In the first year, the Commission has identified 25 CPSEs and Central Government Ministries / Departments to be covered.
- 6.5. The organisation in consultation with the consultant will be required to collect data from the internal and external stake holders, conduct workshops and surveys to gather information, evaluate and bench mark the organisations against the Index so developed.

Chapter III

COMMON IRREGULARITIES IN PUBLIC PROCUREMENT

General irregularities:

In course of Intensive Examinations, a number of irregularities and lapses in the award and execution of the works / stores / purchases have been observed. Some of the areas of concern where irregularities in procurement cases have been observed on regular basis are as follows:

(i) Improper estimation of cost:

Cost estimation without due regard to detailed specifications; site conditions and other procurement specific requirements; without due reference to market survey, appropriate last accepted rates, inputs cost analysis for the tendered item. It may result in incorrect decisions in respect of cost-benefit analysis, fund requirement assessment, competent authority for project sanction and assessment of rate reasonableness of the price bids.

(ii) Engagement of consultant:

Engagement of the consultant on nomination basis and, at times, without due regard to its competence in view of specific nature of the procurement and other technicalities; over dependence and lack of scrutiny and appreciation, with due diligence, of the advice tendered by the consultant, in spite of availability of inhouse expertise; agreement with consultant lacking in specifics regarding deliverables and performance related payment.

Guidelines in connection with the selection of consultants have been issued by the Commission as follows- (i) CVC Circular No.3L PRC 1 dated 12.11.1982 (ii) CVC Circular No. 3L -IRC 1 dated 10.01.1983 (iii) CVC Circular No.OFF-1-CTE-1 dated 25.11.2002 reiterated its previous guidelines and listed out commonly observed lapses / irregularities. (iv) CVC Circular No. 98 / DSP / 3 dated 24.12.2004 clarified that Consultants and any of its affiliates who are engaged for the preparation or implementation of a project, should be disqualified from participating in subsequent tenders for providing goods or works or services related to the initial assignment for the same project.

(iii) Bid eligibility conditions:

Deviation from the laid down instructions on the subject either due to ignorance or vested interest, making eligibility criteria either too lax or restrictive; at times, eligibility conditions fail to address specific requirements of procurement deliverables, by way of proper

assessment of the capacity-cum-capability of the prospective bidders.
Vigilance Manual 2017 259 Chapter - IX Chief Technical Examiners' Organisation

(iv) Bid evaluation criteria:

Bid evaluation criteria, i.e. attributes of the prospective bidders and the bids, to be weighed into consideration while looking at the suitability of the bids, are decided without due regard to the nature and performance of the procurement agreement; not brought out, at times, upfront in transparent manner. Marking scheme, i.e., bench marking of measurable parameters, correlated to the desirable attribute, is not brought out in fair and transparent manner in the NIT.

(v) Verification of the credentials submitted by the bidders:

Verification of documents, submitted by the bidders in support of their credentials, is not undertaken with due diligence, making a reference back to the document issuing authority, before adjudging suitability of an offer and arriving at a decision as to the successful tenderer /s for award of contract.

(vi) Participation by JVs:

Just to meet the requirements of the bid eligibility conditions, constituent firms of a joint venture, join together in a loose manner without bringing out specific credentials and roles to be played by each one of them in contract execution; at times, the constituent firm signing the contract or the employer may really not have legally binding power to ensure that all the JV partners play their respective roles, at the time of contract execution, as envisaged while evaluating the bids. In an endeavour to introduce system improvements to avoid recurrence of different lapses / irregularities and to achieve better technical and financial control in the execution of contracts, instructions highlighting the lapses / irregularities in different types of procurement contracts, as observed in course of Intensive Examinations, have been issued and are as referred in following paras.

IT Procurement:

IT related procurement cases consist of contracts for procurement of only hardware, only software or software & hardware together. While procuring computer systems, it is advisable to go for generalized specifications and not to specify the international brands. Such practice vitiates the guidelines for open tender system laid down in General Financial Rules and deprives other brands including domestic manufacturers of an opportunity to participate in the tender. Government procurement entities also need to ensure that they receive desktop computers, personal computers made of genuine parts and not those made of counterfeit parts. As a first step in this direction, there is a need for all buyers to insist on signed undertaking

from appropriate authority of the system OEM, certifying that all the components of the parts / assembly / of the software used in the supplied item are original/ new components / parts / assembly / software and that no refurbished/ duplicate / second hand / components / parts / assembly / unauthorised software have been used; it should also be ensured that IT items are supplied in factory sealed boxes, with system OEM seal, to ensure that contents are not changed en-route.

In the procurement cases, through turn-key contracts, for networking of computer systems, necessary care should be taken to ensure that unrelated products which are either not required or which can be procured separately, in stand-alone mode, at a much lower cost, are not included in the networking system.

In case of procurement of proprietary IT related items, extant instructions, on the subject of procurement through single tender / proprietary article certificate, are required to be followed. With ever increasing emphasis on use of IT by Government organisations, several instances of malpractices and irregularities were observed in the procurement contracts of IT & related products.

Accordingly, the Commission issued instructions vide following Circulars- (i) No. 000/VGL/14 dated 06.03.2000 (ii) No. 98/ORD/1 dated 05.05.2003 (iii) No. 004/ORD/8 dated 03.11.2004, and (iv) No. 007/CRD/008 dated 15.02.2008

Chapter IV

Check list for public procurement process:

The compendium of checkpoints in public procurement for the purpose of ensuring fairness, equity and transparency is issued by CTEO. This check list is illustrative and intended to serve as a guide to executives dealing with procurement or vigilance activities.

1. Scope of Work :

It is important for any scheme that the scope of work is properly defined. A well defined scope of work giving an overview of the proposed procurement needs to be put up to the Competent Authority at the time of seeking approval/sanction. The objective of the procurement needs to be clearly brought out in the scope.

2. Administrative Approval & Expenditure Sanction (AA & ES) :

2.1. Administrative Approval & Expenditure Sanction is an important component of procurement process. This provides an opportunity to the Competent Authority to have a comprehensive overview of the project. If the scheme is approved by the Competent Authority, suitable provision for expenditure to be incurred on the project is also to be made at this stage. There are situations, where projects/scheme is sanctioned by the authority, who is not competent.

Following check-points are suggested:

- i. Whether 'Feasibility Study' has been done before formulating the project?
- ii. Whether, proposal for A/A&E/S has been prepared after considering aspect of mandatory clearances such as Environmental, Land Use etc.?
- iii. Whether A/A&E/S is based on proper estimate?
- iv. Whether administrative approval and expenditure sanction has been accorded by the Competent Authority?
- v. Whether the authority, which accorded the administrative approval and expenditure sanction is competent to do so or not as per the delegation of power?
- vi. Whether necessary budget provision has been made for the instant project or not?
- vii. Whether scope of work in the instant contract matches with corresponding provision in the A/A&E/S?
- viii. Whether there is any excess expenditure over the corresponding sanctioned amount?

- ix. Whether in case of excess expenditure or change in scope, approval of the Competent Authority has been taken?

3. Consultancy :

3.1. The consultant should be appointed in a transparent and competitive manner for need based and specialized jobs. The agreement should contain adequate provisions for penalizing the defaulting consultant keeping in view the fact that a consultant's role is only advisory and recommendatory. Consultant's fee should be based on some fixed value of the contract. Following check-points are suggested:

- i. Whether guidelines for appointment of consultants are in place in the organization?
- ii. Whether the guidelines are updated regularly or not and when were these last updated?
- iii. Whether the guidelines for appointment of consultants are covering various aspects of the consultancy contracts such as provision of 'Professional Liability', upper ceiling of consultancy fee, work performance linked payment, penal clauses for frequent change of staff, penal clauses for deficiency in services, clauses to deal with professional misconduct, penal clauses to deal with delay in services etc.?
- iv. Whether the qualifying requirement fixed for the selection of the consultant is commensurate with the importance and size of the project? v. Whether the qualifying requirement is unambiguous and also fixed before inviting the offers for the consultancy work?
- vi. Whether wide and adequate publicity including web-publicity has been given for inviting the offers for the consultancy work?
- vii. In case of limited tender enquiry, whether the panel has been prepared in a fair and transparent manner or not? Whether this panel is being updated regularly or not?
- viii. Whether the bid(s) are in conformity with the terms of the tender document?
- ix. Whether the evaluation of the bids is done as per the notified qualifying criteria and all bidders are treated at par?
- x. Whether all the issues relating to the services tax, professional tax traveling allowances etc. are taken into account at the time of bid evaluation?
- xi. Whether during performance of the consultancy contract, the contract conditions are being complied with?
- xii. Whether the quality of project management by the Project Management Consultant is up to the mark?

4. Detailed Project Report (DPR)/Detailed Estimate :

Successful contract performance depends on the quality of Detailed Project Report (DPR). If DPR is prepared on ad-hoc basis not based on site conditions, there is likelihood of delays and deviations resulting in time and cost overrun. It is imperative for trouble free execution of the contract that there is consistency among schedule of items, drawings and specifications. Any such ambiguity and inconsistency adds to time and cost overrun of the project besides leading to legal complications. Poor DPR leaves opportunity for the contractor to exploit the situation and gain profits out of ambiguity in the contract. Designing of the products/structures of a Project is one of the most important activities in the project formulation. It is important that structures are designed using the latest codal provisions and latest engineering practices. Following check-points are suggested:

- i. Whether detailed site investigation has been carried out before finalizing the items/materials and their corresponding quantities to be used in the project?
- ii. Whether proper specification suiting to the site conditions have been selected or not?
- iii. Whether all the items required for successful completion of the project has been taken into account?
- iv. Whether there is consistency among description of items in 'schedule of items' / bill of quantities, drawings and specifications?
- v. Whether rates supported with proper documents (genuine market rate quotations or standard schedule of rate) have been considered in the preparation of the estimate?
- vi. Whether detailed analysis of rate has been carried out before arriving at the rate of a particular item?
- vii. Whether DPR has been reviewed as a whole to assess its conformity with local bylaws, Archaeological Survey of India guidelines, environmental norms, to other mandatory regulations or otherwise by an independent agency or in-house?
- viii. Whether the structural design has been proof checked by an independent agency or in-house?

5. Design and Drawings :

Designing of products/structures/service modules is an important aspect of any procurement. It is important that various elements of the project are scientifically designed using the latest practices and should be economically efficient. Design should suit to the prevailing site conditions. Similarly drawings should be prepared indicating all necessary details leaving no room for ambiguity. Following check-points are suggested:

- i. Whether proper design has been carried out considering the relevant parameters prevailing at site?
- ii. Whether design has been proof checked?
- iii. Whether any deficiency is observed in the design?
- iv. Whether any review of the design has been done! If so, reasons for the same?
- v. Whether 'good for construction' drawings contain all necessary elements?

6. Tender Document :

The tender after acceptance becomes the contract- a legal document. An ambiguous agreement leads to poor contract performance and litigations. It also gives an opportunity to a contractor to make profit out of ambiguous conditions. It has been observed that often the tender document is prepared in a hurried manner without checking for consistency among Schedule of Items, Drawings, Specifications and Contract Conditions etc. This can happen due to different parts of the tender document like Schedule of Quantities, Specifications, Drawings and General Conditions etc. being prepared by different set of people without correlating them. Sometimes they are copied from old tender cases without giving a thought to the applicability of the conditions to the present work. Following check-points are suggested:

- i. Whether complete tender document containing General/ Special Conditions of Contract, specifications, Bill of Quantities, all Addendums etc. is approved by the Competent Authority?
- ii. Whether standard approved tender document has been used? If not, whether the tender document would be legally sustainable?
- iii. Whether all the prevailing guidelines of Govt./CVC organization have been made part of the tender document?
- iv. Whether relevant modality to deal with any ambiguity in the bid has been provided in the tender document?
- v. Whether all the documents/drawings stated to have been attached with the tender documents have actually been attached or not?
- vi. Whether proper place of tender receipt has been notified in the NIT or not?
- vii. Whether the provision of additional bank guarantees or other securities have been made in case of bid being unbalanced or front-loaded?
- viii. Bank Guarantees from Nationalised Banks only should be accepted. Under no circumstances bank guarantees from Co-operative Banks should be accepted?

7. Pre-qualification :

The success of a project largely depends on the capability of the contractor/vendor. Prequalification is a process to select competent contractors having technical and financial capability commensurate with the requirements of the particular procurement (work/supply of goods/hiring of services). The pre-requisites of pre-qualification process are: -Transparency -Fairness -Maintenance of fair competition. The Commission had issued guidelines advising the organizations to frame the pre-qualification criteria in such a way that it is neither too stringent nor too lax to achieve the purpose of fair competition. During intensive examinations of the works of the organizations dealing with the power projects, following deficiencies were observed:

Stringent PQ Criteria resulting in poor competition.

- Unduly restrictive criteria, creating entry barrier for potential bidders.
- Evaluation criteria not notified to the bidders, making the PQ process non-transparent.
- PQ Criteria relaxed during evaluation, thus creating entry barrier to the other potential

bidders fulfilling the relaxed criteria.

- Credentials of the bidders not matched with the notified criteria
- Credentials of the bidders not verified.
- Following check-points are suggested:
 - i) Whether there are proper guidelines on pre-qualification of contractors/suppliers in the procurement manual of the organization?
 - ii) Whether pre-qualification criteria for the instant procurement has been framed objectively commensurate with importance and size of the project/procurement?
 - iii) Whether the pre-qualification criteria was frozen before inviting pre-qualification bids?
 - iv) Whether the pre-qualification criteria has been approved by the Competent Authority as per the provision in the procurement manual of the organization?
 - v) Whether there is any deliberate attempt to make the pre-qualification criteria suiting to particular bidder(s)?

8. Inviting & Opening of Tenders :

The award of Public Contract through open tender is to ensure - transparency in public procurement, to maximize economy and efficiency in public procurement, to promote healthy competition among tenderers, to provide for fair and equal treatment to all the tenderers and to eliminate irregularities, interference and corrupt

practices by authorities concerned. This is also required by the Article 14 of the Constitution of India.

Normally three modes of tendering are adopted, Namely: 1) Open Tenders 2) Limited Tenders 3) Single Tender/Nomination Basis

In an open tender, bids are invited giving wide and adequate publicity. This is the most preferred mode of tendering. In the case of small value works, urgent works and in case only a few bidders are available in the market, limited tenders from such bidders who have been empanelled are invited. In case of Limited Tenders the empanelment should be done in a transparent way and updated periodically. Award of contracts on nomination basis, which is also called a single tender is to be resorted to only under exceptional circumstances such as natural calamities and emergencies or there were no bids to repeated tenders or where only one supplier has been licensed (proprietary item) in respect of goods sought to be procured.

Widest possible publicity is essential for greater transparency in open tenders. In addition to the existing rules and practices regarding publicity, the Commission vide their circular has instructed for up loading the Notice Inviting Tender and also tender documents in a down loadable form on the web site. The web site publicity is to be given even in the case of limited tenders.

Following check-points are suggested:

- i. Whether proper publicity has been given to the tender as per the guidelines of the organization? 1
- ii. Whether the guidelines of the organization for publicity of the tender are adequate?
- iii. Whether NIT has been posted on the organization's website?
- iv. Whether place of tender receipt as notified in the NIT is conspicuous?
- v. Whether the committee to open the tenders has been duly notified by the Competent Authority?
- vi. Whether the tenders are opened in presence of the bidders or their authorized representatives?
- vii. Whether cutting/overwriting /insertions are accounted for on each page of the price bid?
- viii. Whether the members of the Tender Opening Committee have signed on each page of the price bid?

9. Tender Evaluation and Award of Work :

This is the most sensitive area susceptible to corruption. Corruption is inversely proportional to transparency and fairness. To ensure that evaluation is done in most transparent, fair & open manner, following

points should be taken care of. Evaluation of tenders needs to be done as per pre-notified criteria.

- Timely decision within validity period
- Complying with commission's circular regarding negotiations.
- Ensuring that conditions / specifications are not relaxed in favour of contractor to whom the work is being awarded.

Ensuring that L1 is not ignored on flimsy grounds.

- Compliance with the purchase preference policy of the govt.
- Ensuring that work order / supply order is placed within justified rates.

Following check-points are suggested:

- i. Whether the Tender Evaluation Committee has been duly notified by the Competent Authority?
- ii. Whether members of the Tender Evaluation Committee are competent enough to deal with the subject matter?
- iii. Whether the bids are evaluated as per the terms of the tender document or not?
- iv. Whether the tender evaluation committee has commented upon the aspect of the bid being unbalanced or front-loaded?
- v. Whether ambiguity clause has been properly applied to deal with any inconsistency in the bid during evaluation?
- vi. Whether there has been any inordinate delay in processing the tender for award of the work?

10. Contract Agreement :

During course of technical examination of various contracts by CTE's Organisation, it was observed that officials, who are otherwise expert in their own technical domain, do not go through the complete contract document. During performance of the contract, their main focus could be on BOQ/specifications for various items. In other words, at times, the officials are more concerned with the technical aspects of the contract and as such, other important contract provisions, which are also essential for smooth operation of contract, get ignored. The contractors/vendors tend to take advantage of the ignorance of the officials for their benefit. Many a times, major financial irregularities occur during the performance of the contract because of the officials not being thorough with the contract conditions/provisions. Besides quality, timely completion of the work is also the essence of the contract. While examining the correspondence files of some power projects, it was observed that many projects get unduly delayed due to contractor's fault such as non deployment of adequate plant & machinery, technical staff, material, labour etc. Officials have been

found wanting in their action against the contractors/suppliers. Such actions in many cases lead to recoveries from the contractors/suppliers. In some projects, it was further observed that 'Extension of Time' was granted without claiming compensation i.e. 'Liquidated Damages', ignoring correspondence that could pin the delay to the account of contractor. Following check-points are suggested.

- i. Whether proper agreement between the organization and the contractor / supplier has been entered into within the prescribed period or not?
- ii. Whether the contract agreement containing all the relevant papers has been properly sealed or not?
- iii. Whether irrelevant documents/papers have been made part of the agreement?
- iv. Whether various contract provisions such as labour laws, insurances, guarantees etc. are being complied by the contractor or not?
- v. Whether action has been taken against the contractor for non-compliance of the contract conditions?
- vi. Whether the payment is being made to the contractor strictly as per the contract?
- vii. Whether any overpayment/inadmissible payment?
- viii. Whether Bank Guarantees submitted by the contractor/supplier have been duly verified for their genuineness from the issuing bank?
- ix. Whether action has been taken/proposed against the contractor/supplier for delay?
- x. Whether the work is being carried out as per the detailed procedure/protocol for quality of the material/product provided in the contract and in case of any deviation, whether approval of Competent Authority highlighting the financial implication has been obtained?
- xi. In case of the contractor being a Joint Venture of two or more firms, whether representatives are being shared by each of the partner as per their disclosure at the time of bidding?
- xii. Whether sub-contracting of the work is allowed in the contract and if so to what extent? Proposal for sub-contracting should be scrutinised scrupulously to assess the competence of the sub-contractor. Indiscriminate sub-contracting that too the inexperienced/incompetent sub-contractors may lead to serious quality compromises besides delay in execution of the work?

11. Payment to the Contractors :

Payment to the contractors/suppliers should be made strictly as per the terms of contract. Any payment outside the contract agreement

should have proper & specific approval of the Competent Authority highlighting the need/necessity for the same as well as rule position. Various types of advances such as Mobilization Advance, Plant & Machinery Advance, Advance on Materials (Secured Advance) etc. may have been provided in the contracts, which need to be paid and recovered as per the stipulation in the contract agreement. The basic purpose of Mobilization advance is to extend financial assistance within the terms of contract to the contractor to mobilize the man and material resources for timely and smooth take off of the project or procurement of equipment material or other services contract. There could be possibility of misuse of Mobilization Advance, especially the interest free advance, either due to absence of necessary safeguards or due to non-implementation of these safeguards provided in the contracts. The Mobilization Advance so paid could be misused by the contractors either in building their own capital or for the purpose other than the one for which it was disbursed, rendering to be counter-productive. More importantly the BGs taken in lieu of Mobilization Advance need to be properly examined within respect to the acceptable format and any condition deterrent to the Govt.'s interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/encashment of BGs also needs to be taken so as to protect the Govt. interest. Similarly, Plant & Machinery Advance should be allowed only for the purchase of Plant & Machinery for the bona-fide use in the project and it should be allowed only on the production of genuine documents. Tax evasion in the procurement contracts could be another area of concern; therefore, it is necessary that tax liability of the contractors/suppliers is examined properly with reference to as per the extant instructions of the Government. Following check-points are suggested:-

- i. Whether the payment is made as per the terms of the contract?
- ii. Whether there is any possibility of duplicate payment being made to the contractor/supplier?
- iii. Whether any over payment is being made to the contractor/supplier?
- iv. Whether the rates for extra/substituted items have been derived as per the provision in the contract agreement/Procurement Manual?
- v. Whether the payment for extra/substituted items have been made after due approval of the Competent Authority?
- vi. Whether advances are paid to the contractors/suppliers for the amount specified in the contract agreement?
- vii. Whether recovery of advances is being made as per the terms of the contract agreement?
- viii. Whether recovery of mandatory taxes and duties is being done as per the extant instructions of the Government and as per the terms of the contract agreement?

- ix. Whether reimbursement of service tax, excise duty etc. is being done after obtaining the actual proof of depositing the same with authorities concerned?
- x. Some of the contracts provide escalation clause, with detailed formula in order to compensate the contractors for increase in the material cost during the contract period. Whether the formula for escalation is applied correctly or not?
- xi. Whether hire charges of Plant and Machineries are being recovered from the contractor as per the specified rate?

12. Site Records :

Records connected with the execution of the work should be maintained in a proper manner. The registers/files, wherein important data such as record of the mandatory test, record of hindrances, record of receipt and supply of materials, record of issue of drawings/design etc. are kept should be properly bound and page numbered. These records should be maintained under the signature of designated senior officials. This will guard against the possibility of manipulation/tempering of these records at any stage. Following check-points are suggested:

- i. Whether the registers are properly bound and having machine-numbered pages?
- ii. Whether the registers to keep record of important data like mandatory test, hindrances etc are being issued under the signature of designated senior officer?
- iii. Whether these records are being maintained properly with signatures and attestation of the designated officers?
- iv. Whether any tampering/manipulation is noticed in these records?

13. Site Inspection :

Site inspection is basically to assess the quality of work being carried out. All the stages discussed previously are the means, whereas the quality/quantity is the end product. One of the cardinal principles of public procurement is to procure works or goods or services of specified quality. For this purpose, detailed quality standards are stipulated in the contracts. Any compromise in the quality will not only defeat the very purpose of stipulating such elaborate quality standards, but also cause irreversible loss to public exchequer. To maintain the quality of the work, testing of the material at various stages of the work is required. The contract documents stipulate mandatory tests to be carried out for ensuring that the materials represented by the sample conform to desired quality standards. It has been observed that at times, aspect of testing at specified frequency & interval is ignored. This not only defeats the objective of

mandatory testing of input materials/products, but also gives opportunity to the contractors/manufactures/vendors to supply sub-standard materials and save on the testing charges. It needs to be examined whether the work is being carried out with the specified quality standards? Site inspection should highlight the specific quality compromises w.r.t. the benchmark i.e. specified standards/specifications rather than general observation.

14. Leveraging information technology :

The Government is promoting E-Governance to improve transparency in government functioning. As regards public procurement, the modern IT tools can be used in enhancing transparency in the form of E-Tendering, E-Procurements, E-Payments & uploading of post tender details on the website. CVC has issued instructions in this regard from time to time. Following check-points are suggested:

- i. Whether e-payment is being made to the contractors/suppliers in general in the organization?
- ii. Whether e-payment is being made in the instant contract?
- iii. If the e-payment is not being made then reasons for the same?
- iv. Whether CVC's instructions on e-tendering/e-auctions/reverse-auctions are being complied with?
- v. Whether post-tender details are being uploaded on the organization's website?

15. Integrity Pact :

As part of its endeavour to promote transparency in public procurement, the Commission has issued instructions for putting in place the mechanism of Integrity Pact. Among the important provisions in the instructions of the Commission are mandatory provision of Integrity Pact in the procurement contracts and appointment of Independent Monitors in the organisation. Following check-points are suggested:

- i. Whether the provision of Integrity Pact as approved by the Management has correctly been incorporated in the tender documents/contracts?

Chapter V

Systemic Improvements Issued by Vigilance:

1. Systemic Improvement regarding - Irregularities observed in plying of hired taxies during the Surprise Inspection.

During surprise inspection of plying of hired taxies certain observations have been noticed. It has been felt imperative to intimate these observations for the benefit of all concerns as a Preventive vigilance measure so that such lapses are not repeated in future. The observations are as under:-

1. The work was completed without signing of Contract Agreement.
2. The work of plying of hired taxies was awarded to contractor on the basis of documents of taxi which was already plying in other project. One taxi was plying on two different routes at the same time. Contractor concealed the fact deliberately and submitted the documents in respect of the same vehicle to take the work of plying of taxi.
3. The allotted/awarded taxi was not plying and execution deptt. permitted another taxi in place of taxi mentioned in LOA to be utilised on the route. Log books of the taxies were not maintained.
4. The Contractors had also concealed important facts and deployed vehicles other than the designated one.

2. Systemic Improvement in respect of adherence to Policies & Procedures for Procurement of Goods and Works & Services as laid down in THDCIL.

During the Intensive Examination of one of the work where Limited Tender amongst eight Prospective local contractors was done, it has been observed that the credentials in respect of Work Experience & Financial Strength of the bidders were neither evaluated before calling of bids nor in the tendering phase.

The Techno-commercial documents in respect of work experience and financial capabilities of the bidders are required to be evaluated after opening of Techno-commercial bids to see the capabilities of the bidders, which is of vital importance. It was overlooked by the Tender Committee. Thus, the very purpose of two part bid system of tender process was defeated. Guidelines laid down under Policies & Procedures for Procurement of Goods and Works & Services in respect of Limited Tender has not been adhered to.

It is requested that all departments of THDCIL may follow Policies & Procedures for Procurement of Goods and Works & Services as laid down by THDCIL for all mode of tendering.

3. Systemic Improvement in respect of Deployment of Man-Power in line with Contractual Provisions.

During inspections/examinations, it has been observed that requirement of deployment of Qualified Man-Power (Engineers/Surveyors etc.) as per laid down provisions of the contract agreement has not been adhered to. Since all services which are part of agreement bears direct or indirect cost component, the adherence to Contract Provisions is of vital importance.

In view of the above, it requested to take appropriate steps to improve the system so those further occurrences of this type of deviations are not repeated.

4. Systemic improvement in respect of delay in signing of Contract Agreement.

During the surprise inspection of the project sites, it has been observed that there are inordinate delays in signing of contract agreements. In this regards a letter has been received from CVO, THDCIL for systemic improvement to curb the ongoing practices of late signing of contract agreements by complying following instructions strictly:

- i. It should invariably be ensured that once the offer is found techno-financially acceptable, the work is awarded without any loss of time. All the necessary documents should be kept ready-beforehand. Further, to give the contract legal sanctity, a formal contract agreement containing all the requisite documents forming part of the agreement should be signed within reasonable time schedule/dead lines of letter of award.
- ii. As the late submission of performance guarantee amounts to giving undue advantage to the contractor by way of saving bank charges, these practices should strictly be avoided.
- iii. There should be a provision of levying a suitable penalty in the tender conditions for per day delay in signing of agreement on the contractor in case delay is attributable to him.
- iv. The activity of signing of contract agreement should invariably be made part of KRA for executives of C&MM Deptt./other Deptts. signing the agreements vis-a-vis the reasonable time schedules/deadlines given by them in their Letter of Award(s). The same shall also be monitored by the Head of Project/GM concerned.
- v. This should be the responsibility of officer(s) concerned to put up the monthly details of late signed agreements to the Head of Project as well as to Vigilance Deptt. in such a way that it should reach by 7th day of every month.

5. Systemic compliance through systemic improvements in case of Supply of Xerox make Toner & Copy / Drum Cartridge of photocopying machines.

Vigilance Department have observed certain issues of concern in the one of the case pertaining to Annual Rate Contract for Supply of Toner/Drum Cartridges of Photocopier Machines. The observations are as under:-

1. Before finalization of award of Annual Rate Contract, quantities of Toner/Drum cartridge should be properly estimated every year on the basis of requirements received from user Departments consumption during the year, availability of previous stock position in store/ administration department.
2. Despite availability of Cartridges in Central Stores, the items were ordered without taking cognizance of the available stock. The process for initiation of proposal of New Annual Rate Contract shall only be initiated after maintaining a minimum threshold balance for Toner / Drum Cartridges.
3. During scrutiny & examination of Stock Register, it has been noticed that the Toner Cartridge & Drum Cartridge in large quantity are still lying in Department, It is also worth mentioning here that the Cartridges (Toner/Drum) have specified Shelf life. In the absence of their timely use, they may get expired. Possibility of their pilferage cannot be ruled out.
4. The toner cartridge may be got issued on requirement basis from Stores Department only.

6. Procurement of Supply and Installation of Air Conditioner.

Following issues of concern have been observed during examination of the documents / files in respect of procurement of Window/ Split Air-Conditioner:-

1. The estimate was prepared on the basis of only one budgetary offer received from authorized dealer of Voltas make only. For realistic estimate, the budgetary offer should have been collected from at least three to four authorized dealers /OEM's of other equivalent makes. Tendering being Opened for all prospective bidder, the generalized specifications should have been made. Restrictive Trade Practices should always be avoided for better competition & reasonable price.
2. The requirement of such items of Administrative Nature be first collected from the Departments by issuing proper notification and be finalized in one go. It is seen from the files that the requirements of ACs keep changing during the course of procurement and number of times the case were put up to Competent Authority for Approval.
3. The Performance security have not been submitted it may be ensured that Performance Security should be deposited within schedule date as per special condition of the contract and all contract provision should be followed as per terms and condition of contract.

7. Systemic Improvement related with deployment of manpower.

During examination of one of the work, following has been observed :-

- During the inspection of work, Attendance register of manpower was not available at site.
- The manpower present at site was less than the provision of contract agreement and no initiative has been taken to depute the manpower as per contract requirement.
- The pattern of marking the Attendance indicates that Attendance of manpower has not been marked on daily basis. It appears that the marking has been done in a single day.
- Overwriting at "P" and "A" was noticed in the attendance register. No initial was done on overwriting. The Attendance register was not verified /checked by any concerned officials.

8. Systemic Improvement related with compliance of THDC Works manual as well Contract clauses.

During intensive Examination of one of the work, following has been observed:-

- Executives are not checking the measurements of work in accordance with the provisions made in THDC Works Manual.
- The Stock Register maintained at site has not been checked/verified by executive as per THDC Works Manual clause as well as Contract clause of Agreement.

The Engineer-in-charge of work will be responsible for compliance of Contract clauses of Agreement and checking of measurements of work in accordance with Work manual.

प्रतिज्ञा

हम, भारत के लोक सेवक, सत्यनिष्ठा से प्रतिज्ञा करते हैं कि हम अपने कार्यकलापों के प्रत्येक क्षेत्र में ईमानदारी और पारदर्शिता बनाए रखने के लिए निरन्तर प्रयत्नशील रहेंगे। हम यह प्रतिज्ञा भी करते हैं कि हम जीवन के प्रत्येक क्षेत्र से भ्रष्टाचार उन्मूलन करने के लिए निर्वाचन रूप से कार्य करेंगे। हम अपने संगठन के विकास और प्रतिष्ठा के प्रति सचेत रहते हुए कार्य करेंगे। हम अपने सामूहिक प्रयासों द्वारा अपने संगठनों का गौरवशाली बनाएँ तथा अपने देशवासियों को सिद्धांतों पर आधारित सेवा प्रदान करेंगे। हम अपने कर्तव्य का पालन पूर्ण ईमानदारी से करेंगे और भय अथवा पक्षपात के बिना कार्य करेंगे।

PLEDGE

We, the Public Servants of India, do hereby solemnly pledge that we shall continuously strive to bring about integrity and transparency in all spheres of our activities. We also pledge that we shall work unstintingly for eradication of corruption in all spheres of life. We shall remain vigilant and work towards the growth and reputation of our organization through our collective efforts. We shall bring pride to our organizations and provide value based service to our countrymen. We shall do our duty conscientiously and act without fear or favour.



Kosiwar Dam & Reservoir

VIGILANCE DEPARTMENT



टीएचडीसी इंडिया लिमिटेड
THDC INDIA LIMITED

(भागीदार सरकार एवं उ.प्र., सरकार का संयुक्त उपक्रम)
(A Joint Venture of Govt. of India & Govt. of U.P.)
सोडयुल 'ए' - मिनि रत्न (श्रेणी-1) पी एस ई
SCHEDULE 'A' - MINI RATNA (CATEGORY-1) PSE

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