

Section A

Coal India Executives'

CDA Rules, 1978

Coal India Executives'
**CONDUCT
DISCIPLINE
AND
APPEAL RULES
1978**

Amendements incorporated upto July, 2006

BACKDROP.....

The Conduct Discipline and Appeal Rules (CDA Rules) of CIL and its subsidiaries became effective after approval by the Board of Directors of CIL at its meeting held on 24th February 1978. Since these CDA Rules were framed in 1978.

In a review meeting taken by the Central Vigilance Commissioner with the Secretary, Ministry of Coal and the CEOs of CIL and its Subsidiary Companies on 29th August 1996, it was decided that the CDA Rules of CIL should

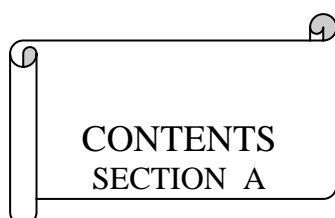
be reviewed and revised to remove certain deficiencies experienced while taking action in accordance with those Rules and also to take care of certain new provisions.

The amendments proposed after a review of CDA Rules, 1978 by CVO, CIL, in consultation with CVOs of the subsidiaries, were placed before the Board of Directors of CIL in its 172nd meeting held on 18th February 1998. The Board directed that a Committee headed by Director (P&IR), CIL should consider the amendments and submit its report. Accordingly, the Committee after taking into consideration the DPE guidelines, the Rules of other Public Sector Undertakings and various Government Departments, recommended certain amendments and additions in the CDA Rules of 1978.

A draft incorporating the proposed amendments and additions were placed before the Board of Directors in their meeting held on 24th May 1999. The Board while approving the proposed amendments in principle, gave directions on some of the issues and authorised Chairman, CIL and Director (P&IR), CIL to carry out necessary amendments in CIL CDA Rules, 1978 as would deem fit and appropriate.

Accordingly the revised CDA Rules have been finalised by Chairman, CIL and Director (P&IR), CIL on the direction given by the Board of Directors of CIL and was published by Coal India Ltd after due amendment upto April, 2000.

For a wider circulation amongst executives of Coal India Ltd, Indian Institute of Coal Management, Ranchi is reprinting the CDA Rules incorporating the amendments upto July, 2006.



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Chapter - I

GENERAL

1.0 SHORT TITLE AND COMMENCEMENT

1.1 These rules may be called **Coal India Executives Conduct, Discipline and Appeal Rules.**

They shall come into force with effect from 24th February, 1978 in supersession of the existing Conduct and Discipline Rules applicable to the executives of the Company.

APPLICATION

These rules shall apply to all employees holding posts in the Executive Cadre scales of pay of Cal India and its subsidiary companies and to such other employees as may be notified by the Company from time to time.

The employees governed by Railway Rules/Civil Rules, as the case may be, and who have been allowed by the Company to draw pay under the Central Government scales of pay, shall continue to be governed by the said rules as may be in force from time to time.

These employees may opt for Coal India Executives Conduct, Discipline and Appeal Rules, if they so wish.

DEFINITIONS

In these rules, unless the context otherwise requires:

- (a) 'Appellate Authority' means the authority specified in the schedule attached to these rules.
- (b) 'Board of Directors' means the Board of Directors of CIL provided that where special reference is made to the Board of Directors of the subsidiary company, such Board of Directors.
- (c) 'Company' means the Coal India Ltd., and includes its subsidiary companies.
- (d) 'Competent Authority' means the authority empowered by the Board of Directors of the company by any general or special order or rules to discharge the function or use the powers specified in the rule or order.
- (e) 'Disciplinary Authority' means the authority as specified in column 3 of the schedule.
- (f) 'Employee' means an officer holding a post in the executive cadre scales of pay or any other person notified by the Company, if such officer or person is employed on a whole time basis by the Company provided that such persons on deputation to the Company shall continue to be governed by these rules or the rules applicable to them in their parent organizations, as may be settled at the time of finalization of their terms and conditions of deputation.
- (g) 'Family'—In relation to an employee includes:

- (i) The wife or husband, as the case may be of the employee, whether residing with him or not but does not include a wife or husband, as the case may be separated from the employee by a decree or order of a competent court.
- (ii) Son or daughter or step-son or step-daughter of the employee and wholly dependent on him, but does not include a child or step-child who is no longer in anyway dependent on the employee or of whose custody the employees has been deprived by or under any law.
- (iii) Any other person related, whether by blood or marriage to the employee or to such employee's wife or husband and wholly dependent on such employees.
- (h) 'Public servant' shall mean and include a person as mentioned in Section 21 of the Indian Penal Code/Section 2(c) of the prevention of Corruption Act, 1988 as amended from time to time.
- (i) 'Relative'—A person shall be deemed to be a relative of another if, and only if:
 - (i) they are members of a Hindu undivided family ; or
 - (ii) they are husband and wife ; or
 - (iii) the one is related to the other in the manner indicated in Schedule-IA of the Indian Company's Act.

Comments —

Relative : It means, all members including females of a Hindu undivided family, husband and wife and persons related to one another in the manner indicated in Schedule-IA of the Indian Companies Act. Under Schedule-IA of the Companies Act, the list of relatives is as under :

Father, mother (including step-mother), son (including step-son), son's wife, daughter (including step-daughter), father's father, father's mother, mother's mother, mother's father, son's son, son's wife, son's daughter, son's daughter's husband, daughter's son, daughter's son's wife, daughter's daughter, daughter's husband, brother (including step-brother), brother's wife, sister (including step-sister) and sister's husband.

CONDUCT

4.0 DUTIES AND OBLIGATIONS OF EXECUTIVES

4.1 Every employee of the Company shall at all times :

- (i) maintain absolute integrity ;
- (ii) maintain devotion to duty ;
- (iii) conduct himself at all times in a manner which will enhance the reputation of the 'Company', and
- (iv) do nothing which is unbecoming of a public servant.

4.2 Every employee shall take all possible steps to ensure integrity and devotion to duty of all employees for the time being under his supervision, control and authority.

4.3 Every employee must carry out the work for which he is employed and obey all lawful orders of his superiors or of the Company.

4.4 No employee shall engage himself either directly or indirectly in any other business/profession/trade or calling within or outside the working hours except with the previous permission of the competent authority as may be specified from time to time.

4.5 Each employee is responsible for and must take proper care of all Company's property specifically entrusted to him.

4.6 No employee shall, in the performance of his official duties or in the exercise of powers conferred on him act otherwise than on his best judgement except where he is acting under the direction of his official superior.

5.0 MISCONDUCT

Without prejudice to the generality of the terms 'misconduct', the following acts of omission and/or commission shall be treated as misconduct :

- (1) Theft, fraud or dishonesty in connection with the business or property of the Company or property of another person within the premises of the Company.
- (2) Taking or giving bribes or any illegal gratification.
- (3) Possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person, which the employee cannot satisfactorily account for.
- (4) Furnishing false information regarding name, age, father's name, qualifications , ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment.
- (5) Acting in a manner prejudicial to the interests or image of the Company.
- (6) Wilful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.
- (7) Absence without leave or over-staying the sanctioned leave for more than four consecutive days

without sufficient grounds, or proper or satisfactory explanation.

- (8) Habitual late attendance or habitual absence without taking prior permission for leave.
- (9) Neglect of work or negligence in the performance of duty including malingering or slowing down of work.
- (10) Wilful damage to property of the 'Company'.
- (11) Interference or tampering with any safety devices installed in or about the premises of the Company or any of its establishments/offices/units.
- (12) Drunkenness or riotous or disorderly or indecent behaviour in the premises of the Company or outside such premises where such behaviour is related to or connected with the employment.
- (13) Gambling within the premises of the establishment.
- (14) Smoking within the premises of the establishment where it is prohibited.
- (15) Collection without the permission of the Competent Authority of any money within the premises of the Company except as sanctioned by any law of the land for the time being in force or rules of the 'Company.'
- (16) Sleeping while on duty.
- (17) Commission of any act which amounts to a criminal offence involving moral turpitude.
- (18) Absence from the employee's appointed place of work without permission or sufficient cause.
- (19) Purchasing properties, machinery, stores, etc. from or selling properties, machinery, stores, etc. to the 'Company' without express permission in writing from the Competent Authority.
- (20) Commission of any act subversive of discipline or of good behavior.
- (21) Abatement of or attempt at abatement of any act which amounts to misconduct.
- (22) Any act of sexual harassment of women employees at her place of work.
- (23) Any lapse on the part of an employee in discharging his duties with regard to any official documents or part thereof of the office or in his custody.
- (24) Unauthorized communication of any official information as referred to in Rule 12.
- (25) Bringing or attempting to bring himself or through any other person any outside influence to bear upon any superior authority to further his interest in matters pertaining to his service in the company.
- (26) Any breach of any of the provisions of these rules or any other statutes or rules.

Note:

The above instances of misconduct are illustrative in nature, and not exhaustive.

5.0 EMPLOYMENT OF NEAR RELATION(S)

5.1 No employee shall use his position or influence directly or indirectly to secure employment under the 'Company' for any person related, whether by blood or marriage to the employee or to the employee's wife or husband, whether such a person is dependent on the employee or not.

Every employee shall submit in Form No.1 (annexed) a statement regarding employment of relatives under the 'Company' at the time of his first appointment and at such intervals as may be decided by the Competent Authority. Every employee in addition to the statement in Form No. 1, shall also furnish to the Competent Authority a declaration in Form No. II (annexed) at the time of his first appointment and at such intervals thereafter as may be decided by the Competent Authority showing the details of his/her

relatives employed in any company or firm, or business houses doing business with the company.

5.2 No employee shall, except with the previous sanction of the Competent Authority, permit his son, daughter or any member of the family to accept employment with any company or firm with which he has official dealings.

Provided that where the acceptance of the employment can not await the prior sanction of the Competent Authority, the employment may be accepted provisionally subject to the sanction of the Competent Authority, being sought forthwith.

5.3 No employee shall in the discharge of his official duties deal with any matter or give or sanction any contract to any company or firm or any other person if any member of his family is employed in that firm or under that person or if he or any member of his family is interested in such matter or contract in any other matter and the employee shall refer every such matter or contract to his official superior and the matter or the contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made.

5.4 TAKING PART IN POLITICS AND ELECTION

(i) No employee shall be a member of, or otherwise associated with, any political party or any organization which takes part in politics no shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

(ii) No employee shall canvass or otherwise interfere or use his influence in connection with, or take part in, an election to any Parliament, State Legislature or Local Bodies.

7.0 TAKING PART IN DEMONSTRATIONS

7.1 No employee of the Company shall engage himself or participate in any demonstration/strike in connection with condition/of his service and/or which involves incitement to an offence.

8.0 CONNECTION WITH PRESS OR OTHER MEDIA

8.1 No employee of the 'Company' shall, except with the previous sanction of the Competent Authority, own wholly or in part of conduct or participate in the editing or management of, any news paper or other periodical publication in press or electronic media.

8.2 No employee of the 'Company' shall, except with the previous sanction of the Competent Authority or in the bonafide discharge of his duties, participate in a radio broadcast or telecast trough any electric media or contribute any article or write any letter either in his own name or anonymously, pseudonymously or in the name of any other person t any newspaper or periodical.

Provided that no such sanction shall be required if such broadcast or such contribution is of a purely literary, artistic or scientific character.

8.3 No employee shall, except with previous sanction of the Competent Authority or except in the bonafide discharge of his duties, publish a book himself or through a publisher or contribute an article to a book or compilation of articles, provided however, that no such sanction shall be required if such publication is of a purely literary, artistic or scientific character.

9.0 CRITICISM OF THE COMPANY AND GOVERNMENT

9.1 No employee shall in any radio broadcast or telecast through any electronic media in any document

published anonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterances, make any statement of fact or opinion, which :

- (a) has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government and/or the 'Company' ; or
- (b) is capable of embarrassing the relation between the Central Government/any State Government and the Government of any foreign State and/or the 'Company'.

Provided that nothing in this rule shall apply to any statements made or views expressed by an employee in his official capacity or in the due performance of his duties assigned to him.

0.0 JOINING OF ASSOCIATION BY EMPLOYEE

- 0.1 No employee shall join or continue to be member of an organisation banned by Government or of an Association, the objective or activities of which are prejudicial to the interest of the sovereignty and integrity of India or public order or morality.

1.0 EVIDENCE BEFORE COMMITTEE OR ANY OTHER AUTHORITY

- 1.1 Save as provided in sub-rule 11.3, no employee of the 'Company' shall, except with the previous sanction of the Competent Authority, give evidence in connection with any enquiry conducted by any person, committee or authority.
- 1.2 Where any sanction has been accorded under sub-rule 11.1, no employee giving such evidence shall criticise the policy or any action of the Central Government or of a State Government, of the 'Company'.
- 1.3 Nothing in this rule shall apply to :
 - (a) evidence given at any enquiry before an authority appointed by the Government, Parliament or a State Legislature or the 'Company' ; or
 - (b) evidence given in any judicial enquiry ; or
 - (c) evidence given at any enquiry ordered by any authority of the Government or the 'Company'.

2.0 UNAUTHORISED COMMUNICATION OF INFORMATION

- 2.1 No employee shall, except in accordance with any general or special order of the 'Company' or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any officer or other employees, or any other person to whom he is not authorised to communicate such document or information.

3.0 SUBSCRIPTIONS

- 3.1 No employee shall, except with the previous sanction of the Company or of such authority as may be empowered by it in this behalf, ask for or accept contributions to or otherwise associate himself with the raising of any fund in pursuance of any object, whatsoever, except as sanctioned by any law of the land, or rule or order of the Company, for the time being in force.

Note:

- (i) Mere payment of subscription to a charitable or benevolent fund does not by itself violate this rule.

- (ii) Voluntary association of an employee with the collection of Flag Day contributions is permissible and no prior permission is necessary for this purpose.

4.0 GIFTS

- 4.1 Save as otherwise provided in these rules, no employee of the Company shall accept or permit any member of his family or any other person acting on his behalf, to accept any gift, from any individual or firm having official dealings with him.

Explanation :

The expression 'gift' shall include free transport, board, lodging or other services or any other pecuniary advantage when provided by any person other than a near relative or a personal friend having no official dealings with the employees.

Note :

- (i) An employee of the Company shall avoid acceptance of lavish or frequent hospitality from any individual or firm having official dealings with him.
- (ii) A casual meal, gift or other social hospitality shall not be deemed to be a 'gift'.
- 4.2 On occasions such as weddings, anniversaries, funerals or religious functions, when the making of gifts is in conformity with the prevailing religious or social practices, an employee of the Company may accept gifts from his/her near relatives and personal friends having no official dealings but he shall make a report to the Competent Authority if the value of the gift exceeds Rs.5000/-.
- 4.3 In any other case, an employee of the Company shall not accept or permit any member of his family or any other person acting on his behalf to accept any gifts without the sanction of the Competent Authority if the value thereof exceeds Rs.2500/-. Provided that when more than one gift has been received from the same person/firm within a period of 12 months, the matter shall be reported to the Competent Authority if the aggregate value of the gifts exceeds Rs.2500/-.
- 4.4 An employee of the Company may accept gifts from foreign dignitaries or firms having no official dealings with him, the value of which shall not exceed Rs.2500/- within a period of 12 months but he shall make a report to the Competent Authority about the acceptance of the gifts.

4.5 DOWRY

No employee of the Company shall :

- (i) give or take or abet the giving or taking of dowry ; or
- (ii) demand directly or indirectly from the parents or guardians of a bride or bride-groom as the case may be, any dowry.

Explanation :

For the purpose of this rule 'Dowry' has the same meaning as in the Dowry Prohibition Act, 1961 (28 of 1961).

5.0 PUBLIC DEMONSTRATIONS IN HONOUR OF A COMPANY EMPLOYEE

5.1 No employee shall except with previous sanction of the Company, receive any complimentary or valedictory address or accept any testimonials, attend any meeting or entertainment held in his/her honour or in the honour of any other employee.

Provided that nothing in this rule shall apply to a farewell entertainment held in honour of an employee or on the occasion of his retirement or transfer.

6.0 PRIVATE TRADE OR EMPLOYMENT

6.1 No employee of the Company shall, except with the previous sanction of the Competent Authority, engage directly or indirectly in any trade or business or undertake any other employment.

Provided that an employee may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer but he shall not undertake or shall discontinue such work if so directed by the Competent Authority.

Every employee shall submit a statement in Form No.III (annexed) details of any kind of business done by him/her either in his own name or in the name of his family members of 'Benami' at the time of his/her first appointment and by the 31st January of every subsequent year.

6.2 Every employee of the Company shall report to the Competent Authority if any member of his/her family is engaged in trade or business or owns or manages an insurance agency or commission agency.

6.3 No employee of the Company shall, without the previous sanction of the Competent Authority, except in the discharge of his/her official duties, take part in the registration promotion or management of any Bank or other company which is required to be registered under the companies Act, 1956 (I of 1956) or other law for the time being in force or any co-operative society for commercial purposes. Provided that an employee of the Company may take part in the registration, promotion or management of a House Building Co-operative Society substantially for the benefit of employees of the Company, or any other co-operative society registered under the Co-operative Societies Act 1912 (2 of 1912) or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Companies Registration Act, 1860 (21 of 1860), or any corresponding law in force.

6.4 No employee of the Company may accept any free/honorarium or any pecuniary advantage for any work done by him/her for any public body or any private person without the sanction of the Competent Authority.

6.5 RESTRICTIONS ON TOP LEVEL EXECUTIVES OF PUBLIC ENTERPRISES JOINING PRIVATE COMMERCIAL UNDERTAKINGS AFTER RETIREMENT

No functional Director of the company including CMD who has retired from the services of the company or shall retire in due course, after such retirement, shall accept any appointment or post whether advisory or administrative, in any firm or company, whether India or foreign, with which the Company has or had business relations, within two years from the date of his retirement without prior approval of the Government.

6.6 FOREIGN VISITS

No employee of the Company shall, except with the previous sanction / approval of the Competent Authority undertake to visit abroad on private business.

Information regarding foreign visits should be brought to the

knowledge of the Competent Authority in Form No. V D (Annexed) (Inserted vide CIL OM No. CIL/ C -

7.0 INVESTMENT, LENDING AND BORROWING

7.1 No employee shall speculate in any investment.

Explanation :

The habitual purchase or sale of securities of notoriously fluctuating value shall be deemed to be speculation in investments within the meaning of this rule.

7.2 No employee shall make, or permit his wife or any member of his family to make any investment likely to embarrass or influence himself in the discharge of his/her official duties.

7.3 If any question arises whether a security of investment is of the nature referred to in Rule 17.1 or Rule 17.2 the decision of the Competent Authority there-on shall be final.

7.4 No employee shall, except with the previous sanction of the Competent Authority lend money to any person possessing land or valuable property within the local limits of his/her authority or at interest to any person. provided that an employee may make an advance of pay to a private servant or give loan of small amount free of interest to a personal friend or relative, even if such person possessing land within the local limits of his/her authority.

7.5 No employee shall save in the ordinary course of business with a Bank or LIC or a firm of standing borrow money from or otherwise place himself under pecuniary obligation to any person within the local limits of his/her authority, or any other person with whom he/she is likely to have official dealing nor shall he/she permit any member of his/her family, except with the previous sanction of the Competent Authority to enter into any such transaction.

Provided that an employee may accept a purely temporary loan of such amount, free of interest, from a personal friend or relative or operate a credit account with a bonafide tradesman.

7.6 When an employee is appointed or transferred to a post of such nature as to involve him in the breach of any of the provisions of rule 17.4 or rule 17.5 he shall forthwith report the circumstances to the Competent Authority and shall thereafter act in accordance with such orders as may be passed by the Competent Authority.

8.0 INSOLVENCY AND HABITUAL INDEBTEDNESS

8.1 An employee of the Company shall avoid habitual indebtedness unless he/she proves that such indebtedness or insolvency is the result of circumstances beyond his/her control and does not proceed from extravagance or dissipation.

8.2 An employee of the Company who applies to be, or is adjudged or declared insolvent shall forthwith report the fact to his/her Competent Authority.

9.0 MOVABLE, IMMOVABLE AND VALUABLE PROPERTY

9.1 No employee of the Company shall, except with the previous knowledge of the Competent Authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either

in his/her own name or in the name of any member of his/her family. Information regarding acquisition/disposal of immovable properties should be brought to the knowledge of the Competent Authority in Form-IVA (annexed) subject to the provision of rule 19.3 below.

- 9.2 Every employee of the Company shall report in Form No.- IVB (annexed) to the Competent Authority every transaction concerning movable property acquired or disposed of by him in his own name or in the name of any member of his family, within one month from the date of such transaction, if the value of such property deals in exceeds two months basic pay of the employee. (Amended vide CIL OM No. CIL/ C - 5A (vi) /50774 /CDA/ 225 dated 14/16.12.2004)
- 9.3 No employee of the Company shall, except with the previous sanction of the Competent Authority, enter into any transaction concerning any immovable or movable property with a person or a firm having official dealings with the employee or his/her subordinate. Application for such permission should be made in Form IVA or IVB, as the case may be.
- 9.4 Every employee shall, on first appointment in the Company, submit a return of assets and liabilities giving the particulars regarding :
- a) Movable property inherited by him or owned, acquired or held by him if the value of such property deals in exceed two months basic pay of the employee, such return should be submitted in new Form-VA and VC (annexed); (Amended vide CIL OM No. CIL/ C -5A (vi) /50774 /CDA/ 268 dated 22.02.2005)
 - b) The immovable property inherited by him, or owned or acquired or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person; such return should be submitted in Form-VB (annexed).
- 9.5 Every employee shall, thereafter, every year, submit to the Competent Authority a return of immovable property inherited/owned/acquired during a year latest by the 1st January of the following year in Form No. VB (annexed).
- 9.6 The Competent Authority may, at any time, by general or special order require an employee to submit, within a period specified in the order a full and complete statement of such movable or immovable property held or acquired by him/her or on his/her behalf or by any member of his/her family as may be specified in the order. Such statement shall, if so required by the Competent Authority include details of the means by which, or the source from which such property was acquired.

Explanation No. I

The term movable property would include :

- a) Shares, debentures and other securities and cash including bank deposits;
- b) Loans advanced or taken by the employee whether secured or not ;
- c) If the value of Jewellery and insurance policies the annual premium of which exceeds two months basic pay of the employee. (Amended vide CIL OM No. CIL/ C -5A (vi) /50774 /CDA/ 268 dated 22.02.2005)
- d) Motor cars, motor cycles etc.; and
- e) Refrigerators, television sets, audio and video equipment, personal computers etc.

Explanation No. II

Transaction entered into by the spouse or any other member of family of an employee of the company out of his or her own funds (including stridhan, gifts, inheritance etc.) as distinct from the funds of the employee of the company himself, in his or her own name and in his or her own right, would not attract the provisions of the above sub-rules.

Explanation No. III

Transactions as members of Hindu Undivided Joint Family do not require the Company's prior permission. In such cases, transactions in immovable property should be included in the annual property returns and those immovable property should be reported to the competent authority within the prescribed period. If an employee is unable to give an idea of his share of such immovable property, he may give details of the full property and the names of the members who share it.

20.0 VINDICATION OF ACTS AND CHARACTER OF EMPLOYEES

20.1 No employee shall, except with the previous sanction of the Company, have recourse to any court or to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of defamatory character.

Explanation

Nothing in this rule shall be deemed to prohibit an employee from vindication of his private character or any act done by him in his private capacity.

21.0 CANVASSING OR NON-OFFICIAL OR OTHER OUTSIDE INFLUENCE

21.1 No employee shall bring or attempt to bring himself or through any other person or political party, any outside influence to bear upon any superior authority to further his/her interests in respect of matters pertaining to his/her service in the Company.

22.0 MARRIAGES

22.1 No employee shall enter into, or contract, a marriage with a person having a spouse living.

22.2 No employee, having a spouse living, shall enter into or contract, a marriage with any person.

Provided that the Competent Authority may permit an employee to enter into or contract any such marriage as is referred to in Clause 22.1 or Clause 22.2, if it is satisfied that :

- a) such marriage is permissible under the personal law applicable to such employee and the other party to the marriage ; and
- b) there are other grounds for so doing.

22.3 The employee who has married or marries a person other than that of Indian Nationality, shall forthwith intimate the fact to the Competent Authority.

23.0 CONSUMPTION OF INTOXICATING DRINKS AND DRUGS

23.1 An employee of the Company shall not be under the influence of any intoxicating drink or drug during the course of his duties.

23.2 SEXUAL HARRASSMENT

- (i) No employee shall indulge in any act of sexual harassment of any woman at her work place.
- (ii) Every employee who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation

For the purpose of this rule, 'Sexual Harassment' includes such unwelcome sexually determined behaviour, whether directly or otherwise as -

- (a) Physical contact and advances;
- (b) Demand or request for sexual favours;
- (c) Sexually coloured remarks;
- (d) Showing any pornography; or
- d) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Chapter - III**SUSPENSION****24.0 SUSPENSION**

24.1 The Appointing Authority or any Authority to which it is subordinate or any other Authority to whom the powers to suspend is delegated may place an employee under suspension -

- (a) where a disciplinary proceedings against him/her is contemplated or is pending ;
or
- (b) where in the opinion of the authority aforesaid, he/she has engaged himself/herself in activities prejudicial to the interests or the security of the Company/State ;
or
- (c) where a case against him/her in respect of any criminal offence is under investigation, inquiry or trial.

Provided that where the order of suspension is made by an Authority lower than the Appointing Authority, such Authority shall forthwith report to the Appointing Authority the circumstances under which the order

was made.

An order of suspension may be issued in Form VI. CMDs of the subsidiary companies will have full power to suspend executives from E1 to E5 grade. They will also have the power to suspend executives from M1 to M3 grade for a period not exceeding three months.

Chairman, Coal India Limited as the appointing authority has full power to suspend any executive.

24.2 It is desirable to issue the order of suspension along with the charge sheet in Form VI but whenever this is not possible, the charge sheet must follow within a reasonable time. Wherever necessary the suspension order may follow the charge sheet.

24.3 DEEMED SUSPENSION

i) An employee shall be deemed to have been placed under suspension by an order of the authority competent to suspend :

(a) with effect from the date of his detention, if he is detained in custody whether on criminal charge or otherwise for a period exceeding forty eight hours ;

(b) with effect from the date of his conviction if in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent on such conviction.

An order of deemed suspension may be issued in Form VIA (annexed) in case of an employee having been detained on criminal charges.

ii) It shall be the duty of the employee who has been arrested for any reason to intimate promptly, the fact of his arrest and the circumstances connected therewith to his official superior even though he might have been released on bail subsequently. Failure on the part of the employee to so inform his/her official superior will be regarded as suppression of material information and will render him/her liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the Police case against him.

iii) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review and the case is remitted for further inquiry or action or with any directions, the order of his/her suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

iv) Where a penalty of dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the Disciplinary Authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him/her on the allegation on which the penalty of dismissal or removal was originally imposed, the employee shall be deemed to have been placed under suspension from the date of the original order of dismissal and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical ground without going into the merit of the case.

v) An order of suspension made or deemed to have been made under Rule 24.3 (i) shall continue to remain in force until it is modified or revoked by the authority competent to do so.

An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

4.4 Where an employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him/her during the continuance of that suspension, the authority competent to place him/her under suspension may, for reasons to be recorded by him/her in writing direct that the employee shall continue to be under suspension until the termination of all or any such proceedings.

4.5 During the period of suspension the employee shall not enter the work-place/office premises except with the written permission of the suspending authority or any other authority competent to give such permission, nor shall he/she leave station without the written permission, of the Competent Authority. No leave shall be granted during the period of suspension.

5.0 SUBSISTENCE ALLOWANCE:

5.1 An employee under suspension shall be entitled to draw subsistence allowance equal to 50 per cent of his/her basic pay provided the Disciplinary Authority is satisfied that the employee is not engaged in any other employment or business or profession or vocation. In addition, he/she shall be entitled to dearness allowance admissible on such subsistence allowance and any other compensatory allowance of which he/she was in receipt on the date of suspension provided the suspending authority is satisfied that the employee continues to meet the expenditure for which the allowance was granted.

5.2 Where the period of suspension exceed six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows :

- (i) The amount of subsistence allowance may be increased to 75 per cent of basic pay and allowances thereon if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the employee under suspension.
- (ii) The amount of subsistence allowance may be reduced to 25 per cent of basic pay and allowance thereon if in the opinion of the said authority, the period of suspension has been prolonged due to the reasons directly attributed to the employee under suspension.

5.3 Before making any payment to a suspended employee he/she would be required to furnish to the Competent Authority a certificate every month that he/she is not engaged in any other employment, business or profession or vocation.

5.4 EFFECTING RECOVERIES FROM SUBSISTENCE ALLOWANCE

The following normal deduction shall be made from subsistence allowance :

- (i) Income Tax (provided the employee's yearly income, calculated with reference to the subsistence allowance, is taxable);
- (ii) House rent and allied charges, i.e. electricity, water, furniture, etc.;
- (iii) Repayment of loans and advances taken from the Company at such rate as may be fixed by the Competent Authority;
- (iv) Subscription to Provident Fund (contributory).

26.0 TREATMENT OF THE PERIOD OF SUSPENSION

26.1 When an order placing an employee under suspension is revoked or would have been revoked but for his retirement (including premature retirement) while under suspension, the Authority competent to order revocation shall consider and make specific orders -

- a) Regarding pay and allowances to be paid to the employee for the period of suspension ending with revocation of suspension or date of his retirement (including premature retirement) as the case may be; and
- b) Whether or not the said period shall be treated as a period spent on duty.

26.2 Notwithstanding anything contained in rule 25, where an employee under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowance for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

26.3 Where the Authority competent to order revocation is of the opinion that the suspension was wholly unjustified, the employee shall, subject to sub-rule (8), be paid full pay and allowance to which he would have been entitled had he not been suspended.

Provided that where such authority is of the opinion that the termination of proceedings against the employee had been delayed due to reasons directly attributable to the employee, it may after giving him an opportunity to make his representation within thirty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine. The pay and allowances so determined should not be less than the subsistence allowance already paid to the employee.

26.4 In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

26.5 In cases other than those falling under sub-rules (2) and (3) the employee shall, subject to the provisions of sub-rules (7) and (8), be paid such amount (not being the whole) of pay and allowances to which he would have been entitled had he not been suspended, as the Competent Authority may determine, after observing the procedure of issuing show cause notice and consideration of representation, if any, submitted by the employee. The amount so determined should not be less than the subsistence allowance already paid to the employee.

26.6 Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the employee, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rules (3), (4) or (5), as may be applicable.

26.7 In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the Competent Authority specifically directs that it shall be so treated for any specific purpose.

Provided that if the employee so desires, such Authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the employee.

6.8 The payment of allowances under sub-rules (2), (3) or (5) shall be subject to all other conditions under which such allowances are admissible.

DISCIPLINE

27.0 NATURE OF PENALTIES

27.1 The following penalties may, for good and sufficient reasons, be imposed on an employee for misconduct, viz. :

(i) Minor Penalties

- a) Censure ;
- b) Withholding increment, with or without cumulative effect;
- c) Withholding promotion ; and
- d) Recovery from pay of the whole of or part of any pecuniary loss caused to the Company by negligence or breach of orders or trust (Rule 27.1 (i) (d) amended vide CIL OM No. CIL/ C-5A (vi)/ 50774 /CDA/ 184 dated 23.11.05)

(ii) Major Penalties

- a) Reduction to a lower grade or post or stage in a time scale;

Note :

The Authority ordering the reduction shall state the period for which it is effective and whether, on the expiry of that period, it will operate to postpone future increments or, to affect the employee's seniority and if so, to what extent.

- b) Compulsory retirement ;
- c) Removal from service ; and
- d) Dismissal

Note 1

Removal from service will not be a disqualification for future employment in Coal India Limited and its Subsidiary Companies while dismissal disqualifies a person for future employment.

Note 2

The following shall not amount to penalty within the meaning of this rule :

- (i) With-holding of increment of an employee on account of his/her work being found unsatisfactory or not being of the required standard or for failure to pass a prescribed test or examination.
- (ii) Stoppage of increment at the efficiency bar in the time scale on the ground of his/her unfitness to cross the bar.
- (iii) Non-promotion, whether in a substantive or officiating capacity of an employee, after consideration of his/her case to a service, grade or post for promotion to which he/she is eligible.
- (iv) Reversion to lower service, grade or post of an employee officiating in a higher service, grade or post on the ground that he/she is considered, after trial, to be unsuitable for such higher service,

grade or post or on administrative ground unconnected with his/her conduct.

- (v) Reversion to his/her permanent service, grade or post of an employee appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his/her appointment or the rules and orders governing probation.
- (vi) Replacement of the services of an employee whose services have been borrowed from Central or a State Government or an authority under the control of Central or a State Government at the disposal of the authority which had lent his services.
- (vii) Compulsory retirement of an employee in accordance with the provisions relating to his/her superannuation or retirement.
- (viii) Termination of the services :
 - (a) of an employee appointed on probation during or at the end of the period of probation in accordance with the terms of his/her appointment or the rules and orders governing probation ;
or
 - (b) of a person appointed in a temporary capacity otherwise than under a contract or agreement in accordance with the general conditions of service applicable to temporary employment;
 - (c) of an employee employed under an agreement or contract, in accordance with the terms of such agreement or contract ;
 - (d) of a person on reduction of establishment ; and
 - (e) of a person who is liable to be discharged for failure to qualify in certain duties or subjects under the conditions of his/her service.

7.2 DISCIPLINARY AUTHORITY

- (i) Subject to the provisions in sub-rule (ii) below, the authorities specified in column 3 of the Schedule appended to these rules or any Authority higher than that it may impose the penalties specified in column 4 upon employees in different grades of pay shown in column 1 of the Schedule.

Note

The authorities empowered to impose penalties on employees officiating in higher posts shall be determined by the post held by the employee at the time when the penalty is imposed and a non-executive staff of the Company officiating in executive post at the time of imposition of a penalty, shall be treated as an employee holding the executive post in a substantive capacity.

- (ii) Notwithstanding anything contained in these rules no employee shall be removed or dismissed by an authority lower than that by which he/she is appointed to the post held by him.

8.0 AUTHORITY TO INSTITUTE PROCEEDINGS

- 8.1 The Disciplinary Authority or any Authority higher than it may institute disciplinary proceedings against any employee.

28.2 A Disciplinary Authority competent under these rules to impose any of the penalties specified in clauses (a) to (d) of rule 27.1 and clause (a) of rule 27.1 (ii) may institute disciplinary proceedings against any employee for imposition of any of the penalties specified in clauses (b) to (d) of rule 27.1 (ii) notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties.

28.3 Where a Disciplinary Authority competent to impose any of the penalties specified in clause (a) to (d) of rule 27.1 (i) and clause (a) of rule 27.1 (ii) but not competent to impose any of the penalties specified in the clauses (b) to (d) of rule 27.1 (ii), has itself inquired into or caused to be inquired into any charge and that Authority, having regard to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that any of the penalties specified in clauses (b) to (d) of rule 27.1 (ii) should be imposed on the employee, that Authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.

29.0 PROCEDURE FOR IMPOSING MAJOR PENALTIES

29.1 No order imposing any of the major penalties specified in Rule 27 shall be made except after an inquiry is held in accordance with this rule.

29.2 Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself inquire into, or appoint any official of the Company or any public servant (hereinafter called the Inquiring Authority) to inquire into the truth thereof.

29.3 Where it is proposed to hold an inquiry against an employee under these rules, the Disciplinary Authority shall draw up or cause to draw up -

- (a) the substance of imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (b) a statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain -
 - (i) a statement of all relevant facts including any admission or confession made by the employee;
 - (ii) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

Note

The articles of charge, the statement of imputations and the covering memorandum should be prepared in Form-VIIA (annexed).

Explanation

It will not be necessary to show the documents listed with the charge sheet or any other document to the employee at this stage.

29.4 On receipt of the written statement of the employee, or if no such statement is received within the time specified, an inquiry may be held by the Disciplinary Authority itself, or by any other officer or a committee appointed as an Inquiring Authority under Rule 29.2.

Provided that it may not be necessary to hold an inquiry in respect of the charges admitted by the employee in his/her written statement. The Disciplinary Authority shall, however, record its findings on each such charge.

29.5 Where the Disciplinary Authority itself inquires or appoints an Inquiring Authority for holding an inquiry, it may, by an order appoint an officer(s) of the Company or any public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

29.6 The Disciplinary Authority shall where it is not the Inquiring Authority, forward to the Inquiring Authority -

- (i) a copy of the articles of charge and the statement of imputation of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the employee;
- (iii) a copy of the statements of witness, if any, referred to in rule 29.3;
- (iv) evidence providing the delivery of documents referred to in rule 29.3 to the employee;
- (v) a copy of the order appointing the Presenting Officer.

29.7 On the date fixed by the Inquiring Authority, the employee shall appear before the Inquiring Authority, at the time, place and date specified in the notice. The Inquiring Authority shall ask the employee whether he/she pleads guilty or had any defense to make and if he/she pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the employee concerned thereon. The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employee concerned pleads guilty.

29.8 The employee may take the assistance of any other employee posted at his Head Quarter/Station or the station where the inquiry is held to present the case on his behalf but may not engage a legal practitioner for the purpose.

29.9 If the employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his/her defence :

- (i) inspect the documents listed with the charge sheet ;
- (ii) submit a list of additional documents and witnesses that he/she wants to examine ; and
- (iii) be supplied with the copies of the statements of witnesses, if any, listed in the charge sheet.

Note

Relevancy of the additional documents and the witnesses referred to in sub-rule 29.8 above will have to be given by the employee concerned and the documents and the witnesses shall be summoned if the Inquiring Authority is satisfied about their relevance to the charges under inquiry.

29.10 The Inquiring Authority shall ask the authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.

29.11 The authority in whose custody or possession the requisitioned documents are, shall arrange to produce the same before the Inquiring Authority on the date, time and place specified in the requisition notice.

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the interest of the Company. In that event, it shall inform the Inquiring Authority accordingly.

- 9.12 On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.
- 9.13 Before the close of the prosecution case, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the chargesheet or may itself call for new evidence or recall or re-examine any witness. In such case the employee shall be given opportunity to inspect the documentary evidence before it is taken on record; or to cross-examine a witness, who has been so summoned.
- 9.14 When the case for the Disciplinary Authority is closed, the employee may be required to state his/her defense, orally or in writing, as he/she may prefer. If the defense is made orally, it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defense shall be given to the Presenting Officer, if any, appointed.
- 9.15 The evidence on behalf of the employee shall then be produced. The employee may examine himself/herself in his/her own behalf if he/she so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination by the presenting officers, re-examination by the employee and examination by the Inquiring Authority according to provision applicable to the witnesses for the Disciplinary Authority.
- 9.16 The Inquiry Authority may, after the employee closes his/her case, and shall, if the employee has not examined himself/herself generally question him/her on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.
- 9.17 The Inquiring Authority may after completion of the production of evidence, hear the presenting officer, if any, appointed, and the employee, or permit them to file written briefs of their respective cases, if they so desire.
- 9.18 If the employee does not submit the written statement of defense referred to in sub-rule 3 on or before the date specified for the purpose or does not appear in person or through the Assisting Officer or otherwise fails or refuses to comply with any of the provisions of these rules, the Inquiry Authority may hold the inquiry *ex parte*.
- 9.19 Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction to therein, and is succeeded by another Inquiry Authority which, has and which exercises, such jurisdiction, the Inquiry Authority so succeeding may act on the evidence so recorded by its predecessor and partly by itself.
- Provided that if the succeeding Inquiry Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine and such witnesses as herein before provided.
- 9.20 After the conclusion of the inquiry, report shall be prepared and it shall contain :
- i) (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
 - (a) a gist of the defence of the employee in respect of each article of charge ;
 - (b) an assessment of the evidence in respect of each article of charge; and
 - (c) the findings on each article of charge and the reasons thereof.

Explanation

If in the opinion of the Inquiring Authority the proceeding of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge. Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself/herself against such article of charge.

- ii) The Inquiry Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include :
 - (a) the report of the inquiry prepared by it under sub-clause (i) above:
 - (b) the written statement of defence, if any, submitted by the employee referred to in sub-rule 29.14 ;
 - (c) the oral and documentary evidence produced in the course of the inquiry :
 - (d) written brief referred to in sub-rule 29.17 if any; and
 - (e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.

30.0 ACTION ON THE INQUIRY REPORT

- 30.1 The Disciplinary Authority shall, if it is different from the Inquiring Authority shall, before making a final order in the case, forward a copy of the inquiry report to the employee concerned with the following endorsement —

"The report of the Inquiry Officer is enclosed. The Disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of the receipt of this letter".

- 30.2 On receipt of the reply of the employee, or if no reply is received within the time allowed, the Disciplinary Authority will examine the report and the records of the inquiry including the reply received from the employee, if any, and will record its findings in respect of each article of charge saying whether, in its opinion, it stands proved or not.
- 30.3 If the Disciplinary Authority disagrees with the findings of the Inquiring Authority on any article of charge, it will, while recording its own findings, also record the reasons for its disagreement.
- 30.4 If the Disciplinary Authority considers that a clear finding is not possible or that there is any defect in the inquiry, the Disciplinary Authority may, for reasons to be recorded in writing, remit the case to the Inquiring Authority for further inquiry and report. The Inquiring Authority will, there upon, proceed to hold the further inquiry according to the provisions of rule 29.3 as far as may be.
- 30.5 If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in rule 27 should be imposed on the employee it shall notwithstanding anything contained in rule 31 make an order imposing such penalty, subject to the provision of the schedule.
- 30.6 If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

31.0 PROCEEDURE FOR IMPOSING MINOR PENALTIES

31.1 Where it is proposed to impose any of the minor penalties specified in Rule 27, the employee concerned shall be informed in writing of the imputations of misconduct or misbehavior against him/her and given an opportunity to submit his/her written statement of defense within a specified period not exceeding 15 days.

The defense statement, if any, submitted by the employee shall be taken into consideration by the Disciplinary Authority before passing orders.

Note :

The memorandum of charges for minor penalties should be issued in Form VIIB (annexed).

31.2 The record of the proceedings shall include :

- (i) a copy of the statement of imputations of misconduct or misbehaviour delivered to the employee ;
- (ii) his/her defense statement, if any ; and
- (iii) the orders of the Disciplinary Authority together with the reasons therefor.

32.0 COMMUNICATION OF ORDERS

32.1 Orders made by the Disciplinary Authority under Rule 29 or Rule 31 shall be communicated to the employee concerned.

33.0 COMMON PROCEEDINGS

33.1 Where two or more employees are concerned in a case, the authority competent to impose a major penalty on all such employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings and the specified authority may function as the Disciplinary Authority for the purpose of such common proceedings.

34.0 SPECIAL PROCEDURE IN CERTAIN CASES

34.1 Notwithstanding anything contained in Rule 29 or 30 or 31 the Disciplinary Authority may impose any of the penalties specified in Rule 27 in any of the following circumstances :

- (i) where the employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial ; or
- (ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules ; or
- (iii) where the Disciplinary Authority is satisfied that in the interest of the security of the Company, it is not expedient to hold any inquiry in the manner provided in these rules.

Provided that the employee may be given an opportunity of making a representation to the penalty proposed to be imposed before any order is made under clause (i) above.

34.2 Disciplinary proceeding, if instituted while the employee was in service whether before his retirement or during his re-employment shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

4.3 During the pendency of the disciplinary proceedings, the Disciplinary Authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company if have been guilty of offences/misconduct as mentioned in Sub-Section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in the case the employee is fully exonerated.

35.0 EMPLOYEES ON DEPUTATION FROM THE CENTRAL GOVERNMENT OR THE STATE GOVERNMENT ETC.

35.1 Where an order of suspension is made or disciplinary proceeding is taken against an employee, who is on deputation to the Company from the Central or State Government, or another public undertaking, or a local authority, the authority lending his/her services (hereinafter referred to as the "Lending Authority") shall forthwith be informed of the circumstances leading to the order of his/her suspension, or the commencement of the disciplinary proceedings as the case may be.

35.2 In the light of the findings in the disciplinary proceeding taken against the employee :

- (a) If the Disciplinary Authority is of the opinion that any of the minor penalties should be imposed on him, it may pass such orders on the case as it deems necessary after consultation with the Lending Authority. Provided that in the event of a difference of opinion between the Disciplinary and the Lending Authority, services of the employee shall be placed at the disposal of the Lending Authority.
- (b) If the Disciplinary Authority, is of the opinion that any of the major penalties should be imposed on him/her, it should replace his/her services at the disposal of the Lending Authority and transmit to it the proceedings of the inquiry for such action as it deems necessary.
- (c) If the employee submits an appeal against an order imposing a minor penalty on him/her under sub-rule 35.2 (a) it will be disposed of after consultation with the Lending Authority ; provided that if there is a difference of opinion between the Appellate Authority and the Lending Authority, the services of the employee shall be placed at the disposal of the Lending Authority and the proceedings of the case shall be transmitted to that authority for such action as it deems necessary.

A P P E A L S

36.0 An employee may appeal against an order imposing upon him/her any of the penalties specified in Rule 27 or against the order of suspension referred to in Rule 24. The appeal shall be to the authority specified in column 5 of the schedule.

36.1 An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be presented to the Authority specified in the schedule to whom the appeal lies, a copy being forwarded by the appellant to the Authority which made the order appealed against. The latter Authority, on receipt of the copy of the appeal, shall forward the same together with its comments and the records of the case to the Appellate Authority within 15 days without waiting for any direction from the Appellate Authority. The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The Appellate Authority may pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the Authority which imposed the penalty or to any other Authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the Appellate Authority proposes to impose is a major penalty specified in Rule 27 and an inquiry as provided in Rule 29 has not already been held in the case, the Appellate Authority shall direct that such an inquiry be held in accordance with the provisions of Rule 29 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the Appellate Authority decides to enhance the punishment but an inquiry has already been held as provided in Rule 29, the Appellate Authority shall be a show-cause notice to the employee as to why the enhanced penalty should not be imposed upon him/her. The Appellate Authority shall pass final order after taking into account the representation, if any, submitted by the employee.

37.0 REVIEW

37.1 Notwithstanding anything contained in these rules, the Appellate Authority as specified in the schedule may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the Appellate Authority proposes to impose, is a major penalty specified in Rule 27 and an inquiry as provided under Rule 29 has not already been held in the case, the Appellate Authority shall direct that such an inquiry be held in accordance with the provisions of Rule 29 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the Appellate Authority decided to enhance the punishment but an inquiry has already been held in accordance with the provisions of Rule 29 the Appellate Authority shall give show-cause notice to the employee as to why the enhanced penalty should not be imposed upon him/her. The Appellate Authority shall pass final orders after taking into account the representation, if any, submitted by employee.

The Coal India Limited, Board of Directors may at any time call for the records of any inquiry review any order and pass necessary order, as it may deem fit.

38.0 SERVICE OF ORDERS, NOTICES ETC.

38.1 Every order, notice and other process made or issued under these rules shall be served in person on the employee concerned or communicated to him/her by registered post at his/her last known address.

39.0 POWER TO RELAX TIME-LIMIT AND TO CONDONE DELAY

Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

10.0 SAVING

- 10.1 Nothing in these rules shall be construed as depriving any person to whom these rules apply, of any right of appeal or right of procedure or rule which had accrued to him/her under the procedure rules, which have been superseded by these rules.
- 10.2 An appeal pending at the commencement of these rules against an order made before the commencement of these rules, shall be considered and orders thereon shall be made in accordance with these rules.
- 10.3 The proceedings pending at the commencement of these rules shall be continued and disposed, as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceedings under these rules.
- 10.4 Any misconduct etc. committed prior to the issue of these rules which was a misconduct under the superseded rules shall be deemed to be misconduct under these rules.

11.0 REMOVAL OF DOUBTS

- 11.1 Where a doubt arises as to the interpretation of any of these rules, the matter shall be referred to the Board of Directors of Coal India Limited for final decision.

12.0 AMMENDMENTS

- 12.1 The Coal India Limited Board may amend, modify or add to these rules, from time to time and all such amendments, modifications or additions shall take effect from the date stated therein.

13.0 REPEAL

These rules supersede all the existing rules in respect of Conduct, Discipline and Appeal Rules concerning executive cadre employees of Coal India Limited and its subsidiaries. Such rules include :

- (i) Conduct and Discipline Rules of BCCL, 1972;
- (ii) Conduct and Discipline Rules of BCCL, 1972 made applicable to executive cadre employees of CMAL and its subsidiaries ; and
- (iii) National Coal Development Corporation Limited Services Conduct and Discipline Rules.

FORM — I

(Rule 6.1)

Statement Regarding Employment of Relatives in the Company

OFFICE MEMORANDUM

1. Name of the office (in full).....

Department

2. Present post held Area No.

Colliery

3. Present basic pay and scale

4. Date of joining the Company

Particulars of the relatives employed in Company

Name & Designation	Colliery/office/ Deptt. in which employed	Basic pay and scale	Relation-ship with employee	Date of appointment of the relative employed in the Company	Remarks
1.	2.	3.	4.	5.	6.

Signature of the employee

Date

FORM — II

(Rule 6.1)

Declaration Regarding Relations Connected with Firms/Business House

Doing Business with the Company

1. Name of the officer (in full)

2. Present post held

3. Place of posting

4. Present basic pay and scale

5. Date of joining the Company

I, the undersigned, hereby declare that none of my relations is/are the following relations are connected with any firms or business houses engaged in business dealing with the Company.

1. Complete address of Nature of relation- Nature of Nature of pecuniary

1. the firm/business house doing business with the Company with name of proprietor/partner/manager	2. ship of the officer with proprietor/partner/manager of the said firm or business house	3. business dealings with the Company	4. or other interest of the officer having relations with said firm/business house
2.	3.	4.	5.

1. I also undertake to inform the management immediately about the changes that may take place regarding the connections of my relations with the firms doing business with the Company.

2. I further declare that I shall not participate in decisions relating to award of contracts/giving orders for purchase or sale or any other matter to the advantage of the firm where my relation(s) is/are having connection.

Place :

Date :

Signature

Strike off whichever is not applicable.

FORM — III

(Rule 16.1)

Statement Regarding any Kind of Business Done by the Employee Either in his/her Own Name or in the Name of his/her Family Members or Benami

1. Name of the office (in full)
Department

2. Present post held Area No.
Colliery

3. Present basic pay and scale

4. Date of joining the Company

Details of the Business	Name of the person in whose name the business is held/conducted	Relationship of the employee in whose name the business is held/conducted	Approximate monthly income
1.	2.	3.	4.

Signature of the employee

Date

FORM — IV A
(Rule 19.1/19.3)

Form for giving prior intimation or Seeking Previous sanction in respect of the immovable property.

- Name and designation :
- Scale of pay and present pay :
- Purpose of application -
Sanction for transaction/prior intimation
of transaction :
- Whether property is being acquired or disposed of :
- Probable date of acquisition/disposal of property :
- Mode of acquisition/disposal :
- (a) Full details about location viz. Municipal No.
Street/Village/Taluk District and state in
which situated :
- (b) Description of the property, in the case of
cultivable and, dry or irrigated land. :
- (c) Whether freehold or leasehold :
- (d) Whether the applicant's interest in the property
is in full or part (in case of partial interest the
extent of such interest must be indicated) :
- (e) In case the transaction is not exclusively in the
name of the Employee, particulars of ownership
and share of each member :
- Sale/purchase prices of the property (Market value in
the case of gifts) :
- In case of acquisition, sources or sources from
which finance/proposed to be finance :
- (a) Personal saving :
- (b) Other sources giving basis :
10. In the case of disposal of property was requisite sanction
intimation obtained/given for its acquisition? :
(A copy of the sanction/acknowledgement
should be attached) :
1. (a) Name and address of the party with whom
transaction in proposed to be made :
- (b) Is the party related to the Applicant?
If so, state the relationship :
- (c) Did the applicant have any dealings with the party
in his official capacity at any time or is the applicant
likely to have any dealings with him in the near
future? :
- (d) How was the transaction arranged? (Whether
through any statutory body or a private agency
through advertisement or through friends and
relatives. full particulars to be given.) :
2. Any other relevant fact which the applicant may like
to mention :

DECLARATION

I, hereby declare that the particulars given above are true, I request that I may be given permission to acquire/dispose of property as described above from/to the party whose name is mentioned in item 11 above.

OR

I, hereby intimate the processed acquisition/ disposal of property by me as detailed above. I

Declare that the particulars given above are true.

Signature :

Signature :

Date :

Designation :

Note 1 - In the above form, different portions may be used according to requirement.

Note 2 - Where previous sanction is asked for, the application should be submitted at least 30 days before the success date of the transaction.

FORM - IV B
(Rule 19.2/19.3)

Form for giving intimation or seeking previous sanction for transaction in respect of movable property.

1. Name of the Employee :
2. Scale of pay and present pay :
3. Purpose of application - Sanction for transaction / prior intimation of transaction :
4. Whether property is being acquired or disposed of :
5. (a) Probable date of acquisition/disposal of property :
- (b) If the property is already acquired/disposed of actual date of transaction :
6. (a) Description of the property (e.g. Car/Scooter/Motor Cycle/Radiogram/Jewellery/Loans/Insurance Policies etc.) :
- (b) Make Model (and also Registration No. in case of vehicles) where necessary. :
7. Mode of acquisition/disposal (purchase/sale/gift/mortgage lease or otherwise) :
8. Sale/purchase price of the property (Market value in the (Market value in the case of gifts)) :
9. In case of acquisition, sources from which financed/ processed to be financed :
 - 1) Personal Savings
 - 2) Other sources giving details
10. In the case of disposal of property, was requisite Sanction/intimation obtained/given for its acquisition (a copy of sanction/acknowledgement should be attached) :
 1. (a) Name and address of the party with whom transaction is proposed to be made/has been made :
 - (b) Is the party related to the applicant? If so, state the relationship :
 - (c) Did the applicant have any dealings with the party in his official capacity at anytime or is the applicant likely to have any dealings with him in the near future ? :
 - (d) Nature of official dealings with the party :
 - (e) How was the transaction arranged? (Whether through any statutory body or a private agency through advertisements or through friends and relatives (Full particulars to be given)) :
11. Any other relevant fact which the applicant may like to mention :

DECLARATION

I, hereby declare that the particulars given above are true. I request that I may be given permission to acquire/dispose of property as described above from/to the party whose name is mentioned in item 11 above.

OR

I, hereby intimate the acquisition/disposal of property by me as detailed above. I declare that the particulars given above are true.

Station : Signature :

Date : Designation :

Note 1 In the above form, different portions may be used according to requirement.

Note 2 Where previous sanction is asked for, the application should be submitted at least 30 days before the success date of the transaction.

FORM - VA

STATEMENT SHOWING DETAILS OF ASSETS (OTHER THAN IMMOVABLE PROPERTY) LIABILITIES ON FIRST APPOINTMENT AND ALSO SUBMISSION OF RETURN ON 1ST JANUARY OF EACH CALENDAR YEAR

NAME

DESIGNMATION

DATE OF JOINING

BASIC SALARY

ASSETS					LIABILITIES
<u>A. Liquid Assets & Investments (including deposits & LIC Policies)</u>					1. Liabilities to the Bank/ Financial Institution
Description	Amount/ original price	Held in the name of & relationship	How acquired	Annual income derived	
1	2	3	4	5	
<u>B. Movable Properties</u>					2. Liabilities to friends & relatives
1	2	3	4	5	
					3. Other liabilities, if any
					Date: Signature:

N.B.: Additional sheets may be attached where necessary.

- Note: 1 In the case of share, securities, debentures etc. face value and approximate market value as on the date of statement may be mentioned.
- Note: 2 In the case of Life Insurance Policies the date of maturity may also be stated.
- Note: 3 Under B information may be given regarding items like (a) gold/gold ornaments: approximate weight only be stated, (b) Silver including ornaments etc. (approximate weight) (c) Other precious metals, items of jewellery, precious stones forming part of jewellery etc. Approximate value to be stated (i) Car (ii) Scooters / Motor Cycles (iii) Refrigerator / Air Conditioners, Radio/Radiogram/Television sets and any other articles the value of which individually is more than Rs.15,000/-.
- Note: 4 In column 4, may be indicated whether the property was acquired by purchase, gift, or otherwise.
- Note: 5 Under liabilities, brief details should be given.

Signature _____ Date _____

FORM - VB

**STATEMENT SHOWING DETAILS OF IMMOVABLE PROPERTY ON FIRST APPOINTMENT AND ALSO
ON 1st JANUARY OF EACH CALENDAR YEAR
(e.g. Lands, House, Shops, other Buildings, etc.)**

NAME

DESIGNATION

ORGANISATION

DATE OF JOINING

BASIC PAY

Sl. No.	Details/Description of property and its location (See notes 1 & 5 below) House/Building/ Land No.	If not in own name, state in whose name held and his/her relationship if any to the employee	How and when acquired (See Notes 2 & 6 below)	Value of the Property (see note 3 below)	Total annual income from the property	Remarks
1	2	3	4	5	6	7

1	2	3	4	5	6	7	8
					Quota		had any borrowing or other facilities at that time

- A. Self
- B. Spouse and Dependent Children
- 2) Any additions/deletions to this statement as on 1st January and the profit/loss incurred by me are given below.

Place:

Date:

Signature _____

ANNEXURE

To be submitted along with the Assets & Liabilities Statement as on 1st January of every year)

Form for giving information where total transactions in shares, securities, debentures and investment in mutual fund schemes etc. exceed Rs.25,000/- during the calendar year as on 1st January

1. Name and designation
2.
 - i) Scale of pay and present pay
 - ii) P.F. Index No.
3. Details of each transaction made in shares securities, debentures, mutual funds scheme etc. during the calendar year.
4. Particulars of the party/firm with whom transaction is made.
 - (a) Is party related to you?
 - (b) Did you have dealings with the party in your official capacity at any time or is the applicant likely to have any dealings with you in the near future?
5. Source or sources from which financed?
 - (a) Personal savings
 - (b) Other sources giving details.
6. Any other relevant fact which you may like to mention.

Declaration:

I hereby declare that the participants given above are true.

Place :

Signature:

Date :

Designation:

F O R M – V D
(Rule 16.6)

NAME OF THE ORGANISATION

Sl No.	Name & Designation of the officer	Name of the Country visit	Duration of stay	Source of Funding	Remarks

FORM - VI
(Rule 24.1)

No.
Name of the company
Place of issue

ORDER

Whereas a disciplinary proceeding against
Sri/Smt.
(name & designation of the Employee)
is contemplated/pending.

Whereas a case against
Sri/Smt.....
.....
(name & designation of the employee) in

respect of an original offence is under investigation/inquiry/trial.

Now, therefore, the undersigned (authority competent to suspend), in exercise of the powers conferred by Rule 24.1 of Conduct, Discipline and Appeal Rules, hereby place the said Sri/Smt..... under suspension with immediate effect and until further order.

It is further ordered that during the period this order shall remain in force the Headquarter of Sri/Smt..... (name & designation of the employee) shall be (name of place) and said Sri/Smt..... shall not leave the Headquarters without obtaining the previous permission of the undersigned.

Signature
(Name & designation of the suspending Authority)

Copy to Sri/Smt..... (name & designation of the employee). Orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately.

Copy of Sri/Smt..... (name & designation of the lending authority) for information.

The circumstances in which the order of the suspension was made are as follows :
(Here give details of the case and reasons for suspension)

Note - paras 2 and 3 should not be inserted in the copy of the order of suspension sent to the employee to be suspended.

Distribution :

FORM - VIA
[Rule 24.3 (i)]

No.....
Name of the Company
Place of issue

ORDER

Whereas a case against Shri/Smt.....(name and designation of the employee) in respect of criminal offence is under investigation.

And Whereas the said Shri/Smt..... was detained in custody on for a period exceeding forty eight hours.

Now, therefore, the said Shri/Smt is deemed to have been suspended with effect from the date of detention i.e. in terms of sub-rule 24.3(i) of the Conduct, Discipline and Appeal Rules, 1978 and shall remain under suspension until further orders.

Signature
Name and designation of the Suspending Authority

FORM - VII A
(Rule 29.0)
MEMORANDUM

The undersigned proposes to hold an inquiry against Shri under Rule 29 of the Conduct, Discipline and Appeal Rules, 1978 of Coal India Limited. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

Shri is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

Shri further informed that if he does not submit his written statement of defence on or before that date specified in para 2 above or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 29 of the Conduct, discipline and Appeal Rules, 1978 of CIL or the orders/directions issued in pursuance of the inquiry against him ex parte.

Attention of Shri is invited to Rule 21.1 of the Conduct, Discipline and Appeal Rules, 1978 of CIL under which no public servant shall bring or attempt to bring any outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to the service under the Company. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 21.1 of the Conduct, Discipline and Appeal Rules, 1978 of CIL.

The receipt of the Memorandum may be acknowledged

To:
Shri
.....
Name & Designation of the Competent Authority

ANNEXURE - I

Statement of articles of Charge framed against Shri
..... (Name and designation of the employee)

Article - I

That the said Shri
..... while functioning as
..... during the period
.....

Article - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri
.....

Article - III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri

.....

ANNEXURE - II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri
..... (Name and designation of the employee)

Article - I

Article - II

Article - III

ANNEXURE - III

List of documents by which the articles of charge framed against Shri
..... (Name & designation of the employee) are proposed to be sustained.

- 1.
- 2.
- 3.

ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Shri
..... (Name and designation of the employee) are proposed to be sustained.

- 1.
- 2.
- 3.

FORM - VII B

(Rule 31.0)

MEMORANDUM

Shri (Designation)
..... (Office in which working) is hereby
informed that it is proposed to take action against him under Rule 31 of the Conduct, Discipline and Appeal Rules, 1978 of
Coal India Limited. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken
as mentioned above is enclosed.

2. Shri may take the opportunity to make such representation
as he may wish to make against the proposal.

3. If Shri fails to submit his representation within 10
days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable
to be passed against Shri ex parte.

The receipt of this Memorandum should be acknowledged by
Shri.....

Signature

Name & designation of the Competent Authority

To :
Shri

SCHECULE UNDER RULE 27.0

1. No.	Grade of Employee	Disciplinary Authority	Penalties which it may impose	Appellate Authority
1.	2.	3.	4.	5.
	CMD & Whole time Directors of CIL and its Subsidiary Companies to whom the CIL Executives' Conduct. Discipline & Appeal Rules Apply	President of India	All penalties	President of India
(a)	Officers in Grade E-1 to M-3 posted in CIL or any of the Subsidiary Companies	Chairman-cum Managing Director, Coal India Limited	All penalties	Board of Directors Coal India Limited
(b)	Officers posted in CIL Hqrs. and other allied office(s) under the direct administrative control of Coal India Ltd. except NEC	(1) Functional Directors of CIL in respect of officers working under them	All penalties except those under Rule 27.1(ii)(b) to 27.1(ii)(d)	Chairman-cum Managing Director, CIL
	In E1 to M3 grade	(2) Director (P & IR) CIL, for all officers Working in the Departments directly reporting to Chairman, CIL		
	In E1 to E5 grade	Head of Divisions of CIL Hqrs in respect of officers working under them	All minor penalties	(i) Concerned Functional Director (ii) Director(P&IR), CIL for officers working in the Departments directly reporting to Chairman,CIL
c)	Officers posted in NEC			
(i)	E1 to M3	Director Incharge of NEC	All penalties except under Rule 27.1(ii)(b) to 27.1(ii)(d)	Chairman, CIL
(ii)	E1 to E5	CGM/GM, NEC	All minor penalties	Director (P&IR), CIL
(a)	Officers in grade E-1 to M-3 posted in Subsidiary Companies	CMD of the concerned Subsidiary Company	All penalties except those under Rule 27.1 (ii)(b) to 27.1(ii)(d)	Chairman-cum Managing-Director, CIL
(b)	Officers in grade E-1 to E-5 posted in Subsidiary Companies	Functional Directors of the concerned Company in respect of officers working under them.	All minor penalties	Chairman-cum Managing Directors of the concerned Company

(c)	All employees from different subsidiaries nominated as leaders/members of CIL Coal Stock Measurement Teams	Director (Technical), Coal India Ltd.	All penalties except those under Rule 27.1 (ii)/(b) to 27.1(ii)(d)	Chairman-cum-Managing Director, CIL
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The jurisdiction of the Disciplinary Authority shall be determined with reference to the Company/Unit where the alleged misconduct was committed.

Section B

Provisions of CDA Rules in a tabular form ,where

Intimation / Permission is required

Provisions of the CDA Rule at a glance :

Instances where permissions are necessary :

Sl. No.	Item	Description	Clause No. of CDA rule	Remarks
	Employment of self/ near relations	No. employee shall engage himself either directly or indirectly in any other profession / trade etc.	4.4	--
	- Do -	Employment of family to a firm having official dealing with the company	6.2	If situation demand due to urgency, the employment may be accepted subject to the sanction of the competent authority, being sought forthwith.
	Connection with press or	For Editing or management of any news paper /	8.1	In case of purely literary Artistic or scientific character no

	radio	periodical publication		permission reqd.
3	- Do -	Participating in a radio broadcast, contribute any article or write any letter to newspaper / periodical.	8.2	- Do -
4	- Do -	To publish a book or contribute article	8.3	- Do -
5	Evidence before committee	For giving evidence in connection with any enquiry conducted by person, committee or authority.	11.1	Except when enquiry is conducted by govt., State, judicial or company.
6	Subscription	To ask or to accept contribution or to raise fund in any occasion	13.1	Except when sanctioned by law of the land or by order of the company/ subscribe to charitable / benevolent fund.
7	Gift	To accept gift either by self or by any member of the family the value of which exceeds Rs.2500/- from a person having official dealings with the company.	14.3	—

Permission continued....

Sl. No.	Item	Description	Clause No. of CDA rule	Remarks
8.	Public demonstration in honour of a company employee	To receive any complimentary valedictory address or accept any testimonials, attend any meeting or entertainment held in one's / any employee's honour.	15.1	—

0.	Private trade / employment	To engage directly or indirectly any trade in own name or name of his family members or benami.	16.1	Can undertake honorary work of a social or charitable nature or occasional work of library artistic or scientific in nature, provided office work may not suffer. Permission is not required for House Building Cooperative or literary, scientific or charitable society.
0	- Do -	To take part in registration, promotion or management of any bank or other company required to be registered under company's act.	16.3	—
1	- Do -	To accept fee/ honorarium or any pecuniary advantage or any work done.	16.4	—
2	Foreign Visit	To visit abroad on private business	16.6	Application in Form - VD
3	Lending	Lend money to any person possessing land or valuable property within local limits or his/her authority or at interest to any person.	17.4	Except to personal friend a small amount without interest, even if he is possessing land or movable property.
4	Immovable/ movable property	To acquire any immovable or movable property with a firm or persons having official dealing with the company.	19.3	Application in form IV A or IV B

Instances where intimation is necessary :

Sl. No.	Item	Description	Clause No. of CDA rule	Remarks
	Employment of near relations.	Employment of relatives under the company	6.1	At the time of appointment in form-I (company may ask for this information at any time during service period)
	Gift	Gift from : i) relatives exceeding Rs.5000/- ii) Foreign dignitaries/ firm more than once in a year the aggregate value of which exceeds Rs.2500/-	14.2 14.4	Having no official dealing with the company.
	Private Trade/ Employment	Details of any kind of business done by him either in his own name or in the name of his family members or "Benami"	16.1	At the time of appointment and by 31st January of subsequent year.
	Private Trade	If any member of his family engaged in trade / business / owns / manages an insurance agency or commission agency.	16.2	
	Insolvency	If declared insolvent	18.2	
	Immovable property	Acquire or dispose any immovable property.	19.1	Prior intimation is required in Form IV A
	Movable property	Acquire or depose movable property, the value of which is more than two months of basic salary.	19.2	When acquired (in Form IV B). (within one month of the purchase /disposal)

Movable/ Immovable at the time of appointment	i)Movable property inherited/owned, acquired or held the value of which exceeds two months basic pay .	19.4	i) in Form V A (modified) and Form V C (new)	
3	Immovable property	Property return within 1 st January of next year	19.5	In Form V B (modified)
9	Marriage	If marries a person other than Indian Nationality.	22.3	
0	Deemed Suspension	Employee, if arrested for any reason.	24.3 (ii)	If released by bail subsequently then also he has to intimate.

Section C

Common irregularities observed in
award and execution of **Electrical,
Mechanical and other allied contracts
& its improvement thereof**

**COMMON IRREGULARITIES/LAPSES OBSERVED IN AWARD AND EXECUTION OF
ELECTRICAL, MECHANICAL AND OTHER ALLIED CONTRACTS AND GUIDELINES
FOR IMPROVEMENT THEREOF**

CHIEF TECHNICAL EXAMINER'S ORGANISATION

CENTRAL VIGILANCE COMMISSION

GOVERNMENT OF INDIA

Government of India

Central Vigilance Commissioner

Central Vigilance Commission

Satarkta Bhawan,

GPO Complex, Block-A, INA

New Delhi - 110 023

November 21, 2002

MESSAGE

This is another publication from the Chief Technical Examiners' Organization of the Central Vigilance Commission which is very revealing and makes compulsive reading. Several pitfalls and lapses that are observed in awarding contracts and purchases are highlighted in this volume. It will be useful for every executive to go through this and avoid such mistakes. It is always wise to adhere to the various circulars and instructions before we make a decision. The time-tested methods should never be given a go-by in the name of urgency.

Once again we commend the efforts put in by the Chief Technical Examiner in bringing out this volume.

Sd/-

(P.Shankar)

Central Vigilance Commissioner

Sd/-
(H.J.Dora)

Vigilance Commissioner

Sd/-
(Janki Ballabh)

Vigilance Commissioner

PREFACE

Corruption has become the bane of our society. It has assumed alarming proportions and encompasses all spheres of life. There was a time when socially, a corrupt person was not considered a desirable person. But today we have reached such a cynical stage that corruption is not only taken for granted but people with money, however ill gotten it may be are respected by the society. The spreading cult of consumerism and a desire for an ostentatious life style tempts many to make money by hook or crook. This not only results in vicious cycle of corruption but also increased criminalisation of the society. The recent exposes, disclosures and a spate of financial scams have very dramatically highlighted the extent of corruption in high places, in public life.

Corruption can be tackled only by sustained and coordinated effort. In the context of Government organisations and PSUs it is imperative and there is transparency and accountability in governance. The root cause of poor governance lies in corruption. The poor governance in turn, affects the productivity, efficiency, image and the profitability of the organisation. One area which not only affects the bottom line of the organisation considerably but is also corruption prone is the area of contract management. Any mismanagement in the award and execution of contracts may result in heavy leakages of revenue and adversely affect the image and profitability of the organisation.

The CTE organisation of the Central Vigilance Commission conducts intensive examination of all types of works and contracts, executed by various organisations under its purview. During the course of such examinations, a number of irregularities and lapses in the award and execution of the works are observed which are brought to the notice of CVOs for suitable corrective action. However, it has also been our endeavour to help improve the systems in the organisations so that a recurrence of such lapses/irregularities is prevented and there is better technical and financial control in the execution of works. Keeping this perspective in view, this booklet highlighting the lapses/irregularities in the award and execution of electrical, mechanical and other allied contracts is being issued. The lapses have been explained and discussed with illustrations as far as possible. The aim of the booklet is not to indulge in fault finding exercise but to help improve the systems and procedures in the organisations so that the project/contract management is more objective, transparent and professional.

Any omission and suggestions for improvement may please be brought to the notice of the undersigned.

Sd/-

New Delhi

(M.P. Juneja)

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Chief Technical Examiner

Central Vigilance Commission

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PART - I

**COMMON IRREGULARITIES/LAPSES OBSERVED IN AWARD OF ELECTRICAL, MECHANICAL
AND OTHER ALLIED CONTRACTS AND GUIDELINES FOR IMPROVEMENT THEREOF**

INTRODUCTION

1.1 The Chief Technical Examiner's Organisation (CTEO) in the Central Vigilance Commission is the technical wing of the Commission and it advises the latter on all technical/contract matters. One of the important functions of the CTEO is to conduct an independent technical examination of various works, reported by the CVOs in their quarterly progress reports. The preponderant objective in such examinations is to detect malpractices in the award and execution of works as also to contain the recklessness and financial imprudence which may result in losses to the organisation. However, the role is not limited to detection of malpractices and punishment of errant practices. It has also been our endeavour to help improve the systems in these organisations so that a recurrence of lapses/irregularities is prevented in the contracts and there is better technical and financial control that result in efficiency and transparency outcomes. Keeping this perspective in view, two booklets - one on Procurement Systems and other on Civil Construction Works were issued by the Commission. In continuance of this effort while also taking into account the persistent demand from officials of various organisations, this booklet on lapses/irregularities often observed in the award and execution of electrical, mechanical and other allied works has been compiled, with guidelines for improvement.

2. SCOPE

2.1 The award and execution of contracts is a very vast area and it is not possible to discuss the whole gamut of issues involved with this activity in a small booklet. However, an effort has been made to highlight some of the important areas, which are more prone to recurrence of lapses/irregularities, in a large number of organisations. The booklet has been divided into two parts - Part I deals with award of Contracts and Part II with the execution of Contracts. The main emphasis is on objectivity and transparency in award and execution of contracts. A dire need is also felt to inculcate a culture and spirit of professionalism amongst officials managing the contracts so as to ensure high standards of quality and timely completion of works.

3. WORKS MANUAL

3.1 Ideally, the objective of any public contracting is to get the proposed work executed as per bid specifications within a given time schedule and at the most competitive prices. To achieve this objective, it is essential to have well-documented and customised policy guidelines in each organisation so that this vital activity is executed in a well-coordinated manner with least time and cost overruns. It is felt that the absence of a proper Works Manual in most organisations constitutes a significant weakness in the system as it not only leads to adhocism and arbitrariness in decision making but also results in a lack of quality supervision in the execution of works as benchmark standards are not available. This also encourages the 'interested officials' to indulge in corrupt practices, due to lack of accountability in the system. Surprisingly, some fairly well established organisations have no Works Manual despite awarding contracts for many years. Works executed here may be based on the whims of individuals or the responsibility may even be completely abdicated to the consultants. In other

organisations, where the manual is available, it is found that the same has not been updated for years. Such a situation is far from satisfactory and needs to be corrected on an urgent basis.

A codified 'Works Manual' containing the detailed tender/contract procedures, guidelines and standards for execution along with proper delegation of powers needs to be prepared by all the organisations so that there is a systematic and uniform approach in the organisation. Such an integrated approach is not only likely to put a cap on corruption but would also ensure smoother and faster decision-making. The organisations not having their own manuals may till such time, that a comprehensive Works Manual may be put together could consider adopting the Works Manual of established engineering organisations like the CPWD, Railways, MES etc.

NECESSITY AND JUSTIFICATION OF WORK

In the course of inspections by the CTEO, it has been noticed that at times, proposals are initiated and works executed by the organisations without establishing the need or justification for such works. In some organisations there is a frenzy of activity at the end of the financial year in order to indiscriminately park funds (lest they should lapse), in either frivolous activities or in 2nd and 3rd stage priority proposals. In worst cases, the proposals are initiated in collusion with contractors to buy and install equipments nearing obsolescence resulting in completely infructuous expenditure. The following cases are illustrative:

- (i) A port trust initiated a proposal for supply and installation of 2 nos. of 1000 KVA DG sets, without preparing proper justification. The port was declared an essential service by the SEB and was accorded a preferred customer status. There were hardly any power cuts in the preceding 2/3 years. The existing two DG sets of the same rating had sparingly been used as per logbook records and 30% of the port's activity was to be diverted to another port. The wastage was further compounded by installing DG sets of obsolete technology (with 2-stroke engines) rendering the whole expenditure infructuous.
- (ii) A PSU company installed a large capacity effluent treatment plant to supplement the existing one. However, a study of the past statistics and the projected future profile of effluent generation established that the effluent generation growth was in fact negative and the existing plant was adequate and a new plant was not justified.
- (iii) Another case of wasteful expenditure was regarding supply and installation of 8 nos. of 10 tonne Electric Wharf Cranes, as a replacement for the existing 3 tonne and 6 tonne cranes. However, the utilisation of new cranes was found to be pathetically low (3.3%) and was attributed to the sluggish and interrupted operation of these cranes as also the non-availability of bigger cargo. In fact, the cargo units predominantly handled here fell in the under 3 tonne category.

- (iv) While constructing a residential colony, with a calculated load of 1 KW, individual cables of 2 x 16 sqmm were provided by a PSU from the feeder pillar for each flat. These should have been laid from the main Distribution Board from the feeder with a suitable size cable, which would have resulted in substantial savings. Further, the transformers installed were of a total capacity of 3200 KVA (4 x 800 KVA) against a load of 1200 KVA thus increasing the cost of the project by over-designing the whole system. The expenditure on the consultancy charges also increased proportionately.
- (v) In yet another case the Electricity Board made a provision of 2 x 20 MVA transformers, against the envisaged total load of 7.5 MVA, for the new campus of a renowned university, ostensibly to cater to the long term futuristic demands.

Before according administrative approval for any project, it is necessary to establish its techno-commercial viability in terms of rate of return and other benefits and also to evaluate the available alternatives to ensure an optimum utilisation of public funds. The tendency to park the funds in frivolous projects to beat the '31st March Blues' needs to be severely discouraged.

One time purchase of capital plant and machinery should be justified by reference to the actual intended use. The equipments must conform to the latest specifications and technology available in the market. The obsolescence factor the life of the equipment, availability of spares, etc. should be kept in view while deciding the procurements.

Gross over-designing cannot be justified on the basis of unpredictable long-term futuristic demands. This kind of over-designing, particularly in sub-stations, DG sets, etc. not only results in unjustified one time extra expenditure but also results in avoidable recurring expenditure in terms of maintenance costs and higher standing losses. Since over-designing of electrical equipments has rather become a norm, it needs to be given a fresh look as far as optimal designing is concerned.

5. APPOINTMENT OF CONSULTANTS

5.1 Some organisations appoint consultants due to lack of in-house expertise in technical matters. While hiring consultants is justified for such organisations, of late it has been observed that even the engineering departments and some PSUs, with large technical set-up have indulged in the practice of hiring consultants. It has invariably been noticed that the appointment of consultants is done in an ad hoc and non-transparent manner without inviting tenders and without collecting adequate data about their performance, capability and experience. In some cases the consultants were appointed after holding direct discussions with only one firm without clearly establishing the job-content and consultation fee payable to them. Often the scope of work entrusted to the consultant is either not

defined properly or the consultant is given a free hand to handle the case so that experiments with impractical, fanciful and exotic ideas result in unwarranted costs. The organisations display an over-dependence on consultants and invariably abdicate their responsibility completely. The officials do not even oversee the working of the consultants resulting in the latter exploiting the circumstances and at times, in collusion with the contractors, give biased recommendations in favour of a particular firm. It has also been noticed that the consultants recommend acceptance of inferior items/equipments and also give undue benefit to the contractors like non-recovery of penalties for the delayed completion. Following illustrations are relevant to highlight shortcomings in appointment and functioning of consultants.

- (i) In one such case the project was for design and construction of a training institute on a big plot of land in a very posh and expensive area. The whole construction was two storeyed with no scope for future expansion. Ironically all other buildings in the vicinity are multi storeyed highlighting the fact that space utilisation here was very poor. Further, the walls in the reception area and on the outside of the auditorium were provided with acoustic insulation with no rationale. For air-conditioning of the library, instead of providing a single AHU of suitable capacity with ducting etc., 20 plus AHUs had been provided in the room. Such fanciful ideas along with the poor planning and supervision, resulted in the project suffering heavy cost and time overruns. In one of the works for a bank in Mumbai, the substation equipment has been installed in the basement area, jeopardising the safety aspect, as Mumbai gets its fair share of heavy rains and the area is also in close proximity to the sea.
- (ii) In another case, the organisation invited and short-listed 5 consultants but awarded the contract to the highest bidder on the plea that the bidder had done a very good job in some other project with the organisation. Extra amount on account of travel expenses, boarding and lodging was also sanctioned, beyond contractual terms.
- (iii) In yet another case the organisation for construction of its Head Office, invited bids to appoint a consultant for the project. In the pre-qualification clause one unique condition was incorporated which stated that the firm should preferably have a branch office in the city where the project was proposed to be implemented. However, this was not a mandatory condition. After receiving the offers, the firm, who was subsequently appointed, was rated better than the others (lower offers) on the grounds that the firm had a branch office in the city where Head Office was proposed to be constructed.
- (iv) A bank, for construction of its Head Office in Mumbai, short-listed three firms after a thorough scrutiny of offers submitted by a large number of bidders. The price bid part of only three firms were opened, after bringing them at par techno-commercially. But in a surprising manner, the work of consultancy was awarded to an L-2 firm thus compromising all ethics of the tendering.

- (v) The payment terms to the consultants are often allowed quite liberally. In one of the cases, the consultant's fee was paid on quarterly basis without linking the same with the progress of the project. Full payments had been authorised even before the completion of the project. In yet another case, the consultant was allowed extra payment on the plea that since the case was re-tendered, the consultant had to generate extra-documents and hence extra payment was made to them. However, the reasons for re-tendering were found attributable to the consultants but instead of penalising, consultants were rewarded with extra payment.
- (vi) Some organisations, have of late been indulging in a new practice of appointing multiple consultants. First the main architects/consultants for initiating and implementing the project, are appointed. Then one more consultant named as Project Management Consultant (popularly known as PMC) is appointed ostensibly to monitor the execution of works. In some cases one more body having hired professionals and designated as Appex Management Consultant (AMC) is constituted to monitor the progress of the PMC. By appointing so many agencies, the responsibility of the officials of the organisation and these outside agencies gets diluted while the role of these officials is reduced to the signing of cheques alone. All such projects with multi-agency involvement invariably suffer from heavy time and cost overruns. Since the self-interest of outside agencies takes precedence over the loyalty towards the organisation, these agencies tend to collude or collide with each other, and both the situations are detrimental to the smooth implementation of the project.

The appointment of consultants should be absolutely need based and for specialised jobs only. The selection of consultants should be made in a transparent manner through competitive bidding. The scope of work and role of consultants should be clearly defined and the contract should incorporate clauses having adequate provisions for penalising the consultants in case of defaults by them at any stage of the project including delays attributable to the consultants. As far as possible a Project Implementation Schedule indicating maximum permissible time for each activity should be prepared with a view to arrest time overruns of the projects. The role of the consultants should be advisory and recommendatory and final authority and responsibility should be with the departmental officers only.

ESTIMATES

In some cases, it has been observed that the estimated value put to tender is at large variance with the actually accepted value of the contract. The reasons for this can be attributed to either wrong assessment of quantities of items or the sketchy estimates prepared in an unprofessional manner. Sometimes to arrive at the estimated value for a particular item, the rates of lower capacity items are extrapolated or a linear escalation is added to the last accepted rates for similar items. The estimates thus prepared are found to be far from realistic. This results in award of contracts at very high rates vis-a-vis the estimates. In one hydroelectric project, against an estimated cost of about Rs.300 crores, the contract was awarded at Rs.600 crores. To justify the rates various factors which were not tenable at all were considered and the estimated cost escalated so as to bring it as close to the quoted rates as possible. The award, despite a padding of the estimate was still at 31% above the justified amount. In

some of the big value turnkey projects, it was noticed that the techno-commercial feasibility reports are prepared by some external agencies and the project award and implementation is done by different departments - at times with a considerable time gap. In one such case, in the award of a contract for an effluent treatment plant, the implementing agency, initially considered the estimated cost in the feasibility report as correct and the bids were also invited based on those estimates. However, the work was subsequently awarded at a rate almost 100% more than the estimated cost and the vast difference was justified on the plea that the estimate was deficient and unrealistic.

Preparation of estimates for contracts is an area, which needs special emphasis. A well defined scope of work and a realistic market rate estimate can prove to be a vital input for successful execution of a contract with high standards of quality. The estimates should take into consideration all relevant factors based on the prevailing market price of various inputs such as labour, material, equipment etc. at the concerned locations. The estimates inter-alia should include the basic price, fabrication charges, inspection fees, duties, packing, handling and transportation charges, sales tax on works (WCT), octroi or any other statutory levies and installation, erection, testing and commissioning charges, license fees, contingencies etc. as applicable at the time of conception of the project. For big projects like Hydro-electric projects and other turnkey contracts where financial assessment of the project is done well in advance, before the finalisation of the contracts, the financial amount indicated in Techno-Economic clearance/Techno-Commercial feasibility reports should be duly analysed and updated before converting the same into a workable estimate. Any deficiency or inadequacy of data (in terms of rates or quantity) found in such reports should be highlighted beforehand in order to prepare a realistic estimates for the tenders.

7. NOTICE INVITING TENDER

7.1 The most preferred, competitive and transparent mode of tendering is to go in for Open/Advertised tenders. However, there is a tendency in some organisations to go in for limited tenders for high value works. The reasons given for this are, either that the work has to be completed in a very short time or that the firms known for carrying out a particular work are very few in number. In the process, the competition is restricted which in turn results in cartel formation, higher rates and favouritism to select firms. At times, even in cases where advertised/global tender notices are issued, the same are published in 'local' dailies and not in any national newspaper. Surprisingly, in some cases, the notice was published only in the 'evening' newspapers. There are cases of the tender notice being published in a leading national newspaper but not on the page dedicated to the advertisements for tenders, thus partly restricting the competition and defeating the purpose of issuing advertised tenders. Some PSUs routinely follow the limited tendering system for all works and issue tender documents to contractors on their approved list. In one oil PSU, limited tenders were issued to 6/7 approved contractors but only one offer was received. Though this was almost 20% higher than the estimated rate, it was accepted and the contract awarded, without any negotiations. On further examination, it was found that the other 'approved contractors' had not even bothered to respond or to send a regret letter which establishes that they were either no longer interested in dealing with the organisation or had formed a cartel to divide different works of the said organisation among themselves. Ironically, the 'approved

contractors' list had been formed a long time back and had not been updated for years - giving credence to the cartel theory.

In order to generate wide publicity for better competition and to avoid cartel formation and favouritism to select firms, it is imperative that the advertised/global tender notice should be published in select 'national' and 'local' dailies with a large circulation. Tender notices may also be displayed on the notice boards of other organisations. In case of global tenders, copies of the tender notices should be sent to the Indian Missions/Embassies in major trading countries. In addition to the paper advertisements, the tender notices should also be put on the website indicating all the details of the tender. In case of limited tenders to 'approved contractors', due care should be taken to generate adequate competition and reasonableness of rates should be established. The 'approved' list should be periodically updated weeding out the non performers and including fresh entrants in the field.

7.2 The Notice Inviting Tenders (NIT) should contain all the relevant information in an explicit and categorical manner. Some organisations do not indicate the estimated value in the tender notice with the apprehension that the bidders will come to know their estimates and who may then give biased offers. Some other organisations put forth a fraction of estimates in the tenders. And at times such information as may not be relevant and rather may mislead the bidders is also indicated in the tender notice. In one case of supply and installation of a DG set by a hospital in Delhi, the tender notice indicated an initial security deposit of Rs.1,00,000/-. This amount was to be deposited by the successful bidder after award of the contract but the bidders after seeing high value as initial security deposit probably mistook this amount to be deposited with tenders in addition to the EMD. As a result some firms refrained from buying the bid documents and only one tender was sold despite repeated extensions and eventually the work was awarded on single offer basis. It has also been noticed that the tender sale and tender opening dates are not indicated in the tender notices and the tender sale is closed much in advance of tender opening date.

7.3 In some cases, the time given for submitting the bids is unrealistically short and only such firms as are acquainted with the functioning of the organisation and with prior preparations are able to participate in the bid. One such case regarding execution of very large hydroelectric project on turnkey basis is illustrative. The large and complex, work running into thousands of crores involved a lot of spadework before submitting the bids. But the time given for submitting the bids for such a large project was only 45 days. During the pre-bid conference and through correspondence almost all the firms requested for an extension of the bid submitting date which was not granted to them. Due to abnormally short time given, only two contractors submitted the bids in time. On examination of the case, it was found that these two contractors had participated in the first round of tendering for this work but the tender had to be cancelled due to non-conclusion of the financial tie-up for the project. The re-bids for the same work were invited almost after four years and on the plea of urgency sufficient time was not granted to the bidders to quote. However, these two contractors were fully prepared as they had already done their spade work and were therefore in a position to submit their bids in such a short period. The contract was also awarded at very high rates. Thus the purpose of floating global tenders to give wide publicity and generate sufficient competition seems to have been defeated.

In order to generate fair and adequate competition, it is important that sufficient time, depending upon the magnitude and complexity of the project should be given to the bidders to submit their bids. For big projects, extensions if asked by a majority of the bidders may be considered in the larger interest of the project. Any corrigenda issued in support of extension of dates or any other information should be individually intimated by various means and also be published in the media for wider publicity.

3. PRE-QUALIFICATION CRITERIA (PQ)

3.1 The pre-qualification criterion is a yardstick to allow or disallow the firms to participate in the bids. A vaguely defined PQ criteria results in stalling the process of finalising the contract or award of the contract in a non-transparent manner. It has been noticed that organisations, at times pick-up the PQ criteria from some similar work executed in the past, without appropriately amending the different parameters according to the requirements of the present work. One such case of defective PQ criteria which resulted in restriction of competition and apparent favouritism to a particular firm, pertained to design, manufacture and installation of a cooling tower in one of the thermal power units of a PSU. The PQ criteria kept in the bid documents envisaged a condition of minimum capacity (in M³/Hr) of cooling tower to have been executed in past by the prospective bidders. This minimum capacity was taken from the PQ conditions of a similar work but of higher capacity, executed in the past. On examining the case, it was found that this particular threshold value resulted in qualifying only one bidder while a reputed PSU company that was L-1 got disqualified by a very narrow margin. Thus, the work was awarded to L-2 firm with a huge difference of amount between L-1 and L-2. Had the threshold value kept in the PQ criteria been amended in proportion to the reduction in capacity of cooling towers, probably L-1 firm would have qualified. Therefore, keeping a threshold value in a manner, which disqualifies the reputed and big firms out of the very few bidding firms not only results in restriction of competition but smacks of non-transparency and favouritism.

3.2 At times the cases are re-tendered without adequate justification. While re-tendering the PQ criteria is revised with a view to facilitate the entry of a particular firm. In one such case for the supply and installation of an AC plant in a PSU's corporate office building, the tenders were originally called with the condition that prospective bidders with an experience of installing 1000 tonne capacity only were eligible. The case was re-tendered without convincing justification and the experience criterion was reduced from 1000 tonne capacity to 600 tonne capacity. The firm awarded the work finally, had not qualified in the first round of tendering.

3.3 Another important criteria for pre-qualification of bidders is the period for which the work experience is to be considered. The cut off dates regarding work experience are not clearly indicated. In one such case, regarding the hiring of DG sets by a PSU, on an annual basis, the PQ criteria required the prospective bidders to have three years experience in supplying DG sets to any Government/PSU company on a hire basis. Thus the firms that had conducted such a business for 3 years, even 20 years

back were qualified. On account of this vague condition, some firms that were currently not even in this business also participated in the tender.

3.4 The most important aspect of the PQ criteria is of course the nature of work for which the experience is required. Invariably the phrase 'similar work' is used in the tender notice and bid documents. This 'similar work' is interpreted differently by different agencies. In one case surprisingly, the supply and installation of AC ducting and the work of installing a false ceiling in the corporate office building of a PSU were combined in one tender. Such works are normally not executed together as ducting is normally executed as a part of the AC works while false ceiling forms part of civil construction or interior design works. Therefore, strictly speaking no firms can possibly qualify for such works with experience of 'similar work'. On examination, all the firms who participated in the bid were AC contractors and none of them had any experience of false ceiling work which constituted a large portion of the total work.

While framing the pre-qualification conditions, the end purpose of doing so should be kept in view. The purpose of any selection procedure is to attract the participation of reputed and capable firms with proven track-records. The PQ conditions should be exhaustive, yet specific. For bigger and new projects, as far as possible a preliminary survey may be conducted to collect relevant data from the market about the firms of repute in the field. The factors that may be kept in view while framing the PQ criteria are namely,

- a) the nature of the work;
- b) the scope of work involved in the project;
- c) likelihood of availability / experience of firms for such works;
- d) Volume / amount of the work
- e) financial status.

In addition to above, the cut off dates for the period of work experience, the volume in terms of minimum capacity of equipments as well as in terms of monetary amount should be clearly indicated in the pre-qualification criteria so as to avoid any ambiguity at the time of evaluating the bids.

TENDER/ BID DOCUMENTS

0.1 It has been noticed that tender documents containing instructions to bidders, or the general and the special conditions of contract are not updated to suit the contract requirement. As a result obsolete, irrelevant and sometimes conflicting, vague and incomplete clauses are incorporated in the bid documents. Sometimes the ambiguities in the contract clauses are detected at the time of execution of works and due to wrong interpretations/disputes, contracts get delayed.

0.2 All the important clauses pertaining to earnest money deposit, completion schedule, factory testing of equipments, performance bank guarantee, payment terms, penalty for delayed completion, comprehensive insurance cover, contractor's liability, safety arrangements, statutory arrangements for labour welfare, arbitration etc. are at times not properly incorporated in the bid documents resulting in disputes and loss to the organisation. These clauses are important for safeguarding the interest of the organisation and also have an indirect financial bearing on the evaluation of offers and execution of the contracts.

All the important clauses as brought out above need to be incorporated in the bid documents, in a proper and explicit manner so as to fully safeguard the interest of the organisation. The bidders are required to be made aware of what is expected to be done by them after award of the contract so that all factors may be considered by them while submitting the bids.

0.3 The amount of EMD asked for in some cases was found to be extremely low in comparison to the estimated amount of the work. At times, the limit of EMD had not been revised for 20 years. In such cases, the organisation's interest is not adequately safeguarded, in case the bidder rescinds the offer. Some organisations entertain bids that are not accompanied with earnest money and at times, the firms are asked to submit EMD after the tender opening. This violates the sanctity of tenders.

0.4 At times, the amount and form in which the EMD is required to be submitted are not mentioned properly or the same is accepted violating the stipulations of bid conditions. In one case, the bid documents did not specify any mode in which the EMD was to be submitted but at the time of opening of tenders, some of the offers were rejected on the plea that the EMD was not submitted in the form of a demand draft which of course was not specifically mentioned in the bid documents. In some other cases where tenders were invited in the two bid system, the EMD was stipulated as percentage of tender cost instead of fixed amount. In the two bid system, if the EMD is taken on the basis of some stated percentage of tender value and with the announcement of the amount of EMD submitted by the bidders at the time of tender opening, the same will give every bidder a good indication of the prices quoted by the competitors by calculating backwards. A bidder can use this information to the disadvantage of his competitor, if prices are subsequently modified.

The primary objective of submission of EMD is to establish the earnestness of the bidder so that he does not withdraw, impair or modify the offer within the validity of the bid. It also helps in restricting, if

not eliminating 'speculative', frivolous or 'wait and see' bids. Since any relaxation regarding submission of EMD has financial implications; the terms and conditions should clearly stipulate that the offers without EMD would be considered as unresponsive and rejected.

The amount of earnest money deposit particularly in the two bid system needs to be indicated as a fixed and reasonable amount on the basis of an estimated value of the proposed work. Also the form in which EMD is acceptable should be clearly mentioned in the tender documents.

0.5 The evaluation/loading criteria on account of acceptable range of deviations in the commercial terms and conditions viz. payment terms, request for advance, security deposit, completion schedule, performance bank guarantee, etc. are either not incorporated in the bidding documents or even if mentioned, these are not considered, while evaluating the bids and the offers are evaluated simply on the basis of quoted prices which is not in order. In some cases relating to works involving equipments having minimum guarantee loss, provisions are not made for proportionate loading on account of deviation in minimum guarantee loss. The equipments such as AC plants, transformers, cooling towers, generating stations, etc. come under this category. The comparative assessment of offers in a true sense would be complete only if it is made while taking into account the deviations in terms and conditions, minimum guarantee loss etc. with unequivocal evaluation criteria specified in the bidding documents, so that the evaluation of bids after tender opening could be made in a transparent manner without any subjectivity.

0.6 In some cases, only the nomenclature and capacity along with some broad technical details of equipments are incorporated in the bid documents and the generic specifications with complete details of performance parameters and the technical evaluation criteria are not mentioned. In the absence of detailed specifications/technical evaluation criteria, the evaluation of offers on an equitable basis and in a transparent manner would not be possible and would be prone to subjectivity. One such case of misinterpretation of specification because of vaguely defined bid conditions relates to the manufacture, supply and transportation of elbow liners required in a hydro-electric project. The elbow liners were to be supplied by properly welding all the segments before transportation to the site. But in the specifications, one clause that was vaguely incorporated stipulated that the segments to be dispatched for easy transportability. After dispatching the segments, the contractor claimed the full payment of elbow liners leaving the major portion of welding of segments as part of erection which had to be done departmentally. In another case, the list of preferred 'makes' of major equipments was neither included in the bid documents nor was asked from bidders. the specifications included only the names and capacity of equipments and the details of materials, dimensions while other parameters of the equipments were not mentioned, thereby leaving everything to the whims of the contractor/supplier.

The detailed generic technical specifications along with a list of preferred makes of major equipments should be incorporated in the bid documents. In addition the performance parameters and the technical evaluation criteria, if any, need to be specified in the bidding documents in unequivocal terms. However, despite all precautions there may be some contradicting and conflicting specifications/

conditions. In order to overcome such crisis, an order of precedence i.e. which part of contract will prevail over the others should also be mentioned in tender documents.

0. RECEIPT OF TENDERS

0.1 The receipt of tenders in some organisations is done in an unorganised and ad hoc manner. Sometimes the bidders representative leave the tenders with the concerned staff or send these through post addressed to some officer without having proper superscription over the envelopes resulting in the accidental opening of such tenders. This practice is highly objectionable and has to be severely discouraged, as it may cause tampering of offers and leakage of sensitive information.

A suitable arrangement for receipt of tenders at the scheduled date and time through conspicuously located tender boxes needs to be adopted. The tender notice should categorically contain the information regarding receipt of bids, viz. designation and address of officer to whom the tender should be addressed, the superscription/ reference number to be indicated on the envelopes and most importantly, the due date of opening of tenders to be written on the envelope containing tenders.

1. POSTPONEMENT OF TENDER OPENING

1.1 It has been noticed that whenever extension in tender opening is given due to any reason (like change in scope of work or changes in specifications of some of the equipments etc.), the intimation regarding the extension is sent only to such bidders who had purchased tender documents originally even if the extension is regarding opening of first bid like pre-qualification in case of single bid system and techno-commercial bids in case of two bid system. By doing so the competition is restricted to the firms who had purchased tender documents within the original date of tender sale. The corrigendum for such extensions is not being published in newspapers. In some cases, the time given to submit the revised bids is quite insufficient.

In order to give an equal opportunity to all the bidders and to maintain the sanctity of tendering system, it is of paramount importance that any change in tender terms & conditions, specifications and tender opening date, etc. be notified to all the bidders sufficiently in advance of the revised tender opening date. In case of the advertised tenders, such notifications should invariably be through the publication of corrigenda in the media and also through individual intimation of those firms who had purchased the tender documents within the original tender sale date. However, in case the extension is regarding submission of first bid like pre-qualification documents in case of single bid system and techno-commercial bid in case of two-bid system, the tender sale date should also be extended suitably so as to allow new participants in the bid, in order to increase the competition.

2. OPENING OF TENDERS

2.1 In some organisations, the tenders are not opened in the presence of the bidders' representatives on the plea of maintaining absolute secrecy. Such a practice of not opening tenders in public and of not disclosing the rates quoted by all bidders to other firms is against the sanctity of the tendering system, and is a non-transparent method of handling tenders. The possibility of tampering and interpolation of offers, after opening of tenders, in such cases cannot be ruled out. Some organisations do not even maintain tender opening registers. The rates at times are not quoted both in figures and words, cuttings / over-writings are not attested by bidders.

The opening of tenders in presence of the bidders' representatives needs to be scrupulously followed. While opening the tenders it needs to be ensured that each page of tender, particularly the price and important terms and conditions should be encircled and initialled with the date. Any cutting / overwriting should be encircled and initialled in red ink by the tender opening officer/committee. The tender opening officer/committee should also prepare an 'on the spot statement' giving details of the quotations received and other particulars like the prices, taxes/duties, EMD, any rebates etc. as read out during the opening of tenders. A proper tender opening register in a printed format should be maintained containing information viz. date of opening including extensions, if any, names and signature of all the persons present to witness the tender opening which should include the bidders representatives also.

2.2 In cases involving the two bid system, it has been noticed that after opening of the technical bids, the price bids, which are to be opened subsequently, are kept as loose envelopes. In such cases, the possibility of tampering of bids prior to tender opening cannot be ruled out.

In order to make the system fool-proof, it needs to be ensured that the tender opening officer/committee should sign on the envelopes containing the price bids and the due date of opening of price bids should be clearly mentioned on the envelopes and should again be placed in the tender box.

3. **TECHNO-COMMERCIAL EVALUATION OF TENDERS**

3.1 **OPEN / ADVERTISED TENDERS :**

3.1.1 There have been some cases in which the tenders were issued to the technically pre-qualified firms and after receiving their offers on single bid basis, the offer of lowest bidder was rejected on technical grounds. In a case of supply and installation of Local Area Networking (LAN) system by a PSU bank in Delhi, the offers were asked in a single bid and the firms were required to enter their rates against the formatted BOQ (Bill of Quantities) sheet. Six offers were received. Five firms had quoted their rates against each item of BOQ. But one firm, in addition to furnishing rates against the pre-existing BOQ

items, also added some more items and quoted against them, with the plea to equip the system with state-of-the-art technology. The bank officials, while evaluating the offers, not only considered the bid of the sixth firm which was the highest bidder but also awarded the work to them on the grounds that the offer given by the firm is technically superior to their own specifications.

The single bid system is normally resorted to when the specifications are adequately defined and also the items being procured are standard equipments, designed and manufactured as per general industry standards. However, even for such items, there may be certain deviations in tender specifications vis-a-vis bidders' offers. In order to compensate for such deviations, a loading criteria, to be adopted, for evaluation purpose should invariably be indicated in the bid documents.

3.1.2 In some cases of the two bid system, it was noticed that the makes and technical specifications offered by various bidders are accepted without properly analysing the techno-commercial equivalence of such offers and in the process the bidders offering inferior specifications/makes get undue advantage. Similarly distribution of work is done in an ad hoc and arbitrary manner.

i) In a case for supply and installation of computer system the work was distributed among three firms for similar equipments at three different rates and surprisingly the largest quantity (40%) was given to the highest bidder. Even worse, the repeat order was also placed on the highest bidder only.

In case of the two bid system, techno-commercial negotiations may be conducted with all the bidders to clarify the deviations vis-a-vis tender specifications/requirements. After bringing the acceptable offers on a common platform, all the commercial terms/conditions and technical specifications should be frozen. In case some changes are made in terms/conditions or technical specifications, the bidders may be given a fair chance to revise their price bids accordingly. The distribution of work, if considered necessary should be done in a fair and transparent manner.

3.2 LIMITED TENDERS

3.2.1 Some organisations issue limited tenders to their approved contractors, almost for all the works. However, there are instances when either the response is very poor or the offers are not responsive, as per the bid documents.

(i) An oil sector PSU issued limited tenders to their approved contractors but only one firm responded. Due to the inadequate response, the date of tender opening was extended but still only one offer was received and as a result the work was awarded on the single offer basis at very high rates vis-a-vis the estimated cost. On examination, it was revealed that the firms who were short-listed for limited tenders were empanelled long back. So they had either colluded to form a cartel or were no more interested to execute the tendered works. In yet another case, one

Government consultant first short-listed 8 firms for purchase of UPS for the computer system of a bank and called for the technical and price bids from all the 8 firms. However, after opening of the bids, the work was awarded to an L-4 firm and lower offers were rejected on technical grounds, who otherwise were short-listed based on their past performance and technical competence.

In cases where firms are short-listed for issuing of tenders on limited basis, the techno-commercial competence and other credentials are required to be scrutinised thoroughly. After the offers from such short-listed firms are received, there should normally be no occasion to reject them on technical grounds. Further, since limited tenders are issued to the empanelled firms dealing in a specific item/job on the basis of their capacity and performance it is imperative to up-date the panel periodically.

4. POST TENDER NEGOTIATION

4.1 As per CVC guidelines circulated vide letter No. 8(1)(h)/98(1) dt.18.11.98, post tender negotiations except in case of negotiations with L-1 are banned, in continuation of these instructions, the following further clarifications were issued vide letter No. 98/ORD/1 dt.15.3.99:

- (i) The Government of India has a purchase preference policy so far as the public sector enterprises are concerned. It is clarified that the ban on the post tender negotiations does not mean that the policy of the Government of India for purchase preference for public sector should not be implemented.
- (ii) Incidentally, some organisations have been using the public sector as a shield or as a conduit for getting costly inputs. This should also be avoided.
- (iii) Another issue that has been raised is that many a time the volume of work to be executed is much more than L-1 alone can supply. In such cases the work may be distributed in such a way that the same is done in a fair transparent and equitable manner.

Despite the above instructions, there are instances of holding negotiations with the select/all bidders by some organisations in gross violation of these instructions. The instructions/guidelines circulated by CVC on the subject need to be followed strictly.

5. REASONABLENESS OF PRICES/MARKET RATE JUSTIFICATION

5.1 It has been noticed that works are awarded to the firms by virtue of being lowest among all the bidders without analysing and establishing the reasonableness of the quoted rates vis-a-vis the estimated rates and the prevailing market rates. In some cases even the Abnormally High Rated (AHR) and Abnormally Low Rated (ALR) items are not identified.

- (i) In one such case, regarding the supply and installation of air-conditioning plant, the work was awarded to L-1 firm at 20% higher than estimated rates. However, the officials of the department found these rates reasonable as compared with the prevailing market rates. It is interesting to note that the same officials had prepared the estimates based on the prevailing market rates approx. 3 months before award of work. Such manipulative practices have to be curbed.
- (ii) In yet another case for construction of Combined Effluent Treatment Plant (CETP) by a Government undertaking in Delhi, the work was awarded on a turnkey basis to an L-1 firm at more than 100% higher rates compared to the estimates prepared by an independent Government agency. When called upon to justify these abnormally high rates, the officials woke up to the realisation that the estimates furnished by the agency were deficient and unrealistic, which hitherto were absolutely acceptable to the department.

Before acceptance of the offer, it is very important to establish the reasonableness of rates on the basis of estimated rates and the prevailing market rates. The AHR and ALR items should be duly identified and the officials/agencies responsible for execution of work should be intimated to exercise appropriate control on such identified items.

6. **AWARD OF WORK AND SIGNING OF CONTRACT AGREEMENT**

6.1 In many cases, it is noticed that even if the offer of a particular firm is found acceptable, the work is not awarded within a reasonable time rather, it is prolonged intentionally. Since such delays are viewed as potential source of corruption, it is therefore, advisable that work should be awarded immediately and a formal letter of award should be issued within a reasonable time. In some cases, even though the work order had been issued long back and even the work had started at site, the formal contract agreement between the contractee and the contractor had however not been signed for months together or even in some cases, years together despite payments being made. In such cases, the work is executed without any contractual obligation on either party.

In order to avoid any potential source of corruption, 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 a reasonable time.

7. ADVANCE PAYMENT & BANK GUARANTEES

- (i) As per CVC guidelines circulated vide OM No.NU/POL/19 dt.8.12.97, it has been brought out that payment of mobilisation advance should be made only in cases of select works and that the advance should be interest bearing so that the contractor does not draw undue benefit. However, it has been noticed that some of the organisations are quite liberal in allowing advance payments up to 20%, that too, totally interest free. The payment of interest free advance is in contravention of the guidelines issued by CVC.
- (ii) In some cases though the contract was bifurcated into supply and erection portions but while working out 20% advance payment, total amount of both the portions i.e. supply and erection was considered to the benefit of the contractor. It should be made clear that no advance payment is admissible for the erection portion of the contract.

The advance payments need to be generally discouraged. Whenever the payment of advance is considered unavoidable, the same should be interest bearing as per CVC guidelines and should be allowed after getting an acceptable Bank Guarantee for an equivalent amount with sufficient validity. Timely action for revalidation/encashment of the bank guarantees also need to be taken so as to protect the Government Interest.

8. PERFORMANCE BANK GUARANTEE AND INSURANCE

- 8.1 In some works, either the Performance Bank Guarantee is not stipulated at all or even if it is stipulated the amount of Performance Bank Guarantee/Security Deposit is too low in comparison to the contract value. The validity of Bank Guarantees is also not being scrupulously monitored and extension in the BG commensurate with the time extensions being sought is not asked for, which is detrimental to the Government interest in the event of non-performance of the contract. Some organisations stipulate initial Performance Bank Guarantee (PBG) be submitted at the time of the award of work and be kept valid throughout the duration of the contract period and the defect liability period. But after award of the contract neither does the organisation insist on such PBG nor does the contractor furnish the BG and at time furnishes this late thus getting a financial benefit in the process.

In order to safeguard the Government interest, it would be appropriate to take reasonable amount as Performance Bank Guarantee valid up to Defect Liability period for due performance of the contract. The validity of the BG needs to be properly monitored and whenever the time extension for contract is granted, the validity of BG should also be appropriately extended. The date of submission for the BG should be clearly spelt out and adhered to at the time of the execution of the contract.

8.2 INSURANCE

- 8.2.1 The insurance clause in some cases is either found as not incorporated in the contract or the same is not complied with by the contractor and the department officials also do not insist on compliance. There are instances when the contract envisaged a comprehensive All Risk Insurance for the entire period of the contract but the contractor got the material insured only for transit purposes. In some cases, when the contract period is extended, the insurance cover is not simultaneously extended.

Comprehensive insurance cover for men and materials apart from being a statutory obligation has to be provided in the contract to safeguard the interest of the organisation. Avoiding insurance cover may jeopardize the safety of men and materials and may result in serious legal complications in case of any mishap. Therefore, a comprehensive all risk insurance clause needs to be incorporated and implemented.

9. COMPLETION SCHEDULE OF CONTRACT

- 9.1 The completion period is the essence of any contract but the contract is rarely found to be completed as per the original completion schedule. It has been noticed that most of the organisations grant an extension of time in a liberal and routine manner. The LD clause is not invoked, in cases of delay. Even a proper delay analysis, to establish the cause of delay, is not made. Hindrance Registers, though are sometimes found as maintained at site but in most of the cases either entries are not made at all or bogus entries are made in collusion with the contractors. In quite a few cases rains during the monsoon were considered as hindrance and the benefit was given to the contractor.

- 9.2 In some cases, two different periods for completion of contract are stipulated; one for the supply portion and the other for erection portion. Keeping such stipulations is not in the interest of the contract as the contractor after making the supply may claim large portion of payments and then tend to respond sluggishly as the contractor's stakes are minimal. Moreover, in the case of delay in erection portion, the contractor will plead for an imposition of penalty only for erection part of the contract even if the LD clause stipulate penalty on entire value of the contract. There are cases where the contractor got paid 90/95% payment for the supply of equipments, but shirked the erection and commissioning work on one pretext or the other.

The specific schedule of completion of contract should be stipulated in the contract in an unambiguous manner. Completion of contract should imply overall completion of all the events of the contract, in case of big projects. If the work is broken into small contracts, each and every contract should have its specific schedule of completion which inter alia should be within the overall completion schedule of the main contract. The contractors should be asked to submit the completion schedule of various activities in advance and the progress should be monitored in accordance with such schedule. The LD clause in case of delay in completion of work, should be invoked as incorporated in the contract agreement.

10. DEFECT LIABILITY PERIOD CLAUSE

10.1 The defect liability period clause incorporated by some of the organisations is quite sketchy. The extent of the contractor's liability is generally not spelt out clearly. The date from which the defect liability period starts is not clearly indicated resulting in ambiguity in case the defect is detected in the work. Sometimes the date is reckoned from the physical completion of works but before due commissioning of the same. In some contracts of supply and installation of plant and machinery, the standard guarantee/warranty clause of 15 months from the date of shipment/dispatch and 12 months from the date of delivery, whichever is earlier is incorporated. In such cases, by the time the equipments are installed their guarantee/warranty period is already over or sometimes a very short period of guarantee/warranty is available.

- (i) In a case for providing DG sets in a Hospital, the DG sets were procured by the organisation and stored at site. A separate contract for installation, testing, commissioning was finalised at much later stage resulting in lying of costly equipments unused for months together and jeopardising the guarantee/warranty of the equipments as the same was reckoned from the date of dispatch. On further examination of the case, it was revealed that though the administrative approval had clearly envisaged supply, installation, testing, commissioning of the DG sets through one contract but the executing authorities broke-up the work into two contracts, apparently, to favour a particular firm who was not meeting the PQ criteria if the work was executed on SITC basis.

Detailed Defect - Liability period clause embodying all the safeguards needs to be incorporated in the bid documents and in the resultant contract. In the contracts involving installation/commissioning of equipments, the defect-liability period should be reckoned only from the date of installation/commissioning. However, in case supply and installation have to be executed through separate contract due to some compelling reasons, both the contracts should be processed in such a manner that the time-gap between supply and commissioning is minimal.

11. PAYMENT TERMS AND APPLICABILITY OF TAXES AND DUTIES

11.1 In some organisations, the payment terms kept in the bid documents are found same irrespective of the nature of the contract. The payment terms are either not updated suitably or left open to change, after the award of the contract. In one case, in the execution of a hydro-electric power project, the first few payments were allowed periodically without linking the same with the progress of the work. In cases where a price break-up for payment purpose is required, the break-up is done in a manner that favours the contractor. Similarly, in the turnkey projects where supply and installation are involved, the

Sales Tax on Works / Works Contract Tax (WCT) is applied only on the erection portion without making any reference to the same in the bid conditions. In some cases bigger firms sublet the manufacturing of major equipments to the firms located in priority areas and avail taxes and duties exemptions. Such exemptions are not extended to the end purchaser, i.e. the Government departments and in the process the main contractor draws financial mileage.

The payment terms should be defined unequivocally and should not be changed after award of the contract. An appropriate control on the flow of funds should be exercised while making the payments. As far as possible, the payment terms should be so structured that the payments made to the contractors are linked and commensurate with the actual progress of work. In case of contracts where a price break-up is required for payment purposes, the break-up should be realistic and should be approved by the competent authority. The rates so approved should be deemed tendered rates as if the rates were called for item rate contracts. These rates should be considered for making any proportionate recoveries or withholding of payments or for working out any taxes duties etc. In the case of a composite contract for supply and erection, the applicability of various taxes/duties should be made clear at the outset in the 'instructions to bidders' part of the bid documents.

2. POST CONTRACT MANAGEMENT

2.1 MODIFICATIONS OF CONTRACT CONDITIONS/ SPECIFICATIONS

It has often been observed that after award of the contract, amendments/modifications that have financial implications are subsequently authorised in the contract conditions thus giving financial benefit to the contractors. Some of these are enumerated below:

- 2.1.1 The contract specifications are diluted to benefit the contractor. The makes and specifications as envisaged at the time of signing the contract are not insisted upon and alternate makes/specifications are accepted at the time of execution of the contract, that too without any financial implication. In one case, in the execution of a hydroelectric project, the contract envisaged a 125T EOT crane but the contractor supplied and installed a 100 T crane. The organisation also accepted the same without making any cost adjustments while releasing the payment against this item.
- 2.1.2 The payment terms are amended in a manner favorable to the contractor e.g. advance payments are authorized even when no provision exists in the contract for making advance payments. At times, higher advance payments than stipulated in the contract are authorized.
- 2.1.3 The factory inspection of certain items though incorporated in the contracts was however subsequently waived without any reasons, thus jeopardizing the quality aspects as per contractual requirement and financially benefiting the contractor.

2.1.4 It has also been often observed that submission of the Performance Bank Guarantee was either waived or the same was not extended even when the contract period was extended.

2.1.5 Some bigger equipments are received in a knocked down conditions and the payments are released against such items before getting them assembled thus the labour and other input charges required for assembling the equipments are paid in an unauthorised way or pre-maturely, hence giving a financial advantage to the contractor.

After conclusion of the contract, any relaxation in the contract terms/ specifications should be severely discouraged. However, in exceptional cases where the modifications/amendments are considered absolutely essential, the same should be allowed only after taking into account the financial implications. Further, a sufficient amount should be withheld against the items received in an unfinished/incomplete condition so as to ensure that no extra payments are made against such items / services.

2.2 POST-CONTRACT MONITORING

2.2.1 It is felt that the post contract monitoring is generally handled in a casual and lackadaisical manner. It has been observed that due to lack of coordination and the diversified approach followed by various agencies in the implementation of the projects, there are time and cost overruns.

2.2.2 In some cases, even after expiry of completion schedule stipulated in the contract and without extension of time granted by the owner, the departments keep on exchanging correspondence with the contractors and thereby keep the contract alive. This may result in serious legal complications if it is intended to cancel the contract.

2.2.3 Some organizations do not incorporate a liquidated damages/penalty clause for imposing a penalty in case of failure by the contractors to complete the contract within the stipulated schedule. The contractors quote short completion period and in the absence of deterrent conditions, in the contract, manage to obtain repeated extensions. Even in cases where the LD clause is stipulated; it is not invoked for delay in completion and no recoveries are made from the contractors, on some pretext or the other.

2.2.4 In a large number of cases, the contractors undertaking services contracts (viz. Electrical, Air-Conditioning, Lift, Fire-fighting etc.) try to blame the Civil Contractor for delays therefore absolving themselves of any responsibility and officials meekly accept this argument without verifying the details, thus giving undue benefit to the contractor.

2.2.5 It has also been noticed that even though the contract clearly stipulates deployment of site supervisory staff by the contractor, with minimum requisite qualification and experience, but in practice the supervisory staff is invariably found with inadequate qualifications and experience and is also not employed for the full duration of the contract. The departments are found ignoring this important aspect thus jeopardising the quality supervision of the contract.

It is essential to accord priority to the post contract follow-up for execution of works. The time extension should be granted only on bonafide requests and not in a routine and casual manner. After expiry of the contract period, the contractee should refrain from exchanging correspondence with the contractor. For any delays on part of the contractor in completing the contract the liquidated damages clause should be invoked. In case more than one contractor are engaged on a project and delay occurs, the case should be analysed in a total perspective and the agencies responsible for the delay, including the consultants should be appropriately penalised. There is a dire need to inculcate a transparent and professional contracting culture so that the non-performers are weeded out and only reliable contractors, who can prove their credentials by consistent performance in terms of quality and timely completion of contracts, are encouraged.

PART - II

COMMON IRREGULARITIES OBSERVED IN FIELD/SITE INSPECTION OF VARIOUS WORKS

ELECTRIFICATION WORKS (EXTERNAL & INTERNAL)

1.1 HT PANELS

Common deficiencies observed in HT Panels are enumerated below:

- (i) The size of bus bars in some of the cases was found less than the rated current carrying capacity.
- (ii) In some cases, tripping current of switchgear was found to be higher than the current carrying capacity of bus bars.
- (iii) The clearances in all directions of panels and gap between bus-bars were found to be less than the IS stipulations.
- (iv) The construction material of the panel body is often sub-standard either due to poor quality of the sheet or due to lesser thickness of the sheet.
- (v) In some cases, the highest operating points in the panels are positioned higher than the standard stipulations. As per practice, the highest operating switch in panels should not be above 1900 mm from the ground level.
- (vi) The CTs are sub-standard in make and the burden of CTs does not match with the requirement.
- (vii) The make of the components/accessories is not mentioned clearly, thus leaving everything to the choice of manufacturer of the panels.

- (viii) The control wiring inside the panels is found multi-stranded and sometimes even less than 2.5 sq. mm.
- (ix) The selection of capacity of capacitor banks is done in a random manner and is not based on the actual inductive load in the circuit.
- (x) The stacking of batteries is not done on corrosion resistant platforms and often even the acid is found split over the floor. Adequate ventilation for acid fumes is also not provided.

Any tripping / faults in the HT part of the switchgear affects a wider area of supply. Therefore while designing the HT panels, an adequate factor of safety should be considered. The size of bus bars, side clearance of the panels, construction of materials, selection of components of HT panels should be strictly as per the relevant IS and the tender specifications and should conform to the IE rules.

..2 TRANSFORMERS

Common deficiencies observed in transformer installation are as under:

- (i) The types of transformers are selected in an ad hoc manner. There are cases when outdoor type transformers are found placed inside the closed rooms without proper ventilation.
- (ii) In one of the cases, though the cooling system specified for the transformers was air natural, but on site it was found that one more exhaust fan was installed at the top of the transformer to supplement the cooling system which made it a forced natural cooling system.
- (iii) The type of winding material of transformer coils is not clearly specified which may be a potential cause of controversy at the time of execution.
- (iv) The gap between the phases of end terminations of cables is found less than specified.
- (v) The transformers are found with one body earthing and one neutral earthing instead of double body earthing and one neutral earthing.

- (vi) The minimum clear distance as required inbetween the earthing and the equipment are not maintained and all the earth pits are sometimes found clustered in a small area.
- (vii) In some of the cases, the clearance in all directions of the transformer is not found adequate as per the relevant IS specifications.
- (viii) The arrangement for prevention of fire due to leakage of spillage of the transformer oil is not found adequate.

The transformer is the heart of electrical installation/switchgear. The type and capacity of the transformer should be chosen with utmost care. All the relevant IS specifications should be strictly adhered to. There are certain restrictions in the installation of oil transformers in basements and in public intensive areas. Another key consideration for installing transformers is that the place should not be low lying as water collection near such installations may prove costly.

.3 LT PANELS AND CABLES

Common irregularities observed in LT panels and cable works are enumerated below:

- (i) In a majority of these cases, LT panels are manufactured by subletting to small firms that are not even CPRI approved. Often their products are not type tested.
- (ii) The sheet thickness used for the panel body is found to be lesser than the specified dimension in some of the cases.
- (iii) In one case, the original specifications envisaged two MCC (Motor Control Centre) panels but on actual site, one panel with both side openable and installing switches was accepted without any financial adjustment.
- (iv) Sometimes, the specifications envisage provisions of MCCB while in actual fact SFUs (Switch Fuse Units) were provided at the time of execution.
- (v) There have been instances when incoming main was required with an ABC but instead MCCB was provided which gave financial advantage to the contractor.

- (vi) At times, the panels are not found to be of cubicle type as envisaged in the specifications.

- (vii) Sizes of bus-bars are found on lower side or sometimes the material of the bus-bar is changed from copper to aluminium giving a financial advantage to the contractor.

- (viii) Many a time, the thimbles used for termination of cables are found of unspecified makes. Even the thimbles are not properly crimped thus leaving air gaps, etc.

- (ix) In some cases the types of cables and the optimal size of cables are not properly mentioned thus leaving everything to the discretion of the contractor.

- (x) The XLPE cable in one case was originally envisaged but at the time of execution, the contractor supplied PILC cable which is an obsolete alternative.

- (xi) Mostly the laying of cables is not done as per relevant IS specifications. Either the depth of trench is found less or brick and sand cushioning is found inadequate. The cables are abruptly bent near the panel for termination.

- (xii) In one instance, the cable was to be laid in a new trench, as per contract, but the contractor laid the cable in an existing trench, which was made to lay other cables, and claimed payment at the rates of laying a cable in the new trench.

- (xiii) There have been instances when laying and terminating the cables was one item of BOQ and termination of cables was another item which amounted to duplicity of work. But due to misinterpretation, the contractor claimed payments against both the items separately.

- (xiv) In the construction of the Head Office building of a bank, the LT switchgear was installed in a basement which was potentially hazardous due to chances of collection of water in the basement.

LT panels are generally manufactured by small firms, therefore, in order to ensure the requisite quality and safety, CPRI approval should invariably be asked for the type of switchgear they are authorised to manufacture. Types of switches ACB, MCCB, SFU, etc. should be explicitly defined in the contract specifications. Similarly, the type and size of cables required for the work should also be categorically mentioned beforehand. Items of BOQ should be chosen with due care so as to avoid any duplicity of works which may result in overpayment to the contractor.

Common deficiencies observed in internal electrification work are enumerated as under:

- (i) The conduit size with its class are not clearly specified resulting in the supply of sub-standard material of contractor's choice.
- (ii) The maximum number of wires in each conduit pipe is not found strictly as per the relevant IS.
- (iii) In some cases, the wire sizes and the thickness of conduit pipes are found to be less than specified.
- (iv) In some cases, a single switch box was found with two incoming phases. This is a safety hazard and violation of ISS.
- (v) Switch-boards are not properly flushed and bakelite sheets are found in bent position.
- (vi) Metal boxes are found without proper provisions of earth termination arrangements.
- (vii) In many cases, terminations of conduits are not provided with check nets to ensure continuity. Also, rubber bushes are not provided in the conduit in the MS boxes so as to draw the wire safely and without causing any injury.
- (viii) The gap between clamps is found more than as specified in relevant IS specifications.
- (ix) Fish-wire is found of lesser size and is generally not found inserted during the laying of conduits.
- (x) The sheet thickness and depth of MS-box is found as being less than specified.
- (xi) In some cases, joints are provided in the point wiring even without proper insulation/connectors.
- (xii) In some cases, the junction boxes were found used for the fan connections. Also ceiling roses for fans/exhaust fan point are not provided.

(xiii) In quite a few cases, it is found that the height of switchboard for light points and the light/power sockets is not 1.2 meter and 23 cms respectively, from finished floor level as stipulated in relevant IS specification.

(xiv) Mostly, the earth-pit dimensions are found less than as stipulated in the contract. As per relevant IS, the cover-thickness of earth pit should not be less than 10 mm and the dia of the MS rod should not be less than 6 mm.

(xv) In a majority of the contracts, the polarity test of all the switch/ sockets is not conducted and certified by competent authority.

For any internal electrification work, the size and quality of conduit pipes, cross section and thickness of insulation for wires and quality of circuit breakers should be given due attention as these items form the most critical part of the installation. All relevant IS specifications should be strictly adhered to at the time of execution of IE work.

AIR-CONDITIONING WORKS

The common irregularities noticed in the air-conditioning works are as under:

2.1 HEAT LOAD CALCULATIONS

In most of the cases, the designing of plants is found to be done on higher side. The ambient peak temperatures for short times are considered for heat load calculations. Also the heat generation load of various equipments and human occupancy is kept on an unrealistically higher side. All these factors result in over-designing and thus perpetual under utilization of the plant.

Heat load calculations should be based on the ambient conditions prevailing over a considerably large period so that the design parameters are realistically selected and the system is utilised optimally. Also the other inputs for heat load calculations, like occupancy rates, equipments load, etc. should be taken on a realistic basis only.

2.2 CHILLERS

The selection of type of cooling is found to be done in an ad hoc manner. There have been instances when air cooled chillers were used while the highest temperature touched 45°C or above and there was no scarcity of water in the area. On the other hand, the water cooled chillers were used in some southern part of the country with an acute shortage of water where probably air cooled chillers would have been a better choice. In one more instance of irrational choice of type of cooling, one organisation went for a mix type of chillers, i.e. 50% air cooled and 50% water cooled, which has not only resulted in a mismatch but also resulted in maintaining two types of spares which is a costly affair.

Since the type of chillers affect the overall performance of the air conditioning plant, therefore the selection of cooling should be done with due care. Generally, the type of chillers are based on climatic conditions, the size of the plant and availability of water, etc.

2.3 COMPRESSORS:

- (i) There are instances when two compressors of half the capacity are accepted in place of one unit of double the capacity as envisaged in the contract.
- (ii) Sometimes, even the type of compressors envisaged is left open till execution of the item and thus a free hand is given to the contractor to supply the compressor of his choice, i.e. open type, hermitically sealed or semi-hermitically sealed.
- (iii) In some cases, though reciprocating type of compressors were envisaged in the tender specifications but the contractor supplied screw chillers of lesser capacity on the plea that screw chillers are more efficient thus, fulfillment of contractual obligations is not established.
- (iv) In most of the Government Department Works, the specifications of compressors and other accessories are generally based on a particular model of a particular manufacturer in a vague manner, when it comes to supply of items, the model numbers envisaged in the tendered specifications are not found matching with the model actually supplied.
- (v) In one case, the model number envisaged in the tender specifications was changed during some technical negotiation with the successful bidder. But at the time of actual execution, even the model supplied was not found matching with the agreed model.
- (vi) In some cases, the motor rating of the compressor motor is envisaged as being 10% higher than the full load requirement of the compressor. But since most of the manufacturers supply a factory

built motor compressor unit, which normally does not have motors with a 10% higher capacity, consequently 100% conformance is not ensured.

The model number, capacity of compressor and motor should be explicitly indicated in the tender specifications so as to avoid any controversy at the time of execution. Also the type of compressors should be decided before hand to avoid any subsequent interpretations.

2.4 CONDENSERS

- (i) Though in the contract, the make of condensers are normally the same as the compressors but at times it is found that condensers are of some local and less reputed make.
- (ii) In one case the overall length and dia of condensers were found lesser than the stipulated dimensions.
- (iii) The dia and thickness of copper tubes used in the condense were found less than specification in some cases.
- (iv) The linear density of fins was also found lesser than the specifications.
- (v) The inlet and outlet temperatures of water and refrigerant are either not specified in the tender or not adhered to by the contractors.

The overall length and dia of the condenser the dia and thickness of copper tubes and the linear density of fins decide the performance of a condenser and are very important parameters. Therefore, these parameters should invariably be checked and it should be ensured that these are of tendered specifications before installations.

2.5 CONDENSER AND CHILLED WATER MOTOR-PUMP SETS

- (i) The type of coupling of motor-pump set is either not mentioned in the contract specifications or not adhered to at the time of execution of work.

- (ii) In some cases, the impeller of pump was found to be of cast iron as against brass as envisaged in tender specifications.
- (iii) Invariably the type of protection of motors and class of insulation is found to be at variance with the specifications.
- (iv) Even the motor rating and rpm was found lesser than the specifications.
- (v) There have been instances when horizontal split casing pumps were envisaged in the tender specifications but actually monoblock pumps were provided at site.

The type of casing of pump sets rating and rpm of motors should be clearly mentioned in the tender specifications. Besides, the material of construction of impellers and type of protection and class of insulation of motors are also critical items, which need special attention.

2.6 AIR HANDLING UNITS

- (i) In some cases, the double skin AHUs were envisaged in the tender specifications but at actual site, single skin AHUs were supplied by the contractor.
- (ii) There was a case when the provision of double blower AHU was agreed upon as a substitute item though there was no change in the CFM of AHU vis-a-vis single blower AHU. But there was a significant change however in the price of substituted item.
- (iii) The face area of cooling coils was found lesser than the specified and/or drawing dimensions.
- (iv) The detailed tender specifications were not found matching with the actually installed AHUs. The plea given for such deviations are that AHUs are standard items and are supplied as factory built items from the manufacturers of AHUs.
- (v) The rating of motors, used in AHU was found less than the actual requirement resulting in over heating of the motors. Also, the single phase preventors were not provided in these motors.

- (vi) Almost in all the cases, the specifications envisage provision of AVMs (Anti-Vibration Mountings) for installation of AHUs but there were hardly any instances where AVMs of reputed make were provided. Most of the places, rubber pads are used instead of AVMs.
- (vii) Similarly, the AHUs are envisaged with noiseless operation but in very few cases, the noise level was measured after installation of AHUs.
- (viii) Even the sheet thickness of enclosure of AHUs was found inadequate when compared to the specifications.
- (ix) In most of the cases, the AHUs are located in cramped spaces with the result that maintenance and upkeep of AHUs become very difficult. In one case, the AHUs were installed in a loft inside a big auditorium which would create unpleasant noise inside the auditorium.
- (x) In one case, a large number of small AHUs were installed in a scattered manner to cater to the library of the training institute. Such large areas are generally provided with a big AHU of suitable size in order to save space as well as cost.

The cooling impact of any AHU is mainly judged by the CFM and cross section area of the cooling coils. Therefore, it should be ensured that these two parameters strictly conform to the specifications. Besides, since these units normally run in unmanned areas, the fault detection and prevention action thereon should therefore be given due priority.

2.7 DUCTS, GRILLS AND DIFFUSERS

- (i) The degree of galvanisation of GI sheets was found inferior to the specified grade in some of the cases.
- (ii) Even the thickness of sheet was found less than specified in quite some cases.
- (iii) In some cases, either the insulation of GI sheets was not properly specified in the tender documents or the same was not found conforming to the specifications.
- (iv) Sometimes the thickness of sheet was not matching the cross-section of duct and thus violated the stipulations of relevant ISS.

(v) Invariably the supports used for hanging the ducts are found at more distances than specified.

(vi) Even the dia of hanging rods was found less than minimum requirements.

(vii) In some cases the dimensions of grills were found less than specified.

The ducts are important link between AHUs i.e. source of generation of conditioned air and the area to be air-conditioned. The heat gain or heat loss in ducts or any leakage in the ducts may have adverse effect on the overall performance of the AC plant. Therefore jointing of ducts and insulation of ducts besides quality of sheets should be given due attention.

2.8 COOLING TOWERS

(i) The makes of cooling towers are restricted to one or two only whereas there are quite a number of firms manufacturing the cooling towers.

(ii) Thickness of FRP sheets used for manufacturing the cooling towers are not mentioned in specifications in most of the cases thus giving free hand to the suppliers.

(iii) In quite a few instances, though the material of fan blades was envisaged as cast aluminum but actually the contractor supplied fans made of FRP on the plea that cooling towers are factory built items and bought out from trade.

(iv) In some cases the cooling towers with same model number were found used. For example, for a range of tonnage of the CT from 75 ton to 90 ton, same model was found to be used.

(v) In most of the cases particularly with cross flow cooling towers, ladders are not provided even if specifications envisage provision of ladders.

(vi) In some cases the cooling towers were to be installed on RCC foundations which was included in the BOQ but at actual site, the cooling towers were installed on the RCC beams of the civil work of the building thus giving financial benefit to the contractor.

(vii) The colour and thickness of PVC fills used in the cooling towers are either not specified in the tender or are not adhered to as per specifications.

An efficient cooling tower can, to a great extent lessen the burden on other equipments of the AC plants. Even one degree fall in temperature of outlet water of cooling tower can improve functioning of plant significantly. Therefore the capacity of fan, colour and density of PVC fills, sprinklers and nozzles, etc. should be carefully chosen and strictly adhered to at the time of execution.

2.9 PIPES AND FITTINGS

(i) The grade and sizes of pipes in some of the cases was found to be used in an ad hoc manner and the makes were not from the approved list.

(ii) The valves and fittings are also found supplied from less reputed firms and not as per specifications.

(iii) The thickness of insulation and cement plastering is invariably less as compared to specifications.

(iv) The item of pipes and fittings in most of the cases is kept as lot instead of making it linear measurable item so as to ensure market rate justification of these items.

(v) In some of the cases the proper colour coding of the pipes and direction of flow marks were not made on the pipes.

The selection of pipes of different size should be done on a realistic basis. Also only reputed and standard makes of pipes and fittings be envisaged in the tender specifications and adhered to at the time of execution.

2.10 GENERAL WORKMANSHIP

- (i) Jointing of G.I. ducts is not found as envisaged in the specifications. In one case, the tender specifications envisaged slip joints but the ducts were jointed with riveted joints.
- (ii) The insulation inside ducts and pipes etc. was done in an unskilled manner as the same was found peeling off at a number of places.
- (iii) The acoustic insulation applied in a plant room was found to be done in a shabby manner. The glass wool used was not uniformly spread on the wall and lump formations were seen at many places.
- (iv) The aluminium foil used for wrapping (cladding) the duct insulation is not given proper finish.
- (v) The canvass used at the joint of AHUs and ducts are found either torn or extricating from the joints thus resulting in leakage of air.

Besides, sound material the skillful workmanship can add to the sheen of any project. Therefore, in order to ensure efficient and flawless running of AC plants, the installation of different parts of AC plants should be got done by skilled workmen only.

3. LIFTS / ELEVATORS

3.1 MACHINE ROOM

Common irregularities observed in the design of machine rooms for equipments of lifts are as under:

- (i) The access to machine rooms was allowed even to unauthorised persons, thus jeopardising the safety in the use of lifts.
- (ii) In some cases, the dimensions of machine rooms were found less than the tender specifications.
- (iii) The laying of equipments inside the machine room was not done in a planned manner which gave a shabby and clustered look.

- (iv) In some cases, the dynamic and static colour coding was not applied as per relevant standards.
- (v) There have been instances when the ventilation in the machine room was found inadequate and the electronics components were found getting heated up abnormally.
- (vi) In certain cases even the instructions pertaining to rescue operations by the operating staff were not found displayed inside the machine room.
- (vii) In one case the type of drive envisaged was variable voltage control DC drive instead of thyristor controlled AC drive. Since the variable voltage DC drives are phased out, the machines with these control shall have maintenance problems. Therefore, the latest technology viz. thyristor control as drive should be opted for the lifts.
- (viii) In yet another case of replacement of old existing lifts in a reputed hospital in Chandigarh, the machine room equipments particularly the motors and control panels provided were some foreign make despite the fact that there are quite a large number of indigenous manufacturers for motors and other accessories for the lifts. The imported equipment shall not only be difficult to procure in case of replacement but maintenance of spares shall be a costly affair.
- (ix) In the above cited case, the batteries used for control purpose were found placed in ARD (Automatic Rescue Device) unit thus making the entire unit very congested. The batteries were required to be placed in the battery stack to be provided separately.

Generally, the machine rooms of lifts are unmanned and therefore proper lock and key arrangement is essential so as to ensure the entry of only authorised persons and thereby avoiding any intentional or accidental mishandling of lift equipments. Further, since the critical equipments for lifts are placed inside the machine room and these equipments generate heat when in use therefore proper ventilation should also be ensured to dissipate the heat. Lastly, all the safety instructions for operators and rescue personnel should be displayed inside the machine room in a conspicuous manner.

3.2 LIFT CARS

The illustrative list of deficiencies observed in the lift cars is as under:

- (i) In one case, the guide shoe rollers in the lift car were not envisaged at the initial stage, but at the time of execution, guide shoe rollers were provided at a high cost without any financial justification of these items.
- (ii) The factor of safety of lift rope is not tested and established in most of the cases.
- (iii) In a majority of the cases, the emergency alarms/telephones are found either bypassed or rendered out of use over period of times.
- (iv) In most cases, abnormal misalignment is found between the car floor and the sil. The reason for the abnormal misalignment is generally attributable to the maladjustment of limit switches.
- (v) In some cases, adequate ventilation is not provided inside the lift car. There are instances when even the stipulations of IS 4666 (clause 8.2) are not complied with properly in terms of adequacy of ventilation in the lift car.
- (vi) There are certain cases, when the thickness of brass sheet used inside the lift car is found less than the tender specifications.
- (vii) Although, the IS specifications stipulate conspicuous display of Dos and Don'ts for safety in use of the lifts but in a majority of cases, either the instructions are not displayed at all or the same are displayed in a very inconspicuous manner.
- (viii) In some cases, the ceiling height of the lift cars was found quite less and even the illumination level inside the car was inadequate.

The size of the lift cars should commensurate with the carrying capacity of the lift. The interiors and type of shoe, etc. of cars should be decided before-hand in the tender specification. All the safety instructions should also be displayed preferably bilingually in a conspicuous manner inside the lift cars. Besides, provision of recorded sound with alternative audio clippings in local language and in English/Hindi should also be made announcing the instructions to be followed in case of the accidental stopping of lift. In order to improve safety in the lifts, the length of the toe guard should be increased appropriately in order to reduce the gap between the landing sil and the lower edge of the tow guard so as to prevent any accidental fall through the gap. Further, in case the car stops away from floor level due to power failure, the trapped passengers, in panic, may fiddle with the electro-mechanical latch in the landing door which may be accessible from the car. Therefore, in order to avoid such situation, the

electromechanical latch should be so designed that it is inaccessible or invisible to the passengers in the car.

3.3 SHAFT

The common irregularities noticed in the shafts of lift works are enumerated as under:

- (i) In most cases, the illumination level in the lift shaft is found inadequate either due to non-provision in the tender specifications or due to non-conformance to the specifications.
- (ii) In majority of the cases, the buffer springs are not checked to test their compression which should be minimum 250 mm as per IS specifications.
- (iii) In some cases even the lengths of buffer spring and counter weight spring were found less than the stipulated values.
- (iv) In quite a few cases, the earthing strips provided in the lifts are either not camped properly or the distance between clamps is found more than specified.
- (v) In some cases, the depth of the car pit was found to be less than specified.

In order to have hassle-free maintenance and operation of the lift the shaft of the lift should be adequately illuminated. Further the earth strips should be properly clamped in conformance to the specifications.

3.4 TESTING OF THE LIFTS

Before putting any lift to use, there has to be a statutory test and certification from the lift inspector. But the following deficiencies are noticed in respect of various tests conducted or required to be conducted on the lifts.

- (i) In most cases, the lift doors are neither tested for a fire withstand rating nor is any certificate is obtained from the manufacturer.

(ii) Free fall test is not conducted in most of the works of installation of lifts, neither is the same certified by the lift inspectors.

(iii) Mostly, the lift trailing cables are not tested for fire retardance and moisture resistance.

Safety in use of lifts has to be given the top priority. Therefore all the tests stipulated by IS specifications should be done in a stringent manner. However, in case the conducting of test is not feasible a certificate to that effect should be obtained from manufacturer or from the Lift Inspector.

1.1 CONTROL PANELS, CONTROL CABLES, DETECTORS AND HOOTERS

These items form part of the integrated control and detection system for fire fighting arrangement. Common irregularities observed in these items are enumerated below:

- (i) In the case of a reputed Bank, the provision for a microprocessor based control panel was envisaged in the tender specification but at actual site, a conventional panel with some solid state switching arrangement was supplied without any techno-commercial considerations.
- (ii) In some cases the number of detectors in each zone of main control panel are found at variance with the standard stipulations.
- (iii) In most cases, the distribution of smoke and heat detectors is not found in a reasonable and justified manner. At some places the number of detectors is found as being unreasonably high despite the fact that the area may not be a fire prone one. On the other hand, a lesser number of detectors are installed in fire hazardous places.
- (iv) At times it is found that the fire fighting system installed is not of the appropriate type required for the particular fire hazard. For example, the electrical installation should be provided with sand buckets and carbon foam fire extinguishers but at many places, these provisions are not strictly adhered to.
- (v) In some cases, the main control panel, sector panel and zone panels supplied are not even TAC (Technical Advisory Committee) approved.
- (vi) In some of the cases, the main control panel and sector panel are found to be of patch cord or normal/conventional wiring type instead of adaptor cord system.
- (vii) In some cases, the base of the detector does not conform to the specifications and at times even the makes are not approved ones. The base detector is an item which is rarely checked properly and in most of the cases, it is found to be of spurious make instead of standard make.

- (viii) There were instances when the smoke detectors and heat detectors were not matching the ambient conditions of the place of installation. The detectors were designed to work at a particular temperature. On further examination, it was revealed that the ambient temperature was higher than the detection level of these detectors and hence the chance of false alarms were high. Due to these false alarms, these detectors are generally by-passed.
- (ix) Almost in all the cases, the signal cables, which are used in bulk in fire-fighting detection, are not tested from a reputed laboratory even on a sample basis.
- (x) In most cases, the tender specifications envisage branded and reputed makes of hooters but at actual site, locally made hooters are found installed.

Timely detection of fire can avert a catastrophe. Therefore, it is needless to emphasise that the main control, zonal control, detectors, cables, etc. should be selected with utmost care conforming to latest technology, high quality standards and suiting to the particular place of installation. Further, though there is statutory obligation for seeking clearance and approval for using the fire fighting installations, yet it is found advisable to seek pre-installation or stage inspection of such works so as to avoid any major alterations/modifications at the final stage of installation.

4.2 MAIN AND JOCKEY PUMPS

The common irregularities observed in these items are enumerated below:

- (i) In some cases the capacity of motor was found less than the rated capacity of prime mover of the pump.
- (ii) In yet another case of fire fighting work in a training institute of a bank, the capacity and head of the main pump was found less than the tender specification.
- (iii) There was an instance when the jockey pump did not start automatically even while the standing pressure of hydrant line fell below the threshold value.
- (iv) In one case the engine-pump was not found isolated from the main hydrant line with the results vibrations were traversing in the hydrant line which is a detrimental situation for the installation.

- (v) In one of the cases of Diesel-Engine-Pump Set, the exhaust pipes were not wound with asbestos rope as stipulated in the specifications thus leaving chances of accidental human contact to the heated part of the engine.

The capacity of engines and the rating of prime movers should be chosen with due care. Also all the interlinking controls should be tested periodically to ensure operation of equipments. In order to avoid transmission of vibrations of Engine, Pumps etc. to the main hydrant lines, a flexible coupling between the pump and hydrant line should be provided.

1.3 PIPES AND FITTINGS

The common deficiencies observed in the pipes and fittings of fire fighting works are enumerated as under:

- (i) In some cases the grade (class) of pipes was found Class 'A' which is inferior to the minimum specified grade, i.e. 'Medium' (Class 'B').
- (ii) In most cases, GI pipes were found jointed with threaded coupling as against specified flange welded joints.
- (iii) In some cases, the non-return valves and the sluice valve above 65 mm dia were provided without wheel arrangement and even the direction of rotation was not indicated.
- (iv) There have been instances when a single outlet was provided in place of gun metal double outlet as envisaged in the tender documents.
- (v) In quite a few cases, the dia of primary hose nozzle was found less than 20 mm i.e. the minimum stipulated size as per relevant IS standards.
- (vi) In some of the buildings, the location of hose reels and hydrant outlets are found completely covered by wooden panelling.
- (vii) In some cases even the inscription "Fire Hydrant" and other indications with red paint on doors, etc. were not displayed.

(viii) There were instances when the water sprinklers provided with quartz bulbs were found obstructed/hidden inside the false ceiling/plastering.

(ix) In some cases, the hose reel cabinets were found insufficient for the movement of the reel to a minimum of 120° from its original position.

Since the Hydrant Lines are required to maintain constant pressure, therefore, the grade and quality of pipes should not be compromised under any circumstances. All the fire fighting equipments should be given proper colour coding and indications, etc. wherever required. The location of hose reels should be in a conspicuous position and with free access. The sprinklers and nozzles should be installed without any obstruction.

Section D

Common irregularities observed in
Stores / Purchase contracts &
guidelines for improvement in the
procurement system

COMMON IRREGULARITIES/

LAPSES OBSERVED

IN

STORES/PURCHASE

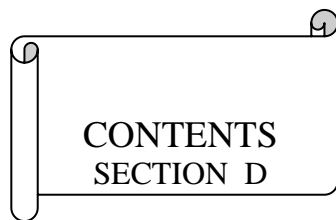
CONTRACTS AND GUIDELINES

FOR

IMPROVEMENT

IN THE

PROCUREMENT SYSTEM



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1.0 Purchase Manual

The cardinal principle of any public buying is to procure the materials/services of the 'specified' quality, at the most competitive prices and, in a fair, just and transparent manner. To achieve this end, it is essential to have uniform and well documented policy guidelines in the organization so that this vital activity is executed in a well-coordinated manner with least time and cost over-runs. In some of the organizations, the purchase manual is either not at all there or has not been updated for years together. Thus the system of procurement is quite adhoc and arbitrary.

• A codified purchase manual containing the detailed purchase procedures, guidelines and also proper delegation of powers, wherever required needs to be made by all the organizations so that there is systematic and uniform approach in the decision-making. Such an integrated approach is likely to put a cap on the corruption and would also ensure smoother and faster decision-making.

3.0 Filing System

The filing system adopted in most of the organizations is not satisfactory. Even the files are not being paginated. The part files are opened as and when new action is initiated and these part files are not merged with the main file, which inter-alia results in break in continuity and arbitrariness in decision-making. The decisions / deliberations of the individuals or the Tender Committees are not properly documented or recorded which dilutes the accountability of the officers and may result in the 'interested' officers going scot free, even if serious lapses are established against them.

The procurement files are very important and sensitive documents and thus there is a need to have a single file system with proper page numbering.

In emergency, if opening of the part files is unavoidable, the same should thereafter be merged with the main file. The decisions and deliberations of the individuals or the Tender Committees also need to be properly recorded and well documented.

3.0 Provisioning

3.1 It has been noticed that in certain cases excessive, fraudulent and infructuous purchases were made without taking into consideration the important aspects like available stocks, outstanding dues / supplies, past consumption pattern and average life of the equipments / items etc. These excessive /infructuous purchases were at times made in collusion with the firms. This resulted in not only the material lying unutilized for years together with no residual life but also a lot of extra expenditure was incurred on the inventory carrying cost. One of the organizations took double procurement action for purchase of tyres against the same liability. Even the factors like shelf life of 5 years and the past consumption pattern were ignored while placing the orders. As no action was taken to dispose off the surplus tyres, the department is incurring inventory carrying cost of about 20-25% per year for the last 10 years and the salvage value of the quantity held in stocks is likely to be 'Nil' due to expiry of the shelf life. In few cases, it was noticed that though the demand for the stores was simultaneously received from different wings / field units but, they were not clubbed together and were rather processed individually against the established principle of bulk buying.

The provisioning of the stores to be done with utmost care taking into account the available stock, outstanding dues / supplies, the past consumption pattern, average life of the equipment/spares. The requirements also need to be properly clubbed so as to get the most competitive and best prices. The requirements should not be intentionally bifurcated / split so as to avoid approval from higher authorities.

In a case for purchase of 1,000 KVA D.G. sets, the tender enquiry was originally issued by the Organization for supply of D.G sets with four stroke engine. However, on the request of one of the bidders, the type of the engine was later changed from four stroke to two stroke and contract was awarded. During investigation, it was found that the engine manufacturer had given a release that the two stroke engine shall be phased out in two years. Surprisingly the existing DG sets were with four-stroke engine.

In yet another case instead of buying DG sets for their energy needs, a shipyard hired DG sets from a firm in an ad hoc manner, without following competitive bidding. On investigation, it was revealed that the energy cost/unit worked, in excess of Rs.40/-

One time purchase for projects or capital equipments / spares should be properly justified depending on the actual requirement usage, rate of return etc. Further, the obsolescence factor should also be taken into account i.e. the equipment to be purchased should conform to the latest specifications and technology available in the market.

Appointment of Consultants

Some of the organizations appoint consultants due to lack of in-house expertise in technical matters. It has invariably been noticed that the appointment of consultants is not being done in a transparent manner and their working is also not properly supervised.

i. The appointment of consultants is often made in an arbitrary manner without inviting tenders and without collecting adequate data about their performance, capability and experience. In some of the cases, the consultants were appointed after holding direct discussions with only one firm without establishing the reasonableness of consultation fee payable to them. In some cases the terms were modified to the financial advantage of the consultant, even after award of the contract. In one of the cases, the organization continued with a consultant for about 30 years and for all types of contracts. In yet another case, the Organization invited offers from 8 enlisted consultants but awarded the contract to the highest bidder on the plea that they are Padam Shree awardees. Extra amount on account of travel expenses was also sanctioned after award of the contract.

ii. The payment terms to the consultants are allowed quite liberally. In one of the cases, the consultant fee was paid on quarterly basis without linking the same with the progress of the project. Even full payments had been authorized before the completion of the project.

iii. Quite a few organizations especially in the Banking Sector seem to abdicate their responsibility completely and do not oversee the working of the consultants resulting in the latter exploiting the circumstances and at times in collusion with the supplier. It has also been noticed that the consultants recommend acceptance of inferior items / equipments and also give undue benefit to the suppliers like non-recovery of penalties, for the delayed supplies and corresponding reduction in the excise duty / custom duty, if announced after award of the contract.

● The consultants need to be appointed only when it is felt absolutely essential. The appointment of consultants needs to be done in a transparent manner and after following the competitive tendering system. The consultant's role should be well-defined. The consultant is meant to assist the departmental officers because of lack of expertise and, it should not mean that they takeover all the functions. The responsibilities relating to award of contract and execution of contract after appointment of consultant should not be abdicated completely by the organizations. Rather appropriate checks should be exercised at all stages of the execution of the contract. Penal clauses for deficiency in service should invariably be stipulated in the contracts/MOUs with the consultants.

Estimated Rates

It was observed that the estimated rates are being worked out in an unprofessional and perfunctory manner, at times by extrapolating the price of the lowest capacity equipment or by applying a uniform yearly compounded escalation over the prices of similar equipment purchased few years ago. Consequently, the inflated estimated rates prepared by the Organizations resulted in acceptance and payment of higher prices to the firms.

As the estimated rates is a vital element in establishing the reasonableness of prices, it is important that the same is worked out in a realistic and objective manner on the basis of prevailing market rates, last purchase prices, economic indices for the raw material/labour, other input costs, IEEMA formula, wherever applicable and assessment based on intrinsic value etc.

6.0 Notice Inviting Tender

Against the most preferred and transparent mode of Global tender enquiry/Advertised tender enquiry, some of the Organizations are generally issuing limited tender inquiry to select vendors, irrespective of the value of purchase. Further, the credentials of the firms and the criteria adopted for selection of such vendors, in most of the cases, are not put on record. This not only result in lack of competition but also favoritism to the select vendors. It has been noticed that even in cases where Advertised/Global tender inquiries were issued, the same were published in the local dailies and not in any National Newspaper and particularly in Indian Trade Journal, Calcutta, which is a Government publication and is regarded

As the standard medium for advertising tender notices in India. The main purpose of issuing Advertised/Global tender inquiry is to give wide publicity. It has been noticed that the Organizations do not forward the copies of the tender notices to the registered/past/likely suppliers and while in case of imported stores, the copies of the tender notices are not being forwarded to Indian Missions/Embassies of major trading countries.

In order to give wide publicity, generate enough competition and to avoid favoritism, as far as possible, issue of Advertised / Global tender inquiries should be resorted to and published in ITJ and select National Newspapers. The copies of the tender notices should be sent to all the registered / past/ likely suppliers by UPC and also to Indian Missions / Embassies of major trading countries in case of imported stores.

It has also been noticed that for Advertised/Global tenders, against a normal time of four – six weeks, there are instances wherein time for tender opening of only 12- 15 days was given. Similarly, in case of limited tenders, against a normal time of 21 – 30 days, there are cases where tenders were opened in a short period of only 7 days. The tender opening in such a short duration is normally resorted to in case of recorded emergencies, where in the purchaser sends the tender inquiries by faster means like fax/speed post. However, in most of such cases, neither urgency nor the proof of having sent the inquiries by fax/speed post could be established. In few cases, it was also noticed that though short term tenders were invited, expressing urgency of the requirement, however, the cases were processed in a very routine and casual manner without any consideration for urgency. On the other hand, in some cases, it was noticed that with the short time available, only 2-3 vendors who probably knew about the system, submitted their bids and, thereby forming a cartel and circumventing the system. In some of the cases of Global tenders, it was observed that though the Organizations had given a time of 6-8 weeks for tender opening but the tender sale was closed 2-4 weeks in advance of tender opening, thereby effectively giving only one month time to bidders for purchase of tender documents. The very purpose of floating Global tender which is to give wide publicity and sufficient time to bidders to get the bidding documents and submit their offers, in such cases seems to have been defeated.

With a view to have wider, fair and adequate competition, it is important that sufficient time of say 4-6 weeks in case of Advertised/Global tenders and 3-4 weeks in case of limited tenders is allowed, except, in cases of recorded emergencies, wherein also, a reasonable time should be permitted and tenders should be sent by faster means like speed post /fax. The tenders should preferably be kept open for sale till the date of tender opening. With the widespread use of Information Technology, the tender notices should also be put on the website and e-mail address of the organization should be indicated in the tender notice.

In case of proprietary purchases, the detailed justification for purchase from a single vendor is not being placed on record. As by issuing single tender, the competition is totally eliminated and the possibility of paying higher prices cannot be ruled out.

It is imperative that the purchase on single tender basis be made with the detailed justification in its support and with the approval of Competent Authority, including associated finance.

1.0 Tender/ Bid Document

The terms and conditions being stipulated in the bid documents by some of the Organizations are quite insufficient and sketchy. Sometimes, the bid document contain obsolete, unwanted matter and conflicting and vague provisions, resulting in wrong interpretation, disputes and time & cost over-runs.

Time/date for receipt and opening of tenders is not being incorporated in the documents.

Important clauses relating to Earnest money, Delivery Schedule, Payment terms, Performance/Warranty Bank Guarantee, Pre-shipment inspection, Arbitration, Liquidated Damages/Penalty for the delayed supplies and Risk-purchase etc. are not being incorporated in the bid documents. All these clauses are important for safeguarding the interest of the purchaser and also have indirect financial implications in the evaluation of offers and execution of the contracts.

All the important clauses as brought out above need to be incorporated in the bidding documents so as to fully safeguard the interest of the Govt. and, for evaluation of bids on equitable and fair basis and in a transparent manner.

In some cases, it was noticed that the amount of Earnest Money Deposit stipulated in the tender document was grossly insufficient to protect the Govt. interest in case of breach committed by the bidder. Some of the organizations instead of ignoring the bids not accompanied with earnest money deposit along with the tenders as per bids requirements, asked the bidders to submit EMD, after tender opening.

The primary objective of submission of Earnest Money Deposit is to establish the earnestness of the bidder so that he does not withdraw, impair or modify the offer within the validity of the bid. It also helps in restricting if not eliminating 'speculative', 'frivolous' or 'wait and see' bids. Since any relaxation regarding submission of Earnest Money Deposit has financial implications besides giving encouragement to the bidders to submit frivolous bids as indicated above; the terms & conditions should clearly stipulate that the offers without Earnest Money Deposit would be considered as unresponsive and rejected.

In case of tenders invited in Two-bid system, some of the Organizations stipulate Earnest Money Deposit as percentage of the tender cost instead of fixed amount. In the Two-bid system, if EMD is taken on the basis of some stated percentage of tender value and with the announcement of the amount of EMD submitted by the bidders at the time of tender opening, the same will give every bidder a good indication of the prices quoted by the competitors by making calculations. A bidder can use this information to the disadvantage of his competitor, if prices are subsequently modified.

The Earnest Money Deposit in case of Two-bid system needs to be incorporated as a fixed and reasonable amount on the basis of estimated value of the purchase.

Some of the organizations incorporate a specific delivery schedule inter-alia mentioning that bids offering delivery beyond stipulated date will be treated as non responsive and will be summarily rejected. However, after opening of the tenders, the bid by one of the organizations with slightly longer delivery period was not rejected as per the bid guidelines, rather that offer was also considered and evaluation was made after loading the offer by applying some unilateral loading criteria. The same resulted in inter se change of ranking position.

In order to meet the project requirement, it would be prudent to incorporate an acceptable range of delivery period with the stipulation that no credit will be given for earlier deliveries and offers with delivery beyond the acceptable range will be treated as unresponsive. Within this acceptable range, for the purpose of evaluation, an adjustment per month say @ 2% should be added to the quoted prices of bidders offering deliveries later than the earliest delivery period specified in the bid documents.

The Evaluation/Loading criteria on account of acceptable range of deviations in the commercial terms and conditions viz. Payment Terms, Delivery period, Performance Bank Guarantee etc. is not being incorporated in the bidding documents. The evaluation of the offers is being made simply on the price quoted which is not in order. The comparative assessment of offers in true sense would be complete only if it is made on equal footing taking into accounts the financial implications for the deviations in terms and conditions, in line with unequivocal evaluation criteria specified in the bidding documents.

In some cases, it was noticed that due to non-stipulation of payment terms in the tender documents, the bidders quoted prices based on varying advance payment. The offers were evaluated by the Organization simply on the quoted prices, even though L-1 bidder had asked for much higher advance payment in comparison to the L-2 bidder. As such, the evaluation done by the Organization was not on equitable basis as the payment of higher advance, evidently had, financial implications.

The Evaluation / Loading criteria with respect to the important terms, like Payment terms, Delivery period, Performance Bank Guarantee etc. having financial implications need to be specified in unambiguous terms in the bid documents so that the evaluation of bids after tender opening could be made in a transparent manner without any subjectivity.

Some of the Organizations incorporate only broad technical details instead of generic specifications with complete details of performance parameters and the technical evaluation criteria. At times the technical evaluation matrix is decided after opening of tenders and is kept confidential. In absence of the detailed specifications/technical evaluation criteria, the evaluation of offers on equitable basis and in a transparent manner would not be possible and would rather be prone to subjectivity in the decision-making. In one of the cases of hiring of coolers, the requirement was bifurcated into two categories viz. 'new cooler' and 'as good as new coolers'. Neither the quantitative requirement of each category of coolers nor the specifications had been indicated for the category of 'as good as new coolers'. Thus the description given was quite vague and susceptible to manipulation as it gave full leverage to the bidders to supply coolers of any vintage.

The detailed generic technical specifications including performance parameters and the technical evaluation criteria, if any need to be specified in the bidding documents in unequivocal terms.

The exemptions/reservation of a particular item which normally apply to SSI units are not being specified in the tender notice / bid documents. The applicable purchase preference to public sector enterprises as per the guidelines circulated by Departments of Public Enterprises is also not being incorporated in the bid documents leading to lot of complaints from SSI/PS Units.

The Government instructions on reservation of items and price preference to SSI Units and purchase preference to PSUs need to be incorporated in bid documents.

It has been noticed that some tenderers offer conditional discounts for coverage within a shorter period, for early inspection/ payment etc. and, such discounts are being considered, at the time of evaluation of tenders by the organizations.

It needs to be ensured that the evaluation of tenders should not be based on such conditional discounts and suitable clause should be included in the bidding documents.

Receipt of Tenders

Some of the organizations do not have proper arrangement for receipt of tenders. There is no tender box for receipt of tenders at tenders at scheduled date and time fixed for tender opening. Instead the trade representatives leave the tenders with the receptionist or the concerned Purchase Officer(s). This procedure is highly objectionable as the possibility of tampering and interpolation of offers cannot be ruled out.

A proper arrangement for receipt of tenders at scheduled date and time through tender box needs to be adopted.

Postponement of Tender Opening

Wherever extension in the tender opening is done due to reasons like change in the specifications or on the basis of request of the vendors, it has been noticed that firstly, sufficient time to submit the bids as per the revised specifications and secondly, the intimation of tender opening extension is not being sent to all the bidders who had purchased the bidding documents. Also such notice of extension is also not being published in newspapers /ITJ.

In order to give equal opportunity to all the bidders and to maintain sanctity of tendering system, it is of paramount importance that any change in the tender terms & conditions, specifications and tender opening date etc. be notified to all the bidders, sufficiently in advance of the revised tender opening date.

Opening of Tenders

Some of the organizations are not opening the tenders in public i.e. in presence of the trade representatives. The system of not opening the tenders in public is against the sanctity of tender system, and is a non-transparent method of handling tenders. There could be a possibility of tampering and interpolation of offers in such cases. The rates at times are not quoted in figures and words, cuttings / over-writings are not attested by bidders. Some of the organizations justify such opacity in tendering system by making a reference to their manuals. This is not acceptable.

The opening of tenders in presence of trade representatives needs to be scrupulously followed. While, opening the tenders by the tender opening officer / committee, each tender should be numbered serially, initialed with date and particularly, the prices, important terms & conditions etc. should be encircled and initialed in red ink by the tender opening officer / committee. Alterations in tenders, if any, made by the firms, should be initialed legibly to make it perfectly clear that such alterations were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should be encircled and initialed and the fact that such erasing / cutting of the original entry was present on the tender at the time of opening be also recorded. The tender opening officer / committee should also prepare 'on the spot statement' giving details of the quotations received and other particulars like the prices, taxes, duties and EMD etc. as read out during the opening of the tenders.

Further, in case of 'Two bid' system, it has been noticed that after opening of the technical bids, the price bids, which are to be opened subsequently, are kept as loose envelopes. In such cases, the possibility of change of bids prior to tender opening cannot be ruled out. In order to make the system fool proof, it needs to be ensured that not only the tender opening officer / committee should sign on the envelopes but the signatures of two trade representatives should also be obtained on all the envelopes containing the price bids. Thereafter, all the envelopes should be put in a bigger envelope / box and the same should be properly sealed duly signed by the tender opening officer committee and trade representatives.

Post Tender Negotiations

As per CVC guidelines circulated vide letter No.8 (1) (h) / 98 (1) dtd. 18.11.98, it has been brought out that "the tenders are generally a major source of corruption. In order to avoid corruption, a more transparent and effective system must be introduced. As post tender negotiations are the main source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiations with L-1 (i.e. Lowest tenderer)". In continuation to these instructions, following further clarifications were issued vide letter No. 98 /Ord. /1 dtd. 15.03.99 :-

- i) The Govt. of India has a purchase preference policy so far as the public sector enterprises are concerned. It is clarified that the ban on the post tender negotiations does not mean that the policy of the Govt. of India for purchase preference for public sector should not be implemented.
- ii) Incidentally, some organizations have been using the public sector as a shield or a conduit for getting costly inputs or for improper purchases. This also should be avoided.
- iii) Another issue that has been raised is that many a time the quantity to be ordered is much more than L-1 alone can supply. In such cases, the quantity order may be distributed in such a manner that the purchase is done in a fair, transparent and equitable manner.

Despite the above instructions, it has been noticed that still repeated negotiations with the select /all the vendors are being carried out by some of the organizations in gross violation of the above instructions. The instructions/guidelines circulated by CVC on post tender negotiations only with L-1 need to be strictly followed.

Technical Evaluation of Tenders

Apart from the deficiencies already brought out in supra para 7.9, it has been noticed that though the offers of some firms fully conform to the specifications laid down in the bid documents, however, based on certain additional features which were never part of the specifications, the offers were graded as 'good', 'better' and 'best' for award of contract.

Once it has been established that the offers meet the laid down specifications, the question of 'grading' as well as any 'pick and choose' should not arise. The contract needs to be awarded to the lowest bidder meeting the laid down specifications.

Purchase Preference to Public Sector Enterprises

The Department of Public enterprises, Ministry of Industry vide OM No. DPE/ 13 (19) / 91-Fin. Dtd. 13.01.92, 15.03.95, 11.10.97, 10.02.98 and 14.09.2000 have circulated the policy of granting purchase preference to Central Govt. Public Sector Enterprises when they compete with Private large scale units. It has been laid down that where the quoted prices of Public Sector Enterprises or Joint Ventures with PSEs with a minimum value added content of over 20% by the latter, subject to purchase in excess of Rs.1 crore, is within 10% of the lowest price, other things being equal, purchase preference will be granted to the Public Sector Enterprises or Joint Venture concerned at the lowest acceptable price. It has been noticed that some of the organizations are not following these instructions and accordingly, undue favour is being given to the Private firms.

The instructions / guidelines circulated by Department of Public Enterprises for granting purchase preference to the Central Govt., Public Sector Enterprises / Joint Ventures need to be scrupulously followed as also brought out by CVC in the instructions circulated vide letter No. 98 / Ord. / 1 dtd 15.03.99.

Consideration of Indian Agents

It has been noticed that some of the organizations entertained the offers of Indian Agents and also place the contracts on them without bothering to examine the following aspects :-

Foreign Principal's proforma invoice indicating the Commission payable to the Indian Agent, nature of after sales service to be rendered by the Indian Agent.

Copy of the agency agreement with the foreign principal and the precise relationship between them and their mutual interest in the business.

The enlistment of the Indian Agent with Director General of Supplies & Disposals under the Compulsory Registration Scheme of Ministry of Finance.

The above aspects are important one to examine the genuineness of the prices quoted by the Indian Agent, the nature of services which would be available from Indian Agent and compliance of Tax Laws by the Indian Agent and, to prevent leakage of foreign exchange.

Reasonableness of Prices

It has been noticed that the purchases are being made by some of the organizations in an ad-hoc and arbitrary manner without satisfying the prime requirement of establishing the reasonableness of rates in relation to the estimated rates, last purchase prices or the prevailing market rates. Some of the instances are as under:-

An organization placed an order for spares on a trader at an abnormally high price of about 40 times the OEM's price. In yet another case, in a span of 10 days, the order was placed on the same firm for the same item at rates almost 10 times of the previous order.

In another case for procurement of an ore crusher, out of 6 offers received by the organization, 5 offers were rejected mainly on the basis of unspecified technical requirement, presumptions and conjectures. Therefore, the competition was killed. The prices of single left out offer were justified by extrapolating the prices of a lower capacity crusher (which were worked out by taking 5% compounded annual escalation over 10 years old prices) in proportion to the crushing force.

In yet another case for hiring of coolers, orders were placed for ambiguous categories of items like 'new' and 'as good as new' coolers. An order was placed on a firm for the category for which the firm had not quoted in their original offer but had subsequently quoted, after they were invited for negotiations. Despite the firm lacking in technical and financial capability and there being cartel formation, still the order was placed at exorbitant prices in comparison to earlier prices for a period of 3 years. Knowing well the cartel of firms and exorbitant prices, the department did not consider placement of order only for one year as for next two years, fresh tenders could have been invited to break the cartel and get better prices.

It is very important to establish the reasonableness of prices on the basis of estimated rates, prevailing market rates, last purchase prices, economic indices of the raw material/labour, other input costs and intrinsic value etc., before award of the contract.

Advance Payment & Bank Guarantees

i) As per CVC guidelines circulated vide Office Memorandum No. NU/POL/19 dtd. 08.12.97, it has been brought out that payment of mobilization advance should be made only in cases of select works and that the advance should be interest bearing so that the contractor does not draw undue benefit. However, it has been noticed that some of the organizations are quite liberal in allowing the advance payments even to the extent of 30%-40% and that too, totally interest free. In some organizations the payment of advance is being stipulated in the bid document itself. The payment of interest free advance is in contravention of the guidelines issued by CVC.

ii) It has been observed that in some cases, despite provision in the contracts for releasing advance payment against Bank Guarantee, the advance payments were released without taking any Bank Guarantee. Unfortunately, in some of the cases, the suppliers failed to discharge their contractual obligations and huge advances are still outstanding for the last several years. It would be suicidal, if the advance payment is released without the Bank Guarantee for an equivalent amount.

iii) In some cases, it has been observed that though the prospects of supply were bleak, still timely action for revalidation / encashment of the Bank Guarantee for the advance payment was not taken and the Bank Guarantees were allowed to lapse, jeopardizing the Govt. interest.

iv) In the case, though the initial advance payment of 20% was released against the Bank Guarantee, however, further 65% progressive payments were also made simply against certification of Internal Auditors that the amount claimed does not exceed the progressive expenditure. The payments were made in a span of hardly 2 months much before the bulk production clearance and without safeguards like Bank Guarantee etc. The Bank Guarantee for 20% initial advance payment was also allowed to lapse. Thereafter, the firm did not make any supplies and was declared sick and huge Govt. claim towards the advances made without protecting the Govt. interest remain un-recovered.

v) The Bank Guarantees accepted were at times defective/conditional and did not safeguard the interest of the purchaser. Normally, the BGs permitting encashment without any demur – merely on a demand from the purchaser are accepted. However, in some cases, though the Bank Guarantees submitted by the suppliers were conditional, stipulating “the encashment only if it is established the supplier had failed to comply with his contractual obligations,” but, the same were accepted.

In one of the cases for procurement of high value equipment, it was observed that though for release of initial advance payment of 30%, submission of a Bank Guarantee was stipulated but, surprisingly for further progressive payments upto 50%, which were also in the form of advances (without receipt of the equipment), the reimbursement of payment simply on the basis of a 'Certificate of Assignments' and without any BG was authorised. After release of first 30% progressive payment, BG taken for 30% advance payment had automatically expired as per terms of the BG. Evidently in this case, the BG was not examined properly before acceptance and the defective BG having conditions deterrent to the Govt. interest was accepted.

- v) In some cases, it was noticed that the effective date of contract was linked with the date of receipt of Bank Guarantee for advance payment. This is detrimental to the purchaser's interest as in the absence of a specific date for submission of Bank Guarantee, it would not be possible to establish specific date of breach to enforce the contractual remedies. In such cases, the supplier will get full opportunity to wriggle out of the contract, if he so desires without fulfilling contractual obligations.

The advance payments need to be generally discouraged except in specific cases. Wherever payment of advance is considered unavoidable, the same should be interest bearing as per CVC guidelines and be allowed after getting an acceptable Bank Guarantee for an equivalent amount with sufficient validity so as to fully protect the Govt. interest. Some reasonable time should be stipulated for submission of Bank Guarantee so that contractual remedies could be enforced, if required. The Bank Guarantees need to be properly examined with respect to the acceptable format and any conditions deterrent to the Govt. interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/ encashment of the Bank Guarantees also need to be taken so as to protect the Govt. interest.

Performance Bank Guarantee

Most of the organizations are not stipulating the requirement of Performance Bank Guarantee while others are stipulating different amount of Security deposit / Performance Bond. In some cases, it has been noted that the amount of PBG is too low in comparison to the contract value. The validity of Bank Guarantees is also not being scrupulously monitored and the extension in the Bank Guarantees commensurate with the delivery period extensions is not being sought resulting in loss to the Govt. in the event of nonperformance of the contract.

In order to safeguard the Govt. interest, it would be appropriate to take reasonable amount of Performance bank Guarantee valid upto warranty period for due performance of the contract. The validity of the Bank Guarantees needs to be carefully monitored and whenever extension in the delivery period is granted, the validity of Bank Guarantee should also be appropriately extended so as to protect the Govt. interest. The genuineness of the BGs should be checked from the issuing bank.

Stipulation of delivery period in the contract

Delivery period is the essence of any contract. It has been observed that in some of the cases, specific delivery period with reference to the terms of delivery is not being incorporated as mentioned below :-

- i) Only the date of offering the equipment for Pre-despatch inspection is stipulated as the delivery period, though the terms of deliver are on CIF basis/ FOR destination basis.

Only the date of completion of supply of the equipment is stipulated as the delivery period even though the installation & commissioning of the equipment is also to be carried out by the supplier. For installation & commissioning, no specific date is stipulated. In absence of any contractual binding in this regard, the suppliers claim the full payment for supplies of equipments and then tend to behave in an irresponsible manner and do not bother to take up timely installation / commissioning resulting in the equipment remaining uninstalled for months / years together.

The specific delivery period for supply as per the terms of delivery such as FOR station of despatch / destination and for completion of installation with the necessary provision for Liquidated damages / Penalty clause in the event of delay in supplies/ installation needs to be incorporated in the contract.

Guarantee / Warranty Terms

The guarantee / warranty clause incorporated by some of the organizations is quite sketchy. The modalities for enforcing the warranty obligations are not being incorporated. Due to incomplete guarantee / warranty terms, the suppliers take full leverage and do not bother to honour the guarantee / warranty obligations resulting in the equipment remaining

defective and unutilized and thereby causing loss to the Govt. It has been observed that in cases where the installation of the equipment is also included in the scope of contracts but the standard guarantee / warranty clause of 15 months from the date of shipment / despatch or 12 months from the date of delivery, whichever is earlier is being incorporated. With the result due to delay in installation of the equipment, the guarantee / warranty expires even before the installation of the equipment or sometimes a very short period of guarantee / warranty is available.

Detailed guarantee/warranty clause embodying all the safeguards be incorporated in the tender enquiry and the resultant contract. It also needs to be ensured that in installation/commissioning contracts, the guarantee/ warranty should reckon only from the date of installation/commissioning.

Post-contract Management

Modification of contract terms / specifications

After award of the contract, amendments/modifications having financial implications are authorized in the contract terms/specifications giving undue benefit to the suppliers. Some of these are enumerated below :-

- i. The specifications are diluted e.g. though specific makes/models of an equipment are specified in the contract as per firm's tender, however, subsequently supply of some more alternative makes/models of the equipment are authorized without taking into account the financial implications thereof. It has been observed that generally lower priced alternative makes/models are being included subsequently in the contract giving undue benefit to the supplier.
- ii. The payment terms are amended favourable to the supplier e.g. advance payments are authorized even when there was no provision in the contract for making advance payments. At times higher advance payments than stipulated in the contract are authorized.
- iii. The Pre-despatch inspection though was incorporated in the contracts but, the same was subsequently waived without any reasons, thus jeopardizing the quality aspects as per contractual requirement.

The submission of Performance Bank Guarantee was waived.

- iv. Even though the contracts were placed on FOR destination, the locations of the consignees were changed nearer to the supplier's premises without taking into account the benefit of freight charges.

After conclusion of the contract, any relaxation in the contract terms / specifications should be severely discouraged. However, in exceptional cases where the modifications/amendments are considered to be absolutely essential, the same should be allowed after taking into account the financial implications for the same.

Post-contract Monitoring

- i. The post contract monitoring is being handled in a very casual and lackadaisical manner. It has been noticed that due to lack of coordination and diversified approach followed by various agencies in the implementation of the projects the same resulted in time and cost over-runs.
- ii. It has been noticed that in some cases even after expiry of delivery schedule stipulated in the contract and without extension of time granted by the purchaser, the consignees keep on exchanging correspondence with the suppliers and thereby keep the contract alive. This may result in serious legal complications if it is intended to cancel the contract. It has also been noticed that even the materials are being accepted and payments are released as and when the supplier makes the supplies. There is utter disregard to the contracting norms relating to delivery period, which is the essence of the contract.
- iii. Generally, the purchaser extends the delivery period of the contracts. However, in some cases it was recorded that the 'Supplier' has extended the delivery period of the contract.
- iv. Some of the organizations do not incorporate Liquidated damages / Penalty clause for imposing the penalty in case of failure of the suppliers to deliver the equipment within the stipulated schedule. The suppliers quote short delivery period and in absence of deterrent conditions in the contract, manage repeated extensions. In some of the cases, it has been observed that Liquidated damages for delay in supplies are not being levied and recovered from the suppliers.

It is essential to accord priority to the post contract follow up. The delivery period should be extended on bonafide request and not in a routine and casual manner. After expiry of delivery period, the consignees should be refrained from

exchanging correspondence with the supplier. In case of delay in suppliers by the supplier, the liquidated damages to the extent possible need to be recovered. Also in case of delay attributable on the part of the supplier, the L/C extension charges should be to supplier's account. In nutshell, there is a need to discipline the suppliers so that the non-performers could be weeded out and the suppliers which can be relied upon with consistent performance, in terms of quality and delivery schedule are encouraged.

Section E

Problem Areas of Corruption in **Construction**

Problem Areas
of
Corruption in Construction

PREVENTIVE VIGILANCE PUBLICATION

CHIEF TECHNICAL EXAMINERS ORGANISATION

CENTRAL VIGILANCE COMMISSION

GOVERNMENT OF INDIA

N Vittal

Government of India

Central Vigilance Commissioner

Central Vigilance Commission

Patarkta Bhawan, GPO Complex,

Block A, INA, New Delhi 110 023

Eternal vigilance is the price of liberty and eternal alertness is the price of vigilance. In engineering, there are three types of maintenance, (i) preventive maintenance (ii) predictive maintenance and (iii) breakdown maintenance. Both in medicine as well as in every aspect of life prevention is better than cure. Prevention of corruption calls for a high degree of alertness. Alertness not in a general sense but alertness about problem areas where there is scope of corruption. The current publication, "Problem Areas of Corruption in Construction" is the second such publication brought out by the CTE of CVC.

I congratulate CTE, Shri Arumugam for taking the initiative to bring out this publication. This identifies the problems areas of corruption in construction as administrative approval, detailed estimate and technical sanction, consultancy, preparation of tender documents, invitation and opening of tenders, tender scrutiny and award of works, works agreement, payment of contractors, site records, quality in construction. The coverage is quite comprehensive and what is more important is based on the rich experience gathered by CTE in this area.

I am sure, this publication will go a long way in improving the quality of preventive vigilance in construction organisations within the purview of the CVC and to that extent help in reducing corruption.

Sd/-

New Delhi

19.08.2002

(N.Vittal)

Preface

Punitive action should not be the main function of the vigilance unit of any organisation. Effective vigilance function lies in the preventive vigilance measures taken. Work specifications, manuals, codes etc. are available to follow during execution of works. However, they are found to be exhaustive for any one to read and memorise. If vulnerable areas of corruption are brought to the notice of the concerned, prevention of the occurrence of the calamities can easily be achieved. Hence, this preventive vigilance publication was thought of. Excuse of ignorance can also be defeated by the preventive vigilance measures.

Attempt has been made to locate the areas vulnerable to corruption in the construction industry from the experience gained by the CTE. Organisation during the intensive examination of works. The problems under various areas are explained with illustrations as far as possible. This publication is not meant for finding faults with any particular organisation. The aim of this booklet is to reduce corruption in the construction industry. I hope this publication would be used by the Vigilance units of various organisations to discharge their functions effectively.

I express my profound gratitude to our dynamic CVC, Shri N.Vittal for his inspiration by his dedication to vigilance administration especially preventive vigilance aspect in publishing books, delivering lectures etc. even by utilizing most of the holidays for that matter. This booklet is the result of the encouragement received from him.

This publication is the outcome of the teamwork of each and every individual working in the CTEO, CVC. Er. K.S.Gaur, former ATE worked hard for preparing the first draft of this booklet. Er. Rabindra Kumar, Er. Surendra Mohan and Er. Chailendra Singh, TEs and Shri S.C.Dixit, ATE had given additional inputs for its improvement. Final form of this publication is possible with the untiring efforts of Er. Vinayak Rai, TE. This booklet could be brought to this shape due to sincere and untiring efforts of Shri Paramjeet Singh, PS of the Commission. I take this opportunity to record appreciation of the above officials. The valuable suggestions given by Er. J.M.Raj, CE(Vig), CPWD are gratefully acknowledged. The timely publication of this booklet would not have been possible but for the keen interest and sincere efforts taken by Mrs. Vijaya Ananth, CVO of Chennai Petroleum Corporation Ltd. which is gratefully acknowledged.

I am sure that this publication would be useful to all concerned.

Any error or omission and suggestions for improvement may be brought to the notice of the undersigned.

Sd/-

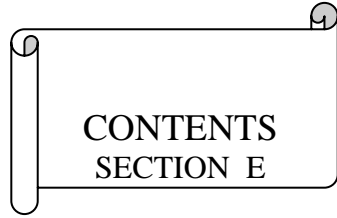
New Delhi

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Problem Areas of Corruption

1 Introduction

Corruption in construction industry was at a lower level of the hierarchy in the past. Bribes paid at that time were mostly for allowing poor quality during construction. However, the top officials maintained a high level of integrity those days, and had even gone to the extent of ordering dismantling of the defective parts of the structure then and there. As time passed, corrupt practices have not spared even the Chief Executives of the organisations. Inflated estimates are prepared to give sufficient margin for the above purpose. Consultants are appointed arbitrarily. Unnecessary and stringent criteria is prescribed for pre-qualification to reduce competition, to get high rates and to favour certain favourite firms. Ultimately, the works are awarded at high rates to favourite firms at the cost of the exchequer. Since huge funds are earmarked for building infrastructure in the country, the construction industry is vulnerable to corrupt practices. An attempt is made in this

publication to identify the problem areas of corruption in the construction industry along with the related problems. The problems and the areas given in this publication are not exhaustive. They cover only the irregularities/problems encountered during intensive examination by the CTE Organisation in the recent past.

2. Problem Areas

Quality in the construction was the area exploited initially for getting bribes from the contractors by allowing inferior quality of works. The payment to the contractors became the next area. Most of the activities in the construction had now become problem areas of corruption. The following areas are identified as the problem areas from the past experience.

- i) Administrative Approval
- ii) Detailed Estimate & Technical Sanction
- iii) Consultancy
- iv) Preparation of Tender Documents
- v) Invitation and Opening of Tenders
- vi) Tender Scrutiny & Award of works
- vii) Works Agreement
- viii) Payment to Contractos
- ix) Site Records
- x) Quality in Construction

Problems identified in the above areas are discussed in the following chapters.

3. Administrative Approval

For every work (excluding petty works and repairs), it is necessary to obtain, the concurrence of the competent authority of the administrative department before commencement. The formal acceptance of the proposals by the competent authority is termed as "administrative approval". The following are the main purpose of the above approval:

- i) To check whether the work is really required.
- ii) To see whether the estimate is not an inflated one.
- iii) To see whether yardstick for various provisions are not exceeded.

3.1 Problems

3.1.1 No approval accorded.

Accordinging of A/A provides to the competent authority an opportunity to take decision regarding scope of work, specifications and cost involved. Otherwise there is likelihood of misuse of the powers by the subordinate authority.

ILLN: A/A for a work costing Rs.30 crores nearly completion was not obtained. On scrutiny it was learnt that funds meant for other works were diverted for this work which are meant for luxury for the staff and not within the yardsticks.

3.1.2 Inflated Provisions in the P.E.

At the conception stage itself, inflated provisions are incorporated in the preliminary estimate and the margin thus available in the sanctioned estimate is misused for non essential works and also for awarding the work at higher rates to the contractor.

3.1.3 Major changes made during execution

The scope and specifications of the work are drastically changed by the executing authorities. This exercise is mainly to give undue benefit to the contractor by allowing him to execute the items at higher rates. Apart from the high rates, the contractor gets additional work without competition.

ILLN. - 1: Number of spans in a bridge were increased during execution from 3 to 8 without the knowledge of competent authority in a bridge work awarded at high rates.

ILLN. - 2: CC & Terrazzo flooring of an office building was substituted with the costly polished granite flooring etc. and thereby increasing the total cost of the project by 30% and by deciding high rates for the substituted item.

3.1.4 Funds allotted to one head incurred on another

There were instances of utilizing the funds on the works not approved by competent authority by diverting funds from approved works. There is no financial discipline in this case apart from utilizing the funds for the lavish expenditure.

ILLN: An office building was constructed almost at double the sanctioned cost by diverting the funds from other sanctioned projects for providing expensive finishing items and air-conditioning items.

3.1.5 Cost over run due to delay in award of work

In many instances it was noticed that there has been unreasonable delay in A/A after submission of the estimate, planning and design, inviting tenders, acceptance and award of work after receipt of administrative approval. This results in exorbitant cost overruns to the tune of crores of rupees.

ILLN: A/A was accorded for an amount of Rs.370.00 crores for a Hydel scheme. But due to delay in taking up the work, the cost had increased to Rs.1150.00 crores.

3.1.6 No check on the preliminary estimate prepared by Consultants

The consultants engaged for planning, design and execution of work may furnish the preliminary estimates with ambiguous provisions and inflated rates etc. The administrative departments simply sanction these estimates without scrutiny resulting in the approval of inflated cost estimates which can be a source of corruption.

ILLN: A consultant prepared an estimate to the tune of Rs.2360 crores for a project. The estimate gives lumpsum amount for various components without giving any basis for the L.S. amount. The administrative approval has been accorded without checking the estimate. During the intensive examination it was found that the estimate is an inflated one.

3.1.7 Non observance of Yard stick

There must be some yard stick prescribed for various requirement such as floor area, finishing items, air-conditioning works etc., for various type of buildings for a particular use. The competent authority should see that these yard sticks are observed strictly while according administrative approval to safeguard the public money against its misuse for personal comfort and benefit.

ILLN: In a work of construction of an office building, the estimate prepared by the consultant provided for expensive finishing items, polished granite flooring, Italian marble flooring etc. and lavish facilities such as air-conditioning etc. for low paid staff etc.

3.1.8 Unit Cost not considered

The estimate prepared for obtaining administrative approval should have some basis, such as unit cost etc. Some organizations such as CPWD follow well established practice, such as "plinth area rates" for preparation of estimate for accord of A/A. If no such practice is adopted, it is difficult to exercise control over the cost, and there is every possibility of approving an inflated cost estimate by the administrative authority.

4. Detailed Estimate & Technical Sanction

The detailed estimate supported by complete details such as schedule of all items, quantities, rate, cost, drawings, specifications, rate analysis, measurement details needs to be prepared for each work and technical sanction of competent authority should be obtained. Technical sanction ensures that the proposal is structurally sound and estimate is an economical one. The nomenclature of various items of works should be without ambiguity. The rates should be adopted from standard schedule of rates and for non-schedule items, rates should be based on proper analysis of rates. If the estimate is prepared by the consultants, the estimate has to be checked and sanctioned by the competent engineers of the organisation which appointed the consultant to ensure economy as well as structural soundness of the project.

4.1 Problems

4.1.1 Estimate not prepared

Instances have come to the notice of this organization, where the process of preparation of detailed estimate and call of tenders was dispensed with and contractors were asked to execute the work.

ILLN- 1: An additional work which cost Rs.5.00 crores was straight away entrusted to the contractor who was executing the adjoining work. As such, undue favour was extended to the favourite contractor, who got the additional work without going through the competition.

ILLN- 2: Tender was invited on the plinth area basis and the work was awarded at exorbitantly high rates based on the rough cost estimate prepared by the plinth area method.

4.1.2 No sanction accorded for the estimate to ensure economy and structural soundness.

Very often, the detailed estimates prepared by the consultants were not checked by the Department. Tenders were invited based on the cost estimated by the consultant. The estimate prepared by the consultants are usually inflated one. Invitation of tenders based on such inflated estimates often lead to the possibility of acceptance of the same at higher rates extending undue financial benefit to the contractor.

ILLN: Item of brick drain costing Rs.2.00 crores was incorporated arbitrarily in the estimate of highway project without doing proper design for the drain. The drain collapsed later on resulting in huge loss of the public money.

4.1.3 Nomenclature of items - ambiguous

Any ambiguity in all nomenclature of the items in the estimate results in quoting of erratic rates by the contractor as well as in disputes, ultimately resulting in loss to the organization.

ILLN: Items of aluminium works having high unit rates were taken on sq.mtr. basis without giving any reference to relevant drawing number etc. in the nomenclature of items. The contractor provided lightweight sections during execution resulting in undue benefit to him.

4.1.4 (i) No schedule of rates followed

(ii) No analysis for non-schedule items

Detailed estimates should be prepared on the basis of standard schedule of rates and in case standard schedule of rates is not followed, the rate need to be analysed based on NBO/CPWD guidelines etc. If the above procedure is not followed, it results in adoption of arbitrary rates for items in the Detailed Estimate. This ultimately will lead to inflated estimated cost, which could be a source of corruption.

ILLN: In a building work, arbitrary lump sum rates were adopted. Coefficients for various components of analysis of rates were taken arbitrarily such as contractor's profit to the tune of 25-30% against the standard 10%. This formed the basis for awarding the work at much higher cost than the justified.

4.1.5 No details and reference to drawings for quantities adopted

It was observed in many cases that the details of measurements and drawings are not made as a part of the detailed estimate resulting in arbitrary adoption of quantities in the estimate. This often led to abnormal and unreasonable deviation in the quantity of various items of the work. The above again can be a source of corruption during execution to extend undue benefit to the contractor.

4.1.6 Same component repeated in more than one item

Repetitive stipulation of the same component in more than one item in the detailed estimate, results in over payment to the contractor.

ILLN: Tack coat was included in the bituminous items such as bituminous macadam, asphaltic concrete etc. In addition to the above, separate item for tack coat was also provided in the estimate of an airport work. During execution, duplicate payment was made to the contractor to the tune of Rs.50 lakhs.

4.1.7 (i) No check on the estimate prepared by the consultants

(ii) No check on use of imported material

It is the tendency of the consultants to use costly as well as imported items in the estimate to increase the cost of work as the fee payable to them is fixed as certain percentage of the cost of work. Due to the above, the works are awarded at high rates. Thus, the consultants and contractors were benefited during the above process which had become the source of corruption.

4.1.8 Technical sanction based on earlier accepted rates

Instances have come to the notice of this Organization where technical sanction of detailed estimates was prepared based on the high rates quoted by the contractor and accepted in earlier tenders. This resulted in the high estimated cost, which was used for award of work to the contractor at higher rates extending undue benefit to contractor by corrupt officials.

5. **Consultancy**

A few Government departments and most of the Public Sector undertakings appoint Consultants. It was observed that the appointment of consultants were mostly made arbitrarily without transparent manner.

5.1 Problems

5.1.1 No Publicity

Appointment of consultant is generally being done without proper publicity and without collecting adequate data about their performance, capabilities, experience etc. Most often, panel of known firms is made and the consultancy contract is given arbitrarily to one of the firms at higher fee without proper publicity and competition.

ILLN: Consultant was appointed by PSU for a fee of Rs.58 crores without inviting tender for a petroleum project.

5.1.2 Appointment from Old Panel

It has been observed that consultants are picked up from very old panels kept by the department and contracts were awarded to them arbitrarily. For big projects, the consultants have to be selected by inviting fresh tenders indicating the requirement to get competent consultants at competitive rates instead of selecting them from the old panel.

ILLN- 1: One organisation engaged Architects from a very old panel prepared 15 years back.

ILLN- 2: One organisation engaged a private firm as the institute's architect for more than 20 years by paying a very high fee resulting in extending undue benefit to single firm.

5.1.3 Ad-hoc Rates

Award of consultancy contract at pre-determined/ad-hoc rates and not resorting to competitive price bids results in acceptance of exorbitant fees.

ILLN: Architect was appointed arbitrarily for planning and design at a fixed rate of 5% of the cost of construction for construction of a training institute building.

5.1.4 Consultant appointed when in-house facility is available

Appointment of consultants when in-house expertise is available, becomes the source of corruption in addition to non-utilisation of available resources.

ILLN: One of the Government departments, for a project costing Rs.20.00 crores, incurred expenditure to the tune of Rs.60.00 lakhs towards payment to the consultant though in-house expertise was available with them. This resulted in loss to the exchequer apart from corruption in the deal.

5.1.5 No action for Part Performance

Punitive action against the consultant is generally not taken even though they fail to perform the required services as per terms of the contract. This results in financial loss to the Government and also the project is delayed resulting in indirect loss in terms of payment of escalation to the contractor.

ILLN: In one of the works, the consultants were paid substantial amount at the early stage of the project though they had submitted only preliminary drawings. Subsequently, the consultants failed to complete the job and no action was taken against them by the Department.

5.1.6 No Maximum limit fixed for payment

The Consultants tend to increase the cost of work for more fees as generally the fees of the consultant is fixed at a certain percentage of the cost of the work. In case, the clause related to maximum ceiling of payment is incorporated in the agreement, then this can serve as a tool to check such tendency of consultants to increase the cost of the project.

ILLN: In an office building work, tender was accepted for Rs.10.00 crores but during execution, specifications were changed and actual cost on completion was twice the tendered cost. Thus the consultant was benefited in the same proportion as there was no maximum limit fixed for the consultant's fee.

5.1.7 Rates for repetitive works not fixed

In the consultancy agreement, generally nature of repetitive type of work is not defined. Fee for such work should be less as no extra input other than issue of additional set of drawings is required.

ILLN: In one work, 4 similar blocks comprising of 100 hostel rooms each were constructed. The Consultants were paid same standard fees for each block. Due to the above the organisation suffered loss at the cost of the consultant.

5.1.8 Paid for the services not rendered

In many instances, it was observed that payment was released to the consultants even though services required to be rendered were not complete in all respects, e.g. complete structural drawings were not submitted by the consultant but payment was released or supervision not done but payment released.

5.1.9 Consultants were allowed to receive sale proceeds of tenders

Some of the banks and public sector undertakings allowed consultants to invite tenders on behalf of the organisation. Consultants collected the sale proceeds of the tender documents sold and did not remit the amount to the concerned PSUs etc. This is highly irregular as it amounts to undue financial benefit to the consultant beyond the scope of contract.

ILLN: In case of a pipeline project, consultant was asked to invite tenders. The consultant, in turn, charged exorbitant cost for tender documents and kept the sale proceeds with them, resulting in undue benefit to them.

5.1.10 No control on the travel expenses of consultants for site visits

Many cases of excess payment to the consultants on travelling expenses have been observed. Payment made towards travelling expenses some times exceeds the fee payable to the consultants.

ILLN: For a work in Punjab, Mumbai based Architects were appointed. The fee payable to them was Rs.6.00 lakhs. But the actual travelling expenses paid to them were Rs.7.5 lakhs. This was mostly done to extend favour to the known firms.

5.1.11 No check on consultants' planning, design and execution - Contractors benefited in the process

In many cases, it has been observed that the departments entrust the responsibilities relating to the preparation of estimate, structural design and execution of work to the consultant. The consultant tends to be over safe in the structural design because of the fact that the above adds to the fees payable to them on account of increase in cost. It has also been observed that the consultants generally do not take much pain while doing the structural design and essential criteria such as earthquake resistance design etc. is ignored. Hence the checking the structural design and drawings of the consultants by the departmental officers is a must to ensure that the design is an economical one apart from the structural soundness.

ILLN: Pile foundation for a workshop building was designed with the capacity of piles, capable of carrying twice the required load. In the same project, high capacity piles (450mm dia, 20m

deep) were provided for a single storeyed ordinary office building which does not require pile foundation at all.

5.1.12 Consultants passing on their responsibility to contractor.

ILLN: Consultant was supposed to give design and drawing as per the consultancy agreement. While preparing the tender document for construction work, the responsibility of the preparation of drawings and structural design was entrusted with the construction contractor by adding a condition to that effect. Finally, the contractors loaded the quoted rates for the above work and the consultant was benefited during the above process at the cost the organisation.

5. Preparation of Tender Document

Tender documents (generally called NIT) comprising of notice inviting tender, standard tender form with conditions, schedule of quantities, set of drawings, specification of the work etc. should be prepared and approved by the competent authority. The NIT should be properly bound and sealed and it should be made available for inspection.

5.1 Problems

5.1.1 Approval of competent authority not accorded

In many PSUs/Banks' tender documents as prepared by the consultants are issued to the contractors without scrutiny and approval. Tender documents should be issued only after scrutiny and approval by the competent authority of the department to avoid irregularities.

5.1.2 Contain conflicting, vague and ambiguous provisions resulting in disputes, delays and financial losses.

Conflicting provisions in the tender documents often lead to dispute, delay and financial loss to the Government.

ILLN: In one of the Road contracts, a condition was stipulated that entire quantity of bitumen to be used in the work shall be brought by the contractor before commencement of work. At the same time, under escalation clause, it was mentioned that the difference between the actual purchase rate and stipulated rate (for issue of Bitumen by the Department) as and when the Bitumen was brought by the contractor shall be paid to the contractor. The two stipulations were ambiguous. But the latter was operated to the benefit of contractor to the tune of Rs.1.5 crores on account of escalation in the price of bitumen.

5.1.3 Prequalifying criteria ambiguous/stringent

It has been observed that earlier eligibility/prequalifying criteria is not specified clearly in the NIT or made very stringent thereby restricting the numbers of intending bidders.

ILLN: The pre-qualification criteria is one of the works of a Port was kept so stringent which resulted in pre-qualification of only one firm. The above was only to favour the favourite firm and ultimately work was awarded to the single contractor without competition.

5.1.4 Rate only item

"Rate only" items are seen provided in the bill of quantities without giving quantity against the item. Such items do not alter the position of the tenderers irrespective of the rates quoted. For such items, generally abnormally high rates are quoted by the tenderers and such A.H.R. items are operated to the advantage of the contractor during execution. Therefore, the rate only items should not be provided in the tender documents.

5.1.5 Advance for old machinery already in possession of contractor

It has been observed that in some of the hydel projects, plant and equipment advance to the tune of crores of rupees were allowed to the contractor for the old machinery acquired by the contractor prior to award of work which no additional expenditure was incurred by the contractor after award of the work.

5.1.6 Mobilisation advance without interest

This Commission vide O.M. No. N4/POL/19 dt. 8/12/97 directed that mobilisation advance should be allowed for selected works only and it should be interest bearing. But it has been observed in a number of cases that the contractors were given interest free mobilisation advance.

5.1.7 Unworkable period of construction

The stipulated period of completion of work should be realistic based on magnitude of work etc. Stipulation of unworkable period leads to frequent grant of extension of time, litigation and corrupt practices.

ILLN- 1: In one hostel work of Rs.6.00 crores, initial time stipulated of 21 months in the NIT was reduced to 8 months during negotiations after receipt of tenders. However, period of completion reduced was not practicable considering the magnitude of work. This resulted in frequent grant of EOT and huge escalation payments and ultimately led to corrupt practices.

ILLN- 2: The period of completion of a seven-storied building with basement was kept 12 months only. The work could ultimately be completed in three years, resulting into huge payments on account of escalation, irregularities in sanctioning E.O.T. etc.

5.1.8 Tender documents prepared by splitting bigger works deliberately to fall within the competency of subordinate officers.

Subordinate officers deliberately split the bigger works into smaller works so that these small works fall within their jurisdiction in respect of technical sanction, award of work etc.

ILLN: A jetty work was split into two parts to bring the tender within the powers of the subordinate officer. This resulted into a loss of Rs.1.5 crores (approx.) to the government by way of awarding the work at high rates.

5.1.9 Particular Brand of products stipulated

It is appropriate to stipulate the use of ISO marked products instead of stipulating a particular brand of product in the tender document, as it encourages restrictive trade practice. Use of a particular brand of product might have been done to favour the known manufacturer.

5.1.10 Improper type of contract followed

Works are generally awarded on item rate contracts. L.S. rate contracts are awarded when all design, drawings, specifications etc were ready before inviting tenders.

ILLN: In a flyover construction case, the tender as per the Department is based on lump sum basis. The work is to be executed as per the design and drawing to be given by the Department. The complete drawings should have been finalized before call of tenders. However, only part drawings were available. The contractors were asked to quote their

rates in 2 schedules. Schedule I contains quantity of various items to be executed for which lump sum price was to be quoted by the contractor. Schedule II pertains to rates to be quoted for individual items in case of deviation in quantities specified in schedule 'I'. The tender is neither LS nor item-rate.

The above type of contract is not an appropriate one due to the following deficiencies:-

- (i) The financial implication of the rates quoted in Schedule-II could not be worked out for deciding the "L1".
- (ii) Had the "L1" quoted very high rates in Schedule-II, it is a loss to the Govt. while executing additional quantities.

5.1.11 Voids to be deducted for earth filling (other than those below flooring) not specified.

ILLN: In a reclamation work, voids were not deducted on the pretext of non-specifying percentage deduction in the contract resulting in huge financial benefit to the contractor.

7. **Inviting and Opening of Tenders**

7.1 **Problems**

7.1.1 Adequate time for publicity not given

Adequate time is not given to restrict the competition in tendering so that the work can be awarded to a favoured contractor of exorbitant rates.

ILLN: The period between the date fixed for opening and the date of publication in newspaper was only 7 days instead of normal period of 21 day, resulting in restricted tendering and the work was awarded at rates higher than the rates of other accepted contracts of similar nature during the period.

7.1.2 Wide Publicity not given

It was observed in many cases that the tenders were published in newspapers having hardly and circulation. Publicity through websites are to be encouraged as far as possible. Also tender notice are not sent to the Building Association. It has come to the notice that wide publicity is not given or restricted tenders are invited by some corrupt officials due to the following:

- (i) To favour a few contractors who normally executes the works for such organizations.
- (ii) To award works to the above contractors in turn by having understanding among the contractor and the corrupt officials.
- (iii) "Bribe Money" for awarding the works is extracted by the corrupt officials well in advance at various stages. In certain cases, the bribe money is paid well before invitation of tenders for the works since the prospective contractors are decided much before the invitation of tender. Hence wide publicity is a must.

7.1.3 Tenders issued to ineligible applicants

The pre-qualification criteria specified in tender notice is not being checked before issue of tender resulting in award of works to ineligible contractors.

ILLN: In a Railway project, the tender documents were issued to all the applicants without checking the criteria of selection specified in tender notice. This resulted in opening of price bids of ineligible applicants also. Subsequently, the work was awarded to the ineligible contractor on the pretext of being the lowest. The same resulted in inordinary delay and rescission of the contract.

7.1.4 Tender sale and opening registers not maintained

7.1.5 Opening tenders in the absence of tenderers

For fair and transparent system of tendering, the tenders should be opened at the prescribed time and place in the presence of bidders who choose to be present at that time. The rates quoted by various tenderers are read by the tender opening officer.

ILLN: Tenders were opened in the absence of the intending tenderers in one work. Finally rates were tampered and, the work was awarded to the 'L2'.

7.1.6 Corrections, omissions etc. in tender not numbered and attested by the tender opening officers.

It is a must that all corrections, omissions and insertions etc. are properly numbered and attested by the tender opening officers to avoid possibility of tampering of documents.

ILLN: A work was awarded with the corrected rates. The corrections were not numbered and attested by the officer who opened the tenders. It was found that the rates of 'L3' were reduced to make him 'L1' and the work was awarded to 'L3'.

7.1.7 Rate not quoted in figures by Tenderers

The rates for various items are to be quoted in words also. The tender document should have provision of quoting rates in figures and words by the tenderer. In case the tenderer fails, the rate in words must be written by the tender opening officer.

ILLN: In one of the works executed by a PSU, the rate of an item was increased by L-1 after adding 'O', in connivance with the officials resulting in increase of rates by ten times, after ensuring that he remains L-1 even after this change. The above had happened because the L-1 had not quoted in words for the above item.

7.1.8 Tender invited without availability of site and approval of local body

Award of works without obtaining possession of site and approval of the scheme by local body is not proper as it results in non utilization of assets created and huge escalation payment to the contractor due to delay in commencement and completion of the works.

ILLN: In case of airport extension, part land between the existing runway and proposed extension of runway was not made available to the contractor. The extension of runway was done leaving a portion for which possession of land was not available. Thus, Rs.8.00 crores spend for extension of runway could not yield any benefit and the assets created could not be utilized.

7.1.9 Limited tenders invited as emergency work but later either work delayed or not put to immediate use on completion.

It was observed that limited tenders were invited on grounds of emergency but later either the completion was abnormally delayed or assets were not put to use on completion. The above is done to avoid competitive bidding and mainly to award the work to favourite contractors at higher rates.

ILLN- 1: In one of the embankment work, the limited tenders were called on the pretext of emergency and work awarded at rates higher than justified rates. The work of four months could not be completed even after 2 years.

ILLN- 2: Another work executed by a Petroleum PSU was awarded to a contractor on single tender basis without call of tenders at exorbitant/high rates showing urgency in construction. The above work took about 11/2 years for completing the same against the stipulated time of 4 months. The asset created was also not put to use for a long time after completion of the work.

7.1.10 Tenders received late considered for evaluation/award

Tenders received after due date and time of receipt are not to be considered to maintain the sanctity of tender system and to avoid malpractices.

3. **Tender Scrutiny and Award of Works**

3.1 **Problems**

3.1.1 Certificates for satisfactory completion of work executed for private organisations accepted without TDS certificate.

The certificates produced by the contractors for having executed works for private organizations are accepted without ascertaining the TDS details as a proof for completion of work of required magnitude. The same is not proper and may result in award of work to the ineligible contractors. Therefore, TDS certificate in addition to the certificate issued by the Organization shall form the basis for considering experience of work executed for private organisation.

ILLN: In many works awarded for Jetty construction, reclamation etc. by Port authorities, T.D.S. certificate are not cross-checked before considering works of private Organization for pre-qualification resulting in pre-qualification of ineligible contractors.

3.1.2 Non-evaluation of conditions quoted by the tenderers and accepting undue conditions during negotiations to give undue benefit to the contractor.

Financial implications of the conditions given at the time of submission of the tenders are generally not worked out to decide the relative position of the tenderers. Due to the above, the work is not awarded to the actual 'L1'. During negotiations certain additional conditions are accepted regarding supply of non-specified material/machinery, interest free mobilisation/equipment advance and increase in rates of few items etc. The same is not proper and results in extending undue advantage to certain contractors.

ILLN: In a bridge work, contractor put forth the condition of reimbursement of difference in rates of cement, steel, liner etc. prevalent at time of procurement and at time of submitting tender. The financial implication of above condition was not evaluated at time of scrutiny of tender. This resulted in additional payments to the tune Rs.1 crore to the contractor apart from changing the position of the lowest tenderer.

3.1.3 Non-finalisation of tenders within validity period

The acceptance of tenders is delayed without any justification. This results not only in time and cost over run but also a major source of corruption.

ILLN: In a hydel project, the validity of period of a tender was six months. The validity period was got extended several times. Ultimately L-1 backed out to extend the validity due to increase in price of material and labour since the delay was two years. The tenders were reinvited and the work was awarded at exorbitantly higher rates.

3.1.4 L-1 ignored pointing out non-satisfactory performance or on other flimsy ground

L-1 contractor, though pre-qualified based on the criteria stipulated in tender documents, at times is ignored on flimsy grounds or on unsatisfactory performance. The same is done as the favoured contractor has quoted higher rates and the work cannot be awarded to him unless L-1 is ignored.

ILLN-1: In a hydel project, only three firms were qualified by the Department. The L-1 was rejected on the pretext of rates quoted as unworkable. The work was awarded during second call to another contractor of higher rates.

ILLN-2 : In a highway project, tender for L-1 prequalified contractor was rejected on the plea that the firm has failed to complete on earlier awarded work. The work was subsequently awarded to L-2 of much higher rates.

3.1.5 Comparative statement not prepared and checked

It is observed that comparative statement of rates quoted by the tenderers was not prepared, checked and signed by the officials. The same can result in award of work to agency other than L-1.

3.1.6 Market rate justification not prepared to assess the reasonability of quoted rates before acceptance

The rates of which works are to be awarded, shall be reasonable considering the prevailing market rates of material and labour and other factors pertaining to the work. At times, the quoted amount is compared with the inflated estimates of consultants, which were prepared without any basis, resulting in award of work at higher rates.

3.1.7 Justification statement prepared wrongly to justify higher rates

ILLN: As per a Departments' works manual, the work, which is not of urgent nature, can be awarded to a contractor if quoted amount is within 5% of justified cost. In a work executed by the above department, to bring the percentage of market rate justification within 5%, contingencies were added to the estimated cost and work was awarded at an amount more than 5% of the justified cost.

3.1.8 Tenders accepted on higher rates during second call

The tenders during first call, at times, are not accepted on flimsy grounds if the favoured contractor is not the lowest. To award the work to predetermined/favoured contractor, the tenders are reinvited and works awarded at higher rates/amount than first call, either with the same or changed condition.

ILLN-1 : In a road work, the tenders of part schedule were not accepted by the Department, on the plea that the same may result in sub-contracting the work to one contractor. The tenders were re-invited with changed conditions of issue of machinery. Earlier machinery was to be issued on hire charges, which was modified to free of hire charges during the second call. The tender during the 2nd call was accepted on rates higher than the earlier quoted rates, even though the condition for the hire charges was relaxed in favour of the contractor.

ILLN-2 : In a tender of renovation of building, the rates quoted by L-1 in first call was Rs.1.39 crores. The same was rejected and the work awarded during 2nd call for Rs.1.82 crores. Thus, resulting in additional liability/favour to the tune of Rs.0.43 crores.

3.1.9 Items deleted after opening price bid to make the favoured contractor as the lowest tenderer (L-1)

3.1.10 Work awarded without proper verification of papers furnished by the tenderer

It is often observed that the works are awarded to the contractor without proper verification of documents furnished by the tenderers. Some times, E.M.D. is submitted in mode other than the

prescribed one or false proof of completed work is considered or work awarded to the contractor not having valid income-tax clearance certificate or sales-tax registration.

ILLN: In a tender of residential building, incomplete works were considered for issue of tender document to a contractor, which eventually become L-1, resulting in award of work to ineligible contractor. This further resulted in delay in completion of work as the contractor was not technically capable of executing the work.

3.1.11 Similar/Identical contracts awarded at the same time with different rate for major items.

The rates quoted by the tenderer are not being compared with the rates of similar/identical works and work is awarded at higher rates.

ILLN: In one of the airport works, overall position of tender considering common civil items was compared with other similar work awarded at the same time. Difference in rates was found to the extent of 28% in two similar contracts, i.e., the contract was awarded at much higher rates.

3.1.12 Contract at risk and cost of contractor

Tender document for the left our work of a rescinded contract is to be executed at the risk and cost of defaulting contractor. The specifications and condition of contract are also not to be altered.

3.1.13 Back to back contracts by PSUs.

Some PSUs undertaking construction works participate in the tender for works by having pre-tender tie-up with one contractor. In the above tie-up, the contractor agrees to execute the works at certain percentage less than the tender amount awarded to the PSU. This is irregular since the competition in awarding the work by the PSUs (undertaking construction works) is missing in addition to award of works to favourite contractors.

ILLN: One Government Department awarded the work to a PSU and the above PSU in turn awarded the work to a contractor (without inviting tender) at 5% lower than the tendered amount accepted by the Govt. Department. In the above illustration, following irregularities were observed - (i) The Govt. Department awarded the work at higher rates; (ii) Govt. Department allowed the PSU to sublet the contract against the provisions in the agreement; and (iii) The PSU awarded the work without call of tenders to a favourite contractor.

0.1 Problems

0.1.1 Unwanted papers in the agreement

Most often, it is observed that contract documents are not drawn in complete and detailed manner, i.e. either lot of unwanted papers are kept or vital papers e.g. original price bi, letters of negotiations etc. are kept in loose file. Therefore, the contract document should be precise, definite and complete.

ILLN: In one agreement of a Govt. Undertaking, the following irrelevant documents were made part of the agreement:-

- b) Protocol between the Govt. of India and a foreign country;
- c) Approval accorded by the Lt. Governor with respect to protocol;
- d) Same proposal submitted by the organisation during various stages etc.

On final scrutiny, it was difficult to work out the exact requirement/provision made in the agreement.

0.1.2 Important papers such as negotiation letters missing

Important papers such as negotiation letters, copies of amendments subsequent to issue of tender documents etc. shall be made part of contract agreement to avoid contractual complications.

ILLN: In one of the works executed by a Bank, negotiations were conducted twice with the contractor. Second negotiation letter was not found in the agreement and payments were made to the contractor based on first negotiation, resulting in overpayment to the contractor.

0.1.3 Performance guarantee obtained late

It has been observed that the performance guarantee is being obtained later than stipulated in the tender document. Late submission of performance guarantee amounts to giving undue advantage to the contractor by way of saving bank charges.

0.1.4 Insurance not taken as per conditions

Contract documents of most of PSUs stipulate, furnishing of insurance policies such as Contractor's all risks policy, workmen compensation, third party policy and policy of machinery/T&P by the contractor. The contractors either do not submit these policies or submit policies for less period. The same can result in large commitments due to mishap during execution. The contractor also gets benefit by saving the insurance policy charges.

ILLN: In a hydel work, insurance for flood was not obtained by the contractor even though specific provision exists in the agreement resulting in large saving to the contractor. During execution, flood occurred resulting in huge loss to the department that could not be recovered from the contractor.

0.1.5 Bank Guarantee not verified through issuing bank

In many cases, it has been observed that the bank guarantees are not verified from the issuing banks. In one of the cases, on verification of BG, subsequent to intensive examination, the BG was found to be fake.

0.1.6 Labour Licence not obtained

As per the agreement and the relevant Act, labour licence from appropriate authority is to be obtained by the agency before commencement of work. But this aspect is not taken care of and work is allowed to proceed without labour licence.

0.1.7 Technical staff not employed by the contractor

It has been observed that the technical staff required as per the terms and conditions of contract are not employed by the contractor resulting in execution of bad quality work due to lack of supervision as well as undue financial benefit to the contractor.

0.1.8 Safety precautions not taken at site

A number of provisions regarding safety precautions to be taken at site during execution, such as providing barricading, red flags, night lamps, road diversion boards and double steel scaffolding etc. are made in the agreement. But it has been observed that no importance is given to such an important aspect, which can result in fatal accidents and also contractors are benefited by not complying with the contract provisions.

0.1.9 Issue of material/machinery not stipulated in the contract agreement

Material/machinery for which no provision is made in the agreement is being issued to the contractor on meager charges, resulting in financial benefit to the contractor.

ILLN: In one of the works being executed by a PSU, no provision was made for issue of machinery to the contractor. On contractor's failure to deploy the required machinery, the machinery was issued by the Department and hire charges were fixed at a much lesser rate than the prevailing market rates resulting in undue advantage to the contractor.

9.1.10 Stipulations regarding approval of sample not adhered to/work not executed as per the approved sample.

In most of the cases, it has been observed that the samples of material to be incorporated in works are not approved by the competent authority. In works where samples are approved, the work is not executed as per the approved samples and contractor is benefited by using substandard materials.

ILLN: In one hospital work, flooring and dado in the building was of marble stone. The quality of the marble used in the work was inferior to the quality of sample approved by the competent authority.

9.1.11 Price escalation paid though not stipulated

It has been observed in a few cases that price escalation was paid to the contractor though there was no provision for the same in the agreement resulting in undue benefit to the contractor.

ILLN : In one work executed by a petroleum PSU, the quoted prices were fixed and no escalation was to be paid to the contractor. The completion of the work was delayed and the escalation to the contractor was paid by the Department

9.1.12 Risk and cost action not taken and balance work awarded at high rates

On failure of the contractor to provide the desired services, the contract agreement is rescinded by the Department. The left over work is awarded at the risk and cost of the original contractor.

ILLN: In one work, the contract was rescinded due to delay on the part of the contractor in completion of building. The work was awarded to another contractor on single tender basis with additional liability of approx. Rs.44.0 lakhs. No action was taken by the department to encash the various bank guarantees to recover the additional liability from the defaulting contractor resulting in undue favour to the contractor.

0.1.13 Guarantees on various accounts not obtained

Certain guarantees for water proofing treatment/anti-termite treatment etc. are to be obtained as per the provisions in the agreement. These guarantees are not often obtained and no action can be taken against the contractor for defects noticed in the guarantee period.

0.1.14 Non-execution of specialized work through specialized agencies

A provision for execution of specialized works like anti-termite treatment, water proofing treatment, aluminium work, fire check doors, flush doors etc. is often made in the agreement. These conditions are not implemented at site resulting in large savings to the contractor and execution of sub standard works.

0.1.15 Design of concrete mix not done by the approved lab and design not revised with change in source of ingredients.

0.1.16 Recording fictitious date of completion though work not completed

The date of completion, at times, is recorded before actual date of completion of work to favour the contractor by non-levy of liquidated damages due to delay and also to relieve him early of his responsibility of defect liability period.

0. **Payments to Contractors**

0.1 **Problems**

0.1.1 Excessive deviations allowed without approval of competent authority

The quantities of various agreement items advantageous to the contractor are indiscriminately deviated during execution of work. The deviation can also occur due to inaccurate detailed estimates and due to wrong/over measurements. Prior approval of the authority competent for deviation is not generally taken by the subordinate officers.

0.1.2 Less quantity to Abnormally Low Rated items executed and paid

Items for which contractor has quoted abnormally low rates are to be identified at the time of award of contract. Execution of less quantity or substitution of such items result in undue advantage to the contractor.

ILLN: In one work, terrazzo tiles flooring was to be carried out and the rates quoted by the contractor were abnormally low. During execution about 15% of quantity was executed and remaining quantity was substituted with marble flooring. Thus, undue advantage was extended to the contractor.

0.1.3 More quantity of AHR items executed and paid

Similarly, abnormally high rated items are to be identified at the time of award to avoid increase in quantity of these items during execution since it results in undue advantage to the contractor.

ILLN: Contractor's accepted rate for item of M.S. grill/railing in a work was abnormally high and 250 Kg was only stipulated in the agreement. To favour the contractor, the above quantity was increased from 250 Kg to 11900 Kg by allowing the contractor to use higher size square bars without any technical requirement which resulted in financial benefit to the contractor.

0.1.4 Items substituted to the advantage of contractor

It has been observed quite often that items not beneficial to the contractor are substituted to other items. The above practice is more prevalent in Organisations which engaged consultants for the purpose of estimation, supervision and preparation of bills etc.

ILLN- 1: In one building work, RCC structure was substituted with structural steel and pre-cast slab and the requirement was justified by showing urgency in completion. The extra cost on account of substitution was Rs.1.00 crore (approx.) but the work could not be completed in the revised period of completion. Thus, the substitution was aimed to favour the contractor.

ILLN- 2: In another work, pile foundation was changed to well foundation without any technical necessity thereby increasing cost of the project by Rs.2 crores which had gone to the benefit of the contractor.

0.1.5 Inadmissible extra items paid

At times, extra items which are not admissible, are paid to extend undue benefit to the contractor.

ILLN: In one building work, as per the conditions given in the agreement, nothing extra was admissible to be paid for extra height of centering and shuttering. In spite of specific provision in the agreement, extra item was sanctioned, measured and paid to give undue benefit to the contractor.

0.1.6 Exorbitant rate fixed for extra/substituted items

It has been observed that the rates of extra/substituted items are not derived based on the conditions of contract. They are derived on abnormally high rated items, which results in undue benefit to the contractor.

ILLN: In one hydel project, extra items amounting to Rs.100.00 crores were allowed and the same were sanctioned at high rates. The rates were analysed by adding 49% on account of contractor's profit and overheads as against the normal 10%.

0.1.7 Measurements not recorded in MBs

Measurements of the items are to be recorded and kept in a bound Book which should be kept ready for inspection. But in many cases, the same were found in loose sheets, which could be changed at any time.

0.1.8 Checking measurements

The measurements including hidden and high rated items are to be checked by senior officers to avoid overpayment. But it is not done in many cases.

0.1.9 Incomplete items paid on full rates or excessive part rates allowed

The payments to contractor for various items are being made as per contractors quoted rate even if the complete scope of the item is not executed by the contractor and this results in over-payment. In certain cases, it was observed that part rates allowed were more than the admissible.

0.1.10 Voided not deducted before allowing payment to contractor for work in filling.

Deduction on account of voids in earth/stone filling work is to be done where compaction is not as per the desired density under OMC conditions. Non-deduction of voids results in huge overpayment to the contractor in connivance with the field staff.

ILLN: In a reclamation work costing Rs.15 crores, deductions on account of voids was not made which resulted in overpayment to the tune of crores of rupees.

- 0.1.11 i) Measurements not restricted as per the drawing.
- ii) More working space measured than admissible in earth work in excavation.
- iii) Excessive offset and side slope than admissible measured and paid in earth work in excavation.
- 0.1.12 i) Secured advance paid for larger quantity than required for execution at site
- ii) Secured advance paid for perishable materials without insurance cover.
- iii) Secured advance paid without adequate testing of materials.
- iv) Not effecting recoveries of secured advance in respect of material utilised in the items which were measured and paid.

0.1.13 Non-recovery of I.Tax and Works Contract Tax

Statutory deductions are not made as per the requirement resulting in huge benefit to the contractor. In few cases, it was observed that Income Tax and Works Contract Tax were not recovered from the contractor's bills. At times recovery is made on net amount after deducting cost of stores/hire charges from contractor's gross payment. The above practice is highly irregular. Recovery shall be made on gross amount of the bill.

0.1.14 Wrong payment of escalation

Escalation, at times is paid based on provisional indices. It has further been observed that the escalation is paid on gross amount of bill without deducting cost of materials issued by the Department. The above result in extending undue benefit to the contractor.

0.1.15 Escalation paid for period for which extension of time was not granted by the competent authority.

0.1.16 Wrong mode of measurements/wrong coefficients adopted

It has been observed that the mode of measurement for brick work in most of the works is not as per the relevant IS Code and also wrong coefficients of reinforcement are adopted while working out quantity for payment to the contractor, resulting in overpayment to the contractor.

0.1.17 Recording measurement under wrong item of agreement

It has been observed that measurements of items are recorded under items other than the appropriate one to extend undue benefit to the contractor.

ILLN: In one land development work, the rate quoted by the contractor for excavation and filling for pipe lines was less than the rates quoted for excavation in foundation trenches and filling earth in plinth. The items of earth work in pipe line was measured under earth work in trenches to extend benefit to the contractor.

- 0.1.18 i) All the accepted rebates of the contractor were not availed by the department while releasing payment to the contractor.
- ii) Rebate not considered while finalizing the rate for extra/substituted items.

0.1.19 Retention money released before due date.

0.1.20 Payment made on full rates for sub-standard work.

The work not executed as per the specification is not to be accepted and contractor is supposed to redo the work. If it is structurally impossible to rectify the defect, the payment shall be made at reduced rates, after approval of the competent authority. The payment at times for sub-standard work is made at full rates resulting in huge benefit to the contractor.

0.1.21 Correction in MBs not attested by concerned official.

1. Site Records

Proper documentation of test records, site instructions, issue of cement and steel etc. is essential to ensure execution of quality work. Recoveries, grant of EOT etc. are decided at a later date based on site records. Therefore, all the site records prescribed in the works manual are to be maintained at site and produced during vigilance inspection.

1.1 Problems

1.1.1 Registers with pages numbered serially not issued by the competent authority.

1.1.2 Hindrance register not maintained

Hindrance Register is a very vital document. All the hindrances with date of occurrence and removal are to be noted in the hindrance register. Record of hindrances is not only required for grant of E.O.T. but also required for early removal of hindrance by the site officials etc.

ILLN: It was observed in some cases that E.O.T. was granted to the contractor without levy of liquidated damages and payment for cost escalation were made without record of hindrances which resulted in undue benefit to the contractor.

1.1.3 i) Site order book not maintained

ii) Compliance in site order book is not recorded by Engineer-in-Charge.

1.1.4 MAS A/c Registers not maintained

In some of the cases, it was seen that MAS A/c registers of important materials viz. cement, steel, bitumen, etc. were not maintained. In the absence of such basic record, source, quality, quantity and day to day consumption of these materials cannot be checked. It is, therefore, essential to maintain MAS A/c registers for above mentioned materials.

1.1.5 Cement and steel not tested/Test Certificates not available

Cement and steel are the major materials used in the construction of any building. Hence, proper quality of these materials has to be ensured by the site officials. Lot wise manufacturer's test certificates should be obtained and kept in record. Reference of these test certificates should be given in corresponding cement and steel Registers to facilitate checking by any independent authority. Independent testing of cement and steel should be also done at regular intervals to ensure proper quality. The above procedure is generally not done and the same results in showing undue benefit to the contractor by accepting inferior quality materials apart from the danger of structural failure.

1.1.6 Cuttings/over writings in the cement register. Test checks not done by senior officers.

Cuttings/over-writings are to be avoided in cement registers. Any cutting, overwriting etc. gives an indication of manipulation of cement records to cover up less/over issue of cement. Periodical test checks of cement register as per required frequencies are to be done by senior officers to avoid any manipulation by junior officers.

1.1.7 Record for mandatory tests not maintained properly

Mandatory tests on various materials are to be conducted as per the prescribed frequency in the contract document/BIS codes to ensure the quality of materials used in the work. Test results obtained from outside labs are to be properly recorded in the test registers by giving the reference to the test report. The test results should be compared with the acceptability criteria in the test registers to ensure that the results obtained passes the acceptability criteria. Record of quantity of material brought and tests conducted should also be maintained in the test registers to ensure that tests have been conducted as per prescribed frequency.

ILLN: It has been noticed in the past that the test registers were not maintained and mandatory tests are not conducted as per prescribed frequency. During vigilance inspection, samples of materials were taken and tested independently. It was found from the test results that many materials failed to fulfil the quality parameters. Non-carrying out the mandatory tests results in extending undue benefit to the contractor by accepting sub-standard materials and by saving in testing charges.

1.1.8 Record of test of water not maintained.

Water is a very important ingredient which affects the quality of concrete. Use of proper quality water must be ensured by site officials to ensure quality of concrete work. Water must be tested regularly at the specified frequency to ensure proper quality of concrete work and to avoid benefit to the contractor for allowing bad quality water in case the contractor has to arrange water.

1.1.9 Record of check of surface undulations in case of cement concrete pavement/bitumen pavement not maintained

The above will help the contractor in allowing bad quality work which goes to the benefit of the contractor.

1.1.10 Bituminous works

(i) Record of tests of DAC, SDAC, Bituminous Macadam for bitumen content, grading of aggregate and field density not maintained.

(ii) Record of level of bottom/top of DAC, SDAC and bituminous macadam not maintained.

(iii) Record of temperature of bitumen macadam, DAC, SDAC not maintained.

(iv) Record of core test or proctor density test of BM, SDAC and DAC not maintained.

During vigilance inspection, variations which were beneficial to the contractors were detected.

1.1.11 Record of testing of earth brought from outside for filling not maintained.

1.1.12 Record of testing of earth disposed off declaring unserviceable not maintained

Testing of earth is to be carried out before declaring the earth unserviceable to avoid corrupt practices.

ILLN- 1: Earth excavated in a building was disposed off on the pretext that the above was unsuitable for filling purpose and earth was brought from outside. When the disposed off soil was tested, the same was found suitable for filling. As such, action of the department resulted in avoidable expenditure of Rs.12.00 lakhs.

ILLN- 2: In a work for extension of runway, the soil available from excavation was to be used for filling in embankment. The available soil was disposed off without ascertaining its suitability and a separate contract for embankment with soil to be brought from outside was accepted resulting in avoidable expenditure of Rs.4.83 crores.

1.1.13 Record of disposal of rejected material by specifying Truck No. and date of disposal not maintained.

1.1.14 Testing of piles not done

Initial and routine pile tests are mandatory as per IS codes to check the capacity of piles. Such tests were found not done in many cases. Records were not maintained in certain cases.

ILLN: In a work of construction of chemical storage terminal, no initial test was conducted to check the bearing capacity of pile considered in the design. Further, no routine pile load test was carried out during execution. Due to the above, public fund was wasted due to the execution of larger diameter piles, longer piles and excess number of piles than the design requirement. During the process, the contractor was also benefited by getting additional work and doing bad quality work since the contractor knew the larger safety margin.

1.1.15 Inspection notes not issued by senior officers

Inspection of site by senior officers improves the quality of work. However, it was noticed that senior officers are not issuing any inspection notes as a record of their inspection. This is mainly due to the fact that senior officers are not keen in taking any responsibility for quality of work. The inspection of senior officers are not to be confined only to issues concerning progress, coordination etc. Senior officers are required to inspect the site to check quality of work etc. Works manual of the organisation should specify such matters. Inspection note is to be issued invariably for each inspection carried out by senior officers. An inspection register is to be maintained at site and inspection notes are to be entered in these registers. Senior officers must review the inspection notes on subsequent visit to ensure its compliance. In the absence of the above procedure, there is a tendency for the subordinate officials to allow bad quality work for giving undue benefit to the contractor.

2. **Quality in Construction**

It is noticed in a number of inspections that site officials incharge of the work do not pay much attention to the workmanship and quality of materials used in the work. Sub-standard works were allowed. When deficiencies were pointed out by inspecting officials of the CTEO, the departments resorted to effecting recovery for sub-standard works. It is hereby again emphasized that recovery is not a substitute for acceptance of bad work. Officials responsible for execution of sub-standard work are liable to disciplinary action apart from the recovery.

2.1 **Problems**

2.1.1 Earth work

- (i) Surplus excavated earth not leveled and neatly dressed at the disposal place.
- (ii) Less sand filling done under floors.
- (iii) Proper compaction of earth under floors not done.
- (iv) Compaction of earth work in filling not done as stipulated in the contract.
- (v) Lead chart for disposal of surplus earth not maintained.

(vi) Excavation of foundation less than specified in drawing.

2.1.2 Concrete work

- (i) Oversize/disintegrated/soft aggregate used.
- (ii) Sand with more silt content used.
- (iii) Honey combed concrete.
- (iv) Concrete found bulged and not in plumb.
- (v) Less thickness of PCC under floors.
- (vi) Proper overlaps in reinforcement not provided.
- (vii) Reinforcement found exposed.
- (viii) Lesser diameter binding wire used.
- (ix) Expansion joint not properly located/provided.
- (x) Throating and drip mouldings not provided to chajjas.
- (xi) Timber form work used though contract provides for steel form work.
- (xii) Clear cover to reinforcement not as per drawing.

2.1.3 Brick work

- (i) Hollow vertical and stretcher course joints.
- (ii) Joints in brickwork thicker than specified.
- (iii) Raking of joints not done properly.
- (iv) Poor quality of mortar and inadequate curing.
- (v) Sub-standard quality bricks used.
- (vi) Bricks on edge not provided at desired locations.
- (vii) Cross walls not properly bonded with long walls.
- (viii) Brick layers not laid in proper level.
- (ix) Less thick brick tiles provided on terrace.
- (x) Expansion joints filled up.

2.1.4 Stone work

- (i) Bond stones in required numbers not provided.

- (ii) Levelling course of C.C. in case of R.R. masonry not provided at required places.
- (iii) Bushing/dressing of stones was not proper.
- (iv) Joints thicker than specified.
- (v) Joints not filled with cement mortar.
- (vi) Poor quality cement mortar.
- (vii) Cramps, pins and dowels not provided for stone veneering/lining work.
- (viii) Thickness of stone less than specified.

2.1.5 Wood work/Aluminium work

- (i) Species of wood other than specified provided.
- (ii) Cracked wood/Wood with knots used.
- (iii) Kiln seasoning not done where specified.
- (iv) Less size of styles and rails.
- (v) Coal tar/wood preservative not used for timber in contact with masonry.
- (vi) Hold fast size found less.
- (vii) Glass panes of less thickness provided.
- (viii) Non ISI fittings provided.
- (ix) Glue not used in joints of wood work.
- (x) Non ISI flush doors provided at site.
- (xi) Less size and number of hinges provided.
- (xii) Doors/windows not fabricated in approved factory.
- (xiii) Lighter weight Aluminium sections provided.
- (xiv) Proper sealing between frame and opening not done.
- (xv) PVC strip/EDPM lining not provided in Aluminium doors/windows.
- (xvi) Less thickness of anodizing/powder coating.
- (xvii) Wire guage not turned at right angle in rebate.
- (xviii) Interior grade ply/particle board used instead of specified exterior grade.

2.1.6 Steel work

- (i) Non-standard steel sections used.
- (ii) Priming coat either not done or poor quality priming coat done on steel works.
- (iii) Tack welding done instead of continuous welding

- (iv) Extra slag of welding not removed
- (v) Thickness of sheets in rolling shutters found less
- (vi) Metal beading and glazing clips not provided in windows though specified
- (vii) Interior quality hinges and fittings provided
- (viii) Steel hinges in M.S. frames not fixed by cutting slots.
- (ix) M.S. striking plates fixed in steel windows instead of brass/aluminum
- (x) Flash butt welding not done in steel windows.
- (xi) Top and bottom fixing of windows not carried out.
- (xii) Non ISI steel windows provided

2.1.7 Flooring

- (i) Lesser width and lesser thick glass strips used in flooring.
- (ii) Smaller size chips used in terrazzo flooring.
- (iii) Thickness of flooring found less.
- (iv) Second quality marble stone provided against specified first quality white marble.
- (v) Floors sounding hollow.
- (vi) Stones of smaller than specified size provided.
- (vii) Large panel size of CC/Terrazo flooring than specified.
- (viii) Joints of tile/stone flooring found thick and crude.
- (ix) Grinding stone marks visible on final polished flooring.

2.1.8 Roofing

- (i) Non ISI and lesser thickness of CGI/AC sheets provided.
- (ii) Side and end laps of sheets found less.
- (iii) Rusted G.I. hook of lesser dia used.
- (iv) Brick coba treatment found with cracks, local undulations, sounding hollow with inadequate slope and less thickness.
- (v) Thickness of mud phuska found less.
- (vi) Joints of brick tiles laid over roofs not grouted.
- (vii) PVC sheet thickness found less than specified.
- (viii) Gola not provided by cutting chase in parapet wall.
- (ix) Non-ISI marked rain water pipes provided.

2.1.9 Finishing

- (i) Ceiling plaster found 10 to 20 mm thick against the requirement of 6 mm thick.
- (ii) Finished surface of plaster found not smooth and uniform and not true to lines/levels.
- (iii) Poor quality mortar used in plastering.
- (iv) Smaller size grit used in external grit plaster.
- (v) Poor quality primer, distemper, paint etc. used.
- (vi) Surface not prepared before painting/distempering.
- (vii) Distemper/white wash/snowcem etc. coming to hands on rubbing.
- (viii) Brush marks visible on painted/distempered surface.

2.1.10 Water supply, sanitary installations and drainage

- (i) Non ISI marked SCI/GI pipes provided.
- (ii) Less weight SCI/GI pipes used.
- (iii) Clamping of GI pipes either not done or done at inadequate spacing.
- (iv) Less size of MS flat used in MS holder bat clamps and MS flat was not galvanized.
- (v) MS holder bat clamps not fixed in CC blocks
- (vi) Less quantity lead used in SCI/CI pipe joints.
- (vii) Traps with insufficient seal used.
- (viii) Commercial quality sanitary wares.
- (ix) Lesser weight bib taps/pillar taps/stop cocks etc provided.
- (x) Under weight PVC storage tanks provided.
- (xi) Less size and weight of gully gratings and manhole covers.
- (xii) Inferior quality SW/RCC pipes.
- (xiii) Earth not properly compacted during refilling of trenches.

2.1.11 Horticulture works

- (i) Estimate not prepared as per landscape plan.
- (ii) Landscape plans do not indicate the location of plant and species.
- (iii) Species not selected as per environmental conditions.
- (iv) Details of plants e.g. species, heights etc. not mentioned in the nomenclature of items.
- (v) Mode of measurement of earth/manure supply is not indicated. Deduction of voids not done.
- (vi) Excavation/trenching not done up to required depth at the time of development of new garden or regressing of lawn etc.
- (vii) Fresh/semidecayed cowdung manure/farm yard manure accepted in place of well decayed cowdung manure/farmyard manure.
- (viii) Grass not dibbled at specified distance during development/regressing of lawn.

- (ix) Pit size for different types of plant not mentioned in nomenclature of items.
- (x) Composition of refill mixture of earth and manure etc. not mentioned as per the requirement of particular species.
- (xi) P.H. value of earth not checked before taking its supply to suit the type of plantation.
- (xii) Manure mixed with earth, stone and other extraneous matters used.
- (xiii) Good earth mixed with building rubbish.
- (xiv) Unhealthy/diseased plants.

3. Special Projects

Following special projects are discussed in this chapter:

- (i) Highways
- (ii) Flyovers
- (iii) Runways
- (iv) Interiors
- (v) Sewage treatment plants
- (vi) Development of site

These special projects require proper supervision by site officials to ensure execution of quality works. It has been observed that inexperienced engineers are deputed for supervision of these works by the contractors resulting in undue benefit to the contractor and execution of bad quality work. Hence, special attention is required for supervision of these works by qualified and experienced engineers.

3.1 Problems

3.1.1 Highway Projects

- (i) Consultants are appointed arbitrarily without competitive biddings in spite of the fact that the fee payable is in crores of rupees.
- (ii) Private consultants are appointed for almost all the activities of the Projects without proper competitive bidding ;
 - * General Consultants
 - * Planning and Design consultants
 - * Construction management consultants etc.

The works done by the consultants are not checked by the departmental Engineers, whose job is mainly to issue cheques to the consultants/contractors.

- (iii) Payment for the works to the tune of several crores of rupees is made by the departmental officers based on the recommendations of the private consultants and that too without conducting any check by the departmental officers.
- (iv) Deviation orders for payment of several crores of rupees are made on lump sum contracts as recommended by the private consultants. The recommendations for such payments are generally not checked by the departmental engineers.
- (v) Quality of the works executed by the private contractors are checked by another private consultant. As such no responsibility lies with the Department.
- (vi) Structural Design and estimate are generally not checked by the departmental engineers.
- (vii) Inflated estimates and recommendations are made by the consultants by adopting many lump sum provisions etc.
- (viii) Compaction of embankment/sub-grade not carried out upto the desired levels.
- (ix) Embankment/sub-grade material not spread in uniform thick layers as specified in specifications.
- (x) Grading of materials used for granular sub-base, water bound macadam, wet mix macadam, bituminous macadam and dense bituminous macadam not as per the requirement.
- (xi) Granular sub-base, wet mix macadam, bituminous macadam, dense bituminous macadam etc. not compacted to the desired density.
- (xii) Thickness of granular sub-base, WBM, WMM, BM and DBM found less than that specified.
- (xiii) Alignment, levels and surface regularity of pavements not executed as per the specification.
- (xiv) Proportions of various ingredients to be mixed for bituminous concrete not as per design mix.
- (xv) Bituminous macadam and bituminous penetration macadam not covered with seal coat before allowing traffic over it.
- (xvi) Flexural strength of CC pavement not as per specified requirement.
- (xvii) Use of sub-standard quality reinforcing element used for reinforced earth work.
- (xviii) Variation in dimensions of kerbstone more than the permissible limits.

3.1.2 Flyovers

- (i) Design and drawings of form work including supports not approved by the Department before execution.
- (ii) Form work used at site not leak proof.
- (iii) No precamber provided to the soffit of form work.
- (iv) Mechanical coupling of bars at additional/extra rate paid though provision for same included in the lump sum price.
- (v) Concrete mixed in batch type mix though provision for fully automatic batching and mixing plant made in the agreement.
- (vi) Surface cracks observed on deck slabs.

- (vii) Complete record of prestressing along with elongators, jack pressure etc. not maintained though provision exists in contract agreement.
- (viii) Safety precautions to avoid accidents during construction not taken as per the requirement specified in the agreement.
- (ix) Diversion roads not constructed and maintained as per the contract provisions.
- (x) Construction done based on RCC solid slab instead of prestressed/voided slab construction accepted at the time of selecting consultant.
- (xi) Uneconomical type of retaining works used for approach roads.
- (xii) Lumpsum provision for various item costing approx Rs.20.00 crores was kept in estimate.
- (xiii) Estimates were prepared based on inflated rates.
- (xiv) Basic data/Traffic data required for design of flyover was not provided by the deptt.
- (xv) Consultancy work awarded to firm not having any experience of planning of flyover.
- (xvi) Cost of flyover increased by more than four times the cost estimates furnished by the consultants in spite of the fact that the selection of the consultants were based on economical design etc.
- (xvii) Private proof consultant were appointed to check the design of another private consultant arbitrarily without any basis.
- (xviii) Quality check not based on manual finalised by the department/consultant.
- (xix) Provision of independent quality check from outside agency not complied.

3.1.3 Runways

- (i) Soil stabilization done without ascertaining its technical necessity.
- (ii) Possibility of using the existing concrete/bituminous pavement for the overlay had not been explored as a base layer. But heavy expenditure incurred in dismantling the same and then refilling with less durable layers. Pavement design not done in such cases.
- (iii) Expansion, contraction and dummy joints not found in true lines and uniform width.
- (iv) Expansion joints of CC pavement not properly filled up with the specified material.
- (v) Surface accuracy of finished concrete/bituminous surfaces not found within prescribed limits.
- (vi) Concrete laid in single layer against the requirement of multi-layers resulting in improper compaction.
- (vii) Thickness of ante-friction layer of PVC sheet found less than specified.
- (viii) Geotextile fabric not tested for specified parameters.
- (ix) Embankment made with costly materials such as river sand etc.
- (x) Failure occurred in the embankment side slope.
- (xi) Surface drains not designed properly.
- (xii) Embankment filling not compacted in layers specified.

3.1.4 Interiors

- (i) Interior decoration with very costly and imported materials allowed even though existing specifications were adequate.
- (ii) Nomenclature of items of interior work not framed properly resulting in litigation and payment of huge amount in the form of extra items .
- (iii) Rates of interior items not derived on the basis of detailed drawings and after working out the quantum of material and labour for each item.
- (iv) Materials used in interior works e.g., fabric, wood, board, carpet, tiles, marble etc. not found as per approved list specified in the contract document.
- (v) Consultants tend to experiment with new materials and design in the name of interiors at the cost of department for their commercial benefits/gains.
- (vi) Minimum price range specified for materials of items not adhered to. Purchase vouchers when verified indicated lesser price than specified but cost adjustment not done.
- (vii) Fire resistant paint/primer on the unexposed surfaces of paneling ceiling etc. though specified in the contract agreement found not done.
- (viii) Sizes of furniture items and other inbuilt components e.g. drawers, partitions, shelves etc. found less than that specified in the drawing.
- (ix) Concealed frame sections used in false ceiling found of lesser size and of inferior quality. Hangers fixed at more spacing than specified. Adjustable nuts and bolts not fixed to hangers.
- (x) Anti-static PVC flooring not provided inspite of clear stipulation of same in contract agreement.
- (xi) Glasses used in cabins not given adequate treatment to get permanent stain free surface.
- (xii) False ceiling of different system of cheaper quality used than that specified in the contract agreement.
- (xiii) Inferior grade (urea bonded) board and ply used instead of exterior grade (phenol formaldehyde bonded) plywood.
- (xiv) Melamine polish found of inferior quality.
- (xv) Plaster of paris lining of 20mm thickness done over already plastered and smooth surface resulting in infructuous expenditure.
- (xvi) Sub-standard quality venetian blinds, sun control films, floor springs, marble tiles etc. provided.
- (xvii) Simple teak wood moulding provided against specified ornamental mouldings.
- (xviii) Anodising/power coating thickness found less than specified.
- (xix) Gauge of sheet thickness of steel almirah found less.

3.5 Sewage treatment Plants

- (i) Capacity of proposed treatment plant was decided arbitrarily i.e., without keeping in view the discharge to be treated.

- (ii) The performance of the tenderer/firm with respect to technology followed in similar plants installed earlier was not ascertained/checked independently. The proposed technology was earlier used in small plants and the performance of plants also was not found satisfactory.
- (iii) The technology proposed was supposed to be cost effective as compared to conventional plants. However, the technology was not cost effective and investment of double the cost was required.
- (iv) Design and drawings submitted by the contractor were not checked by the department for hydraulic design/structural design and economy.
- (v) No guarantee of plant available to the department due to delay in completion of work.
- (vi) Clearance for Chief Electrical Inspector, Explosives Department and Pollution Control Board not obtained.
- (vii) Design of channels, appurtenances and conduits designed for average flow though the same are required to be designed for maximum flow.
- (viii) OPC cement used in sludge digestion tank as against blast furnace slag cement.
- (ix) Size of gravel in sludge drying bed was 25mm as against 3 to 6 mm recommended by manual issued by Central Public Health and Environment Engg. Organisation.
- (x) Plant initially recommended to be constructed up to primary stage of treatment by the consultant. The secondary stage recommendation to be added at a later date depending on reuse of treated effluent. However, plant being constructed with secondary treatment.
- (xi) Alternative scheme proposed though cost effective and acceptable to consultant not agreed. Plant being constructed at higher cost.
- (xii) No provision exists in agreement for payment of extra item since tender was on lumpsum basis on contractors specification/design. Extra item paid to the contractor, resulting in undue benefit.
- (xiii) Spares of various plants/equipments not supplied.
- (xiv) Water retaining structures were not tested as per provision made in IS 3370.
- (xv) Welded joints were not tested by non-destructive testing.
- (xvi) Water used in concreting not tested before use in the concrete work.
- (xvii) Thickness of filter used in sludge drying beds and filter was less than the specified.
- (xviii) Clearance of elevated MS/RCC structures from ground was less than the specified.
- (xix) Various pipe lines laid not tested before covering the lines with earth/concrete etc.
- (xx) Exposed surface of concrete not treated though provision for treatment exists in agreement.

3.1.6 Development of site

- (i) RCC pipes covered with CC 1:2:4 around even though the pipes were not in close proximity to trees/tracks etc.
- (ii) Performance test of water supply and sewerage system not carried out.
- (iii) Design of road, sewage, water supply and storm water drainage systems not carried out.
- (iv) Slopes of pipes not provided properly.

- (v) Height and slope of concrete channel in man hole not as per specifications.
- (vi) Less weight manhole frame and cover provided.
- (vii) RCC/SW/GI pipes not tested before use.
- (viii) Less quantity lead provided in CI pipes.

4. Important Technical Circulars

As preventive vigilance measures, the CVC had issued many circulars. However, the circulars covering the following aspects are reiterated in this section.

- (i) Post Tender Negotiations
- (ii) Interest free mobilisation advance.
- (iii) Appointment of Consultants
- (iv) Acquisition of Accommodation

4.1 Post Tender Negotiations

As post tender negotiations are the main source of corruption, post tender negotiations are banned vide the circular of the commission dated 18/11/98 except in the case of negotiations with L1 (the Lowest Tenderer). It has been further clarified vide Circular dt. 24/8/2000 that if L1 party backs out, there should be retendering in a transparent and fair manner.

It was clarified vide circular dated 28/3/02 that the above instructions are not applicable for projects funded from sources other than the consolidated fund of Govt. of India. The above instructions issued vide circular dated 28.3.02 were withdrawn vide circular dated 29/4/02

4.2 Interest free Mobilisation Advance

It has been clarified by the Commission in the circular dated 8/10/97 that adequate steps may be taken to ensure stipulation of mobilisation advance only for selected works and the advance should be interest bearing so that the contractor does not draw undue benefit. Copy of the this circular is enclosed in Annexure-III at the end of this section..

4.3 Appointment of Consultants

It was observed by the Commission that Consultants are appointed arbitrarily and without considering the merit, capability etc. Two circulars were issued in this regard on 12/11/82 and on 10/1/83. Copy of the these circulars is enclosed in Annexure-I & II at the end of this section

4.4 Acquisition of Accommodation

It was observed by the Commission that accommodation for commercial/residential purposes are being acquired by various PSUs/Banks etc. in an arbitrary and adhoc manner. Three circulars were

issued in this regard on 8/7/99, 8/9/99 and 21/2/2000 respectively. It has been emphasized in these circulars that an "OPEN" advertisement in the local as well as national newspapers with maximum circulation in the area must be given for acquisition of any commercial/residential property. The tenders should be invited preferably by two bid system viz. technical and financial. The technical bid should be opened in the first instance and suitability etc. of accommodation be assessed. The market rate justification for the areas at which property is available should also be assessed before opening the financial bid.

N.B. For copy of important CVC circulars, refer Section F of this book.

5. Conclusion

Thus it can be seen that almost all the activities of construction has become problem areas. Unless preventive vigilance measures are under taken in advance, occurrence of calamity cannot be avoided. Prevention is better than cure. Hence it becomes the duty of the Vigilance Wing of every organisation to locate the areas vulnerable to corruption well in advance so that the problems can be avoided before their occurrence.

6. Abbreviations

A/A	Administrative Approval
AC	Asbestos Cement
AHR	Abnormally high rated
BIS	Bureau of Indian Standards
BM	Bituminous macadam
CC	Central concrete
CPWD	Central Public Works Department
DAC	Asphaltic Concrete
DBM	Dense Bituminous Macadam
D.E.	Detailed Estimate
EMD	Earnest Money Deposit
EOT	Extension Of Time
E/S	Expenditure Sanction
GI	Galvanised Iron
ILLN	Illustration
I.T.	Income Tax
L-1	First Lowest
L-2	Second Lowest

MAS	Material At Site
MB	Measurement Book
NBO	National Building Organisation
NIT	Notice Inviting Tender
PCC	Plain Cement Concrete
P.E.	Preliminary Estimate
PSU	Public Sector Undertaking
RCC	Reinforced Cement Concrete
RR	Random Rubble
SDAC	Semi Dense Asphaltic Concrete
SW	Stone Ware
TDS	Tax Deducted at Source
T&P	Tools and Plants
WBM	Water Bound Macadam
WMM	Wet Mix Macadam

Annexure - I

No.3L PRC 1

Government of India

Central Vigilance Commission

No.3, Dr. Rajendra Prasad Road,

New Delhi

Dated 12-11-1982

All Chief Vigilance Officers of all Public

Enterprises/Nationalised Banks.

Subject: Irregularities/lapses observed in the construction works undertaken by public sector undertakings/banks.

The Chief Technical Examiners' Organisation under the Commission has had occasion to examine and comment upon the works undertaken by Public Sector Undertakings, Banks etc. under the guidance of consultants. Common lapses noticed as a result of these inspections are enumerated below:-

-) Employment of consultant without verifying his credentials and capacity or capability to do the work assigned to him.
-) Inadequate planning of work and incorrect preparation or non-preparation of detailed estimates by consultants.
-) Non-preparation of justification statement for the rates quoted in tender resulting in contract being awarded at very high rates.
-) Rejection of the lowest tender without adequate justification, on the ground that the contractor is not reliable or lacks capacity to execute the work, even though he was included in the original pre-qualification list.
-) Improper evaluation of tenders, leading to allotment of works wrongly with ultimate loss to the public undertaking.
-) Allowing upward revision of rates in some cases by contractors on very flimsy grounds during the process of negotiations, so that the lowest tenderer manages to make up the difference of cost between his quotation and the second lowest quotation.
-) Payment of money to contractors outside the terms of contract. For example, in a large number of cases contract is for fixed price, but substantial payment is made on the ground of escalation or prices.
-) Use of inferior material in the construction, while payment is made at full rates on the approval of the consultant without making any financial adjustment.
-) Substitution of low-rated items by higher-rated items beneficial to contractor.
-) Lack of proper supervisory arrangement by the undertaking placing total reliance on the consultant for even preparation of the bill which leads to incorrect measurement of works and payment for the items of work not done.

In view of these factors, it is recommended that while consultants may be engaged for the purposes of original planning and designing, scrutiny of tenders and execution of work should, as far as possible, be done by

Technical officers directly and fully answerable to the public undertaking/banks etc. concerned. For this purpose, engineers may be taken on deputation from Government Deptts. or the work may be entrusted to established engineering departments, such as the CPWD. To the extent a consultant is engaged, it is also necessary to ensure that the relationship between the undertaking and the consultant is correctly defined so that the consultant can be held legally and financially responsible for the work entrusted to him.

It is requested that suitable arrangements may be made for properly awarding works and exercising effective supervision and control in their execution with a view to ensure timely and systematic completion. Care may also be taken to guard against the types of irregularities indicated above.

Sd/-

(D.C.Gupta)

Director

Annexure - II

No.3L PRC 1

Government of India

Central Vigilance Commission

No.3, Dr. Rajendra Prasad Road,

New Delhi

Dated 10-1-1983

All Chief Vigilance Officers of all Public

Enterprises/Nationalised Banks.

Subject: Appointment of Consultant

Guidelines in connection with the selection of consultants by Public Sector Enterprises for preparation of project reports have been laid down by Bureau of Public Enterprises vide letter No.BPE/GL-25/78/Prod./CR/2/77/BPE/Prod. dt. 15th July, 1978.

The brief guidelines laid down are:-

1. For any new projects, expansions, modernization/modification of the existing projects involving an expenditure of Rs.5 crores and above these guidelines are applicable.
2. The pre-qualification public notice should be issued to enlist names of suitable consultants.
3. Pre-qualification bid should be screened by scrutinising committee.
4. The final selection and commissioning of the consultant should be done with the approval of the board of public sector enterprises.
5. Based on the above guidelines each enterprise should prepare their own instructions and procedure duly approved by the board for the appointment of consultants to ensure that the selection is made with maximum attention to the suitability, competence and proven stock record.

The Chief Technical Engineer Organisation under the control of the Commission has had occasion to examine and comment upon works undertaken by public sector undertakings. Common irregularities/lapses noticed in the construction works undertaken by the public sector undertakings/banks have already been brought to our notice vide Commission's letter No.3L PRC 1 dt. 12/11/82. During examination of engineering works, it was observed that consultants were appointed on ad-hoc basis without going through proper formalities as suggested by B.P.E. and/or the consultant was chosen from an old panel thereby restricting competition. In most of the cases public sector enterprises have not framed their own instructions and procedures duly approved by the Board.

Even though individually such works are less than Rs.5 crores, it is necessary that the appointment of consultant should not be made arbitrary or ad-hoc.

It is, therefore, necessary that urgent action is taken to formulate a rational policy for employment of consultants based on the board outlines given by B.P.E.

This may be given priority and progress made in formulation of rules and procedure may be reported by 31-3-1983.

Sd/-

(D.C.Gupta)

Director

No.98/ORD/1

Government of India

Central Vigilance Commission

Bikaner House, 1st Floor,
No.1, Pandara Road,

New Delhi

Dated the 8th Oct., 1997

To,

All Chief Vigilance Officers/PSUs.

Subject: Grant of interest free mobilisation advance.

Sir,

It has come to the notice of this Commission that PSUs are stipulating payment of interest free mobilisation advance in their tenders. Many times mobilisation advance is allowed after acceptance of tender also. The amount of mobilisation advance thus paid to the contractor is prone to be used by him for building his own capital or for the purpose other than the one for which it is disbursed. For big projects mobilisation advance of 5 to 10% stipulated in the contract works out to a huge amount and the contractor is likely to be benefited with interest free amount to a very big extent. Normally while preparing justification, elements of gain in terms of interest or capital investment by way of mobilisation advance is also not considered and thus the contractor gets higher rates than what may be justified. In case there is a delay in commencement of the work the contractor is likely to get undue benefit by way of retention of huge money.

It is, therefore, desired that adequate steps may be taken to ensure stipulation of mobilisation advance only for selected works and advance should be interest bearing so that contractor does not draw undue benefit. Timely execution/ completion of all projects is an essential requirement and the contractor would like to draw interest bearing mobilisation advance only when he needs to maintain his cash flow.

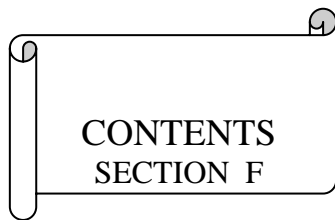
Section F

CVC Circulars

(Nov. 1998 to May 2008)

regarding

Tenders and related matters



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No. 008/VGL/001

Government of India

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 each of the persons proposed. The bio 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

No. 02-07-01-CTE-30
Government of India
Central Vigilance Commission

Satarkata Bhawan, Block 'A',
GPO Complex, INA,
New Delhi-110023.

OFFICE MEMORANDUM

Circular No. 01/01/08

31 DEC 2007

Sub. : Acceptance of Bank Guarantees.

A number of instances have come to the notice of the Commission where forged / fake bank guarantees have been submitted by the contractors/suppliers. Organizations concerned have also not made any effective attempt to verify the genuineness / authenticity of these bank guarantees at the time of submission.

2. In this background, all organizations are advised to streamline the system of acceptance of bank guarantees from contractors/suppliers to eliminate the possibility of acceptance of any forged/fake bank guarantees.
3. The guidelines on this subject issued by Canara Bank provides for an elaborate procedure, which may be found helpful for the organizations in eliminating the possibility of acceptance of forged/fake bank guarantees. The guidelines issued by Canara Bank provides that -

“The original guarantee should be sent to the beneficiary directly under Registered Post (A.D.). However, in exceptional cases, where the guarantee is handed over to the customer for any genuine reasons, the branch should immediately send by Registered Post (A.D.) an unstamped duplicate copy of the guarantee directly to the beneficiary with a covering letter requesting them to compare with the original received from their customer and confirm that it is in order. The A.D. card should be kept with the loan papers of the relevant guarantee.

At times, branches may receive letters from beneficiaries, viz., Central/State Governments, public sector undertakings, requiring bank's confirmation for having issued the guarantee. Branches must send the confirmation letter to the concerned authorities promptly without fail.”

4. Therefore, all organizations are advised to evolve the procedure for acceptance of BGs, which is compatible with the guidelines of Banks/Reserve Bank of India. The steps to be ensured should include-

- i) Copy of proper prescribed format on which BGs are accepted from the contractors should be enclosed with the tender document and it should be verified verbatim on receipt with original document.
- ii) It should be insisted upon the contractors, suppliers etc. that BGs to be submitted by them should be sent to the organization directly by the issuing bank under Registered Post (A.D.).
- iii) In exceptional cases, where the BGs are received through the contractors, suppliers etc., the issuing branch should be requested to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the guarantee directly to the organisation with a covering letter to compare with the original BGs and confirm that it is in order.
- iv) As an additional measure of abundant precaution, all BGs should be independently verified by the organizations.
- v) In the organisation/unit, one officer should be specifically designated with responsibility for verification, timely renewal and timely encashment of BGs.

5. Keeping above in view, the organizations may frame their own detailed guidelines to ensure that BGs are genuine and encashable.

6. Receipt of the above guidelines should be acknowledged.

P. Varma

(Smt. Padamaja Varma)
Chief Technical Examiner

To
All Chief Vigilance Officers

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

Satarkta Bhawan, Block-A
GPO complex, INA,
New Delhi-110023
Dated the 4th 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.

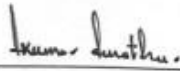
2. In this context, Integrity Pact, a vigilance tool first promoted by the Transparency International, has been found to be useful. The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any 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 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.


4/12/2007 (Vineet Mathur)
Deputy Secretary

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



SAIL



INTEGRITY PACT

Between

Steel Authority of India Limited (SAIL) hereinafter referred to as "**The Principal**",

and

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

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s 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.



SAIL

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- (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 cartelisation in the bidding process.
 - c. The Bidder(s)/ Contractor(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)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractors(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-

- 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 or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is annexed and marked as Annex-"B".

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 Earnest Money Deposit/ Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract 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 the procedure mentioned in "Guidelines on Banning of business dealings".

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 all bidders 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, SAIL.
- (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 take 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, SAIL 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 Independent Directors on the SAIL Board.
- (8) If the Monitor has reported to the Chairman SAIL, a substantiated suspicion of an offence under relevant IPC/ PC Act, and the Chairman SAIL 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 SAIL.

Section 10 - Other provisions

- (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 take 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.
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- (7) Monitor shall be entitled to compensation on the same terms as being extended to / provided to Independent Directors on the SAIL Board.
- (8) If the Monitor has reported to the Chairman SAIL, a substantiated suspicion of an offence under relevant IPC/ PC Act, and the Chairman SAIL 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.
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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 SAIL.

Section 10 - Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
- (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.005/CRD/19
Government of India
Central Vigilance Commission

Satarkta
Bhawan, Block 'A',

GPO Complex,

INA,

New Delhi- 110

023

Dated the 5th July

2007

Subject:- Transparency in Works/Purchase/Consultancy contracts awarded

on nomination basis.

Reference is invited to the Commission's circular No.15/5/06 (issued vide letter No.005/CRD/19 dated 9.5.2006), wherein the need for award of contracts in a transparent and open manner has been emphasized.

2. A perusal of the queries and references pertaining to this circular, received from various organizations, indicates that several of them believe that mere post-facto approval of the Board is sufficient to award a contracts on nomination basis rather than the inevitability of the situation, as emphasized in the circular.

3. It is needless to state that tendering process or public auction is basic requirements for the award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties.

4. A relevant extract from the recent Supreme Court of India judgement in the case of Nagar Nigam, Meerut Vs A1 Faheem Meat Export Pvt. Ltd. [arising out of SLP(civil) No.10174 of 2006] is reproduced below to reinforce this point.

“The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notifications of the public-auction or inviting tenders should be advertised in well known dailies having wide

circulation in the locality with all relevant details such as date, time and place of auction, subject matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance, during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through ‘private negotiations’.”

(Copy of the full judgement is available on the web-site of the Hon’ble Supreme Court of India, i.e., www.supremecourtfindia.nic.in)

5. The Commission advises all CVOs to formally apprise their respective Boards/managements of the above observations as well as the full judgement of the Hon’ble Supreme Court for necessary observance. A confirmation of the action taken

in this regard may be reflected in the CVO's monthly report.

6. Further, all nomination/single tender contracts be posted on the web-site ex post-facto.

(Rajiv Verma)

Under
Secretary

To

All Chief Vigilance Officers



No.98-VGL-25

Government of India

Central Vigilance Commission

(CTEO)

Satarkta Bhawan, Block-A

INA, GPO Complex,

New Delhi: 110023

Dated 26.04.07

OFFICE MEMORANDUM

Circular No. 14/4/07

Sub: Use of Products with standard specification.

A case has come to the notice of the Commission that the user department one organization requisitioned an item of non-standard size. Requisitioning of item with non-standard size resulted in issue of 'Non-availability certificate' by the stores keeper although the same item of standard size was clearly available in the stock. Citing urgency, the item was procured by the user department at 10 times the cost of the standard item by inviting limited quotations.

2. In order to avoid such occurrences, it is reiterated that the items with standard specifications only should be stipulated in the bid documents. In case, items with non-standard specifications are to be procured, reasoning for procuring such items may be recorded and reasonability of rates must be checked before placing order.

Sd/ (dated
26.04.07)
(Smt. Padmaja Varma)

Chief Technical Examiner

To

All CVOs of Ministries / Departments / PSUs / Banks / Insurance
Companies/ Autonomous Organizations / Societies / Uts

No.4CC-1-CTE-2

Government of India

Central Vigilance Commission

Satarkta Bhawan, Block-A

4th Floor, GOP Complex,

INA, New Delhi: 110 023

Dated

10.04.07

OFFICE MEMORANDUM

Circular No. 10/4/07

Sub: Mobilisation Advance.

Commission has reviewed the existing guidelines on 'Mobilisation Advance' issued vide OM No.UU/POL/18 dated: 08.12.97 and OM No.4CC-1-CTE-2, dated 08.06.2004.

The following guidelines are issued in supercession of earlier guidelines issued by the Commission on 'Mobilisation Advance'

1. Provision of mobilization advance should essentially be need-based. Decision to provide such advance should rest at the level of Board (with concurrence of Finance) in the organization.
2. Though the Commission does not encourage interest free mobilization advance, but, if the Management feels its necessity

in specific cases, then it should be clearly stipulated in the tender document and its recovery should be time-based and not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, the recovery of advance could commence and scope for misuse of such advance could be reduced.

3. Part 'Bank Guarantees' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery installments and should be equivalent to the amount of each installment. This would ensure that at any point of time even if the contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.
4. There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
5. The amount of mobilization advance; interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
6. Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.
7. In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.
8. Utilization certificate from the contractor for the mobilization advance should be obtained. Preferably, mobilization advance should be given in installments and subsequent installments should be released after getting satisfactory utilization certificate from the contractor for the earlier installment.

Sd /-
(P.VARMA)
Chief Technical Examiner

Copy to :-

All CVOs : Ministries / Departments / PSUs / Banks / Uts.

No.005/CRD/012

Government of India

Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 3rd March, 2007

Circular No. 4/3/07

Sub:- Tendering process - negotiations with L-1.

Reference is invited to the Commission's circulars of even number, dated [25.10.2005](#) and [3.10.2006](#), on the above cited subject. In supersession of the instructions contained therein, the following consolidated instructions are issued with

immediate effect :-

(i) As post tender negotiations could often be a source of corruption, it is directed that there should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.

(ii) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance

quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.

iii) Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

iv) As regards the splitting of quantities, some organisations have expressed apprehension that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of the L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.

(v) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of

quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

2. It is reiterated that in case L-1 backs-out, there should be a re-tender.

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

Sd/-

(Vineet Mathur)

Deputy Secretary

All Chief Vigilance Officers

No.005/CRD/12

Government of India

Central Vigilance Commission

Satarkta Bhawan, Block 'A',

GPO Complex, INA,

New Delhi- 110 023

Dated the 3rd October, 2006

Circular No. 37/10/06

Subject: Tendering process – negotiation with L1.

Reference is invited to Commission's instructions of even number dated 25.10.2005 on the above subject. A number of references have been received in the Commission, asking for clarification on issues pertaining to specific situations.

2. The Commission's guidelines were framed with a view to ensuring fair and transparent purchase procedure in the organizations. The guidelines are quite clear and it is for the organizations to take appropriate decision, keeping these guidelines in view. In case they want to take action in deviation or modification of the guidelines, to suit their requirements, it is for them to do so by recording the reasons and obtaining the approval of the competent authority for the same. However, in no case, should there be any compromise to transparency, equity or fair treatment to all the participants in a tender.

3. The above instructions may be noted for strict compliance.

Sd/-

(V. Kannan)

Director

All Chief Vigilance Officers

No.005/VGL/4

Government of India

Central Vigilance Commission

Satarkta Bhawan, Block 'A',

GPO Complex, INA,

New Delhi- 110 023

Dated the 1st September 2006

Circular No. 31/9/06

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

The Commission, vide its orders of even number dated 16.3.2005, 28.7.2005 and 20.9.2005, had directed all organisations to post every month a summary of all contracts/purchases made above a certain threshold value on the websites of the concerned organisations, and it was specified that the proposed threshold limits would be acceptable to the Commission as long as they covered more than 60% of the value of the transactions every month in the first instance, to be revised subsequently after the system stabilized. The threshold values as decided by the organisations, were also to be communicated to the Commission separately for its perusal and record. CVOs were required to monitor the progress in this regard and ensure that the requisite details were posted regularly on respective websites. They were also required to incorporate the compliance reports in this regard in their monthly reports.

2. The Commission has taken serious note that the aforementioned instructions are not being adhered to by the organisations. CVOs are, therefore, once again advised to ensure that details of the tenders awarded above the threshold value by the organizations are uploaded in time on the organisation's official website and are updated every month. The position in this regard should be compulsorily reflected in the CVOs monthly reports to the Commission. CVOs should also specifically bring to the notice of the Commission, any violation of this order.

3. Please acknowledge receipt and ensure due compliance.

Sd/-

(V.Kannan)

Director

(i) All Secretaries/CEOs/Head of Organisations.

(ii) All Chief Vigilance Officers

No.005/CRD/19

Government of India

Central Vigilance Commission

Satarkta Bhawan, Block 'A',

GPO Complex, INA,

New Delhi- 110 023

Dated the 9th May 2006

CIRCULAR No.15/5/06

**Subject:- Transparency in Works/Purchase/Consultancy contracts
awarded**

on nomination basis.

The Commission had, in its OM No. 06-03-02-CTE-34 dated 20.10.2003 on back to back tie up by PSUs, desired that the practice of award of works to PSUs on nomination basis by Govt. of India/PSUs needed to be reviewed forthwith. It is observed that in a number of cases, Works/Purchase/Consultancy contracts are awarded on nomination basis. There is a need to bring greater transparency and accountability in award of such contracts. While open tendering is the most preferred mode of tendering, even in the case of limited tendering, the Commission has been insisting upon transparency in the preparation of panel.

2. In the circumstances, if sometimes award of contract on nomination basis by the PSUs become inevitable, the Commission strongly feels that the following points

should be strictly observed.

- (i) 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.
- (ii) The reports relating to such awards will be submitted to the Board every quarter.
- (iii) The audit committee may be required to check at least 10% of such cases.

3. This may be noted for strict compliance.

Sd/-

(V. Kannan)

Director

All Chief Vigilance Officers

Copy to:

- (i) All Secretaries of Govt. of India
- (ii) All CEOs/Head of the organisation

F.No.006/VGL/29

Government of India

Central Vigilance Commission

Satarkata Bhawan, Block 'A',

GPO Complex, INA,

New Delhi-110 023

Dated, the 1st May, 2006

Circular No.21/05/06

Subject: Examination of Public Procurement (Works/Purchases/Services)

Contracts by CVOs.

The Commission has been emphasising the need for close scrutiny by the CVO, of the Public Procurement (Works/ Purchases/Services) Contracts of his department/organisation concerned, to ensure that the laid down systems and procedures are followed, there is total transparency in the award of contracts, and there is no misuse of power in decision making.

2. A number of booklets have been issued by the Chief Technical Examiner Organisation of the Commission, bringing out the common irregularities/ lapses noticed in different contracts. A Manual for Intensive Examination of Works/ Purchase Contracts and guidelines on tendering have also been issued. These are available in the Commission's website.

3. The need for CTE type examinations by the CVOs has been emphasised in the Zonal meetings. The CVOs are required to reflect their examinations in the monthly reports. The Commission reiterates the importance of such examinations by the CVOs, as an effective preventive vigilance measure.

4. For this purpose, the CVOs are required to be well conversant with their organisation's works/purchase manual. Wherever works/purchase manuals are non-existent, they should be got prepared, particularly, in those organisations which have substantial procurement activities. CVOs should also ensure that the manuals are updated from time to time. They should check and ensure that the field staff is well conversant with the extant provisions of the manuals, and the guidelines issued by the Commission/CVOs from time to time. CVOs should have a full and active participation during the CTE inspections to know about the problem areas in the organisation's procurement process.

5. CVOs must also familiarise themselves with the earlier CTE examination reports and ensure that the lapses previously noticed are not repeated. If lessons are not learnt from the past, there would be need to take a serious view of the repetition of lapses and initiate disciplinary proceedings against the officials found responsible for repetition of the lapses committed previously.

6. On the basis of the lapses noticed by the Chief Technical Examiner's Organisation over the years, a checklist has been prepared which could be used by the CVO while examining procurements contracts. The checklist may be seen in Annexure –1. If certain procurement contracts require an intensive examination by the CTEO, a reference may be made to them with adequate justification.

7. This may please be noted for strict compliance.

(V.Kannan)

Director

All Chief Vigilance Officers.

**Check list for examination of Procurement (Works/ Purchases/ Services)
Contracts by CVOs :**

A. Pre-Award Stage

1. Financial and Technical sanction of competent authority is available.
2. Adequate and wide publicity is given. Advertisement is posted on website and tender documents are available for downloading.
3. Convenient tender receiving/opening time and address of the tender receiving officials/tender box are properly notified.
4. In the case of limited tender, panel is prepared in a transparent manner clearly publishing the eligibility criteria. The panel is updated regularly.
5. Pre-qualification criteria are properly defined/ notified.
6. Short listed firms/consultants are fulfilling the eligibility criteria. There is no deviation from notified criteria during evaluation.
7. Experience certificates submitted have been duly verified.
8. Tenders/bids are opened in the presence of bidders.
9. Corrections/omissions/additions etc., in price bid are properly numbered and attested and accounted page –wise. Tender summary note/ Tender opening register is scrupulously maintained.
10. Conditions having financial implications are not altered after opening of the price bids.

11. In case of consultancy contracts (a) Upper ceiling limit is fixed for consultancy fee and (b) Separate rates for repetitive works are fixed.

B. Post-award stage

(a) General

1. Agreement is complete with all relevant papers such as pre-bid conference minutes, etc.

2. Agreement is page-numbered, signed and sealed properly.

3. Bank Guarantee is verified from issuing bank.

4. Insurance policies, labour license, performance guarantee are taken as per

contract.

5. Technical personnel are deployed as per contract.

6. Plant and equipment are deployed as per contract.

7. Action for levy of liquidated damages is taken in case of delay/default.

(b) Payments to contractors

1. Price escalation is paid only as per contract.

2. Retention Money/Security Deposit is deducted as per contract.

3. Recovery of Mobilisation & Equipment advance is made as per the provisions in the contract.

4. Recovery of I.Tax & Works Contract tax is made as per provisions in the
contract.
5. Glaring deviations are supported with adequate justification and are not advantageous to the contractor.

(c) Site Records

1. Proper system of recording and compliance of the instructions issued to the contractors is maintained.
2. Proper record of hindrances is maintained for the purpose of timely removal of the hindrance and action for levy of liquidated damages.
3. Mandatory tests are carried out as per the frequency prescribed in the
Agreement.

No.005/VGL/66
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'

GPO Complex, INA,
New Delhi-110 023
Dated: the 9/12/2005

Office Order No.71/12/05

Sub: Undertaking by the Members of Tender Committee/Agency.

In continuation of the Commission's directions vide Order 005/VGL/4 dated 16/3/2005 regarding transparency in the tender process, the Commission would advise that the members of the Tender Committee should give an undertaking at the appropriate time, that none of them has

any personal interest in the Companies/Agencies participating in the tender process. Any Member having interest in any Company should refrain from participating in the Tender Committee.

Sd/-

(Anjana Dube)
Deputy Secretary

No.005/ORD/12
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated: 25/10/2005

Office Order No.68/10/05

Subject: Tendering Process – Negotiation with L-1.

A workshop was organised on 27th July 2005 at SCOPE New Delhi, by the Central Vigilance Commission, to discuss issues relating to tendering process including negotiation with L-1. Following the deliberations in the above mentioned Work Shop, the following issues are clarified with reference to para 2.4 of Circular No.8(1) (h)/98(1) dated 18th November, 1998 on negotiation with L-1, which reflect the broad consensus arrived at in the workshop.

- (i) There should not be any negotiations. Negotiations if at all shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. Negotiations shall be held with L-1 only. Counter offers tantamount to negotiations and should be treated at par with negotiation.
 - (ii) Negotiations can be recommended in exceptional circumstances only after due application of mind and recording valid, logical reasons justifying negotiations. In case of inability to obtain the desired results by way of reduction. In rates and negotiations prove infructuous, satisfactory explanations are required to be recorded by the committee who recommended the negotiations. The Committee shall be responsible for lack of application of mind in case its negotiations have only unnecessarily delayed the award of work/contract.
2. Further, it has been observed by the Commission that at times the Competent Authority takes unduly long time to exercise the power of accepting the tender or negotiate or re-tender. Accordingly, the model time frame for according such approval to completion of the entire process of Award of tenders should not exceed one month from the date of submission of recommendations. In case the file has to be approved at the next higher level a maximum of 15 days may be added for clearance at each level. The overall time frame should be within the validity period of the tender/contract.
 3. In case of L-1 backing out there should be re-tendering as per extant instructions.
 4. The above instructions may be circulated to all concerned for compliance.

Sd/-

(Anjana Dube)
Deputy Secretary

No.005/VGL/4
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,

New Delhi-110 023
Dated: the 28th July 2005

Office Order No.46/07/05

Sub: Details on award of tenders/contracts publishing on Website/Bulletins-Reminder regarding.

Reference is invited to Commission's Office Order No.13/3/05 dated 16.3.2005 regarding above mentioned subject directing the organisations to publish every month the summary of contracts/purchases made above a threshold value on the website. **In this regard it is specified that the proposed threshold limit is acceptable to the Commission as long as it covers more than 60% of the value of the transactions every month.** This limit can be raised subsequently once the process stabilizes.

2. CVOs may, therefore, ensure that such details are posted on the website of the organisation immediately and compliance report in this regard should be sent by CVOs in their monthly report to the Commission.

Sd/-
(Anjana Dube)
Deputy Secretary

To

All Chief Vigilance Officers

F. No.000/VGL/161
Government of India
Central Vigilance Commission

Satarkta Bhawan, GPO Complex,
Block 'A', I.N.A,
New Delhi-110 023
Dated, the 24th March, 2005

Office Order No.18/3/05

Sub: Banning of business dealings with firms/contractors-clarification regarding.

Para 31 of Chapter XIII, Vigilance Manual Part-I provides that business dealings with the firms/contractors may be banned wherever necessary. It was also suggested that for banning of the business with such firms/contractors or for withdrawal of banning orders, advice of the Central Vigilance Commission need not be sought.

2. It is however observed by the Commission that some of the departments/organizations cite the Commission as the authority behind the decision in their orders while banning of the firms/contractors. This is not appropriate. **The Commission once again reiterates its instructions that banning of business is an administrative matter to be decided by the management of the organization and the Central Vigilance Commission does not give its advice in such matters.** This may please be noted for strict compliance.

Sd/-
(Anjana Dube)
Deputy Secretary

All Chief Vigilance Officers

No. OFF-1-CTE-1(Pt)V
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 24th March 2005

Office Order No. 15/3/05

Subject: Notice inviting tenders-regarding.

The

Commission has observed that some of the Notice Inviting Tenders (NITs) have a clause that the tender applications could be rejected without assigning any reason. This clause is apparently incorporated in tender enquiries to safeguard the interest of the organisation in exceptional circumstance and to avoid any legal dispute, in such cases.

2. The Commission has discussed the issue and it is emphasized that the above clause in the bid document does not mean that the tender accepting authority is free to take decision in an arbitrary manner. He is bound to record clear, logical reasons for any such action of rejection/recall of tenders on the file.
3. This should be noted for compliance by all tender accepting authorities.

Sd/-

(Anjana Dube)

Deputy Secretary

All Chief Vigilance Officers

No.005/VGL/4
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 16th March, 2005

Office Order No.13/3/05

Sub: Details on award of tenders/contracts publishing on Websites/Bulletins.

The Commission vide its Circular No.8(1)(h)/98(1) dated 18.11.1998* had directed that a practice must be adopted with immediate effect by all organisations within the purview of the CVC that they will publish on the notice board and in the organisation's regular publication(s), the details of all such cases regarding tenders or out of turn allotments or discretion exercised in favour of an employee/party. However, it has been observed by the Commission that some of the organisations are either not following the above mentioned practice or publishing the information with a lot of delay thereby defeating the purpose of this exercise, viz. increasing transparency in administration and check on corruption induced decisions in such matters.

2. The Commission has desired that as follow up of its directive on use of 'website in public tenders', all organisations must post a summary every month of all the contracts / purchases made above a certain threshold value to be decided by the CVO in consultation with the head of the organisation i.e, CEO / CMD etc, as per Annexure –I. The threshold value may be reported to the commission for concurrence.

3. Subsequently, the website should give the details on the following:

- a) actual date of start of work
- b) actual date of completion
- c) reasons for delays if any

A compliance report in this regard should be sent by the CVOs alongwith their monthly report to CVC.

Sd/-
(Anjana Dube)
Deputy Secretary

To
All Chief Vigilance Officers

* For Circular dated 18.11.1998, as indicated above, please refer the index at sl. no.
47

Annexure I

TABLE

(given in last page)

No.005/ORD/1
Government of India
Central Vigilance Commission

Satarkata Bhawan Block 'A'
GPO Complex, INA,
New Delhi-110023
Dated 10th March 2005

OFFICE ORDER No.11/3/05

To,

All the Chief Vigilance Officers

Sub: Delays in Payments to Contractors & Suppliers etc. – Reducing opportunities for corruption reg.

The Commission has observed that in a large number of Government organisations and PSUs, payments to contractors/suppliers are inordinately delayed. This makes the system vulnerable to corruption, in addition to increasing the cost of procurement by the Government agencies.

2. The Commission has therefore directed that all the CVOs should undertake a review of bills received during the last six months. The review is meant to primarily determine the time taken in clearing the bills. Necessary help from the concerned Finance/Administration departments may be taken wherever required. Wherever the systems have not yet been computerised there may be practical difficulties in conducting such a review for all the bills. The organisations may fix a cut off limit for review. It is suggested that the cut off limit for bills can be Rs.1 lakh i.e. time taken for payment of all bills above this amount should be seen. In smaller organisations the cut off limit can be lower depending on feasibility and convenience.
4. The CVO should also review whether payments are being made “first-come-first-serve” basis or not.
4. A compliance report in this regard may be sent to the Commission by 15.4.2005 as per the following details:

Statement on delays in Bill Payments

1. **Name of Organisation** :
2. **Cut off limit**
: Rs. 1 lakh/others (in respect of small orgns.)
3. **Bill received during Sept.,04-Feb,05** :
(from contractors/suppliers etc.)
- Total No. of Bills :

Total amount involved	:	
4. Out of these	:	
(a) Bills paid in 15 days	:	
No. of Bills	:	
Amount Involved		
(b) Bills paid in 15-30 days	:	
No. of Bills	:	
Involved		Amount
(c) Bills paid in 30-60 days	:	
No. of Bills	:	
Involved		Amount
(d) Bills paid from 60 days to 120 day	:	
No. of Bills	:	
Amount Involved		
(e) Bills paid over 120 days	:	
No. of Bills	:	
Involved		Amount
5.	There are also complaints that most of the organisations take inordinately long time in releasing 5% bills amount which is normally retained as performance guarantee after it becomes due. CVO may do a similar exercise with regard to release of this payment.	
6.	Has any ERP system or any other computerized system been installed for accounting purposes which can monitor bill payment?	
6A.	It not, is there any plan to do so in near future? If so, Please indicate the time frame.	

Sd/-

Singh)
Secretary

(Balwinder
Additional

No.98/DSP/3
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 24th December, 2004

Office Order No.75/12/04

Sub: Participation of consultants in tender – guidelines regarding.

Consultants are appointed by the organisation for preparation or project report. These appointment are made for any new projects, expansions, modernization/modification of the existing projects etc. The election is made with maximum attention to the suitability, competence and proven track record.

2. Further, during the CVO's Conference convened by the Commission in Sept. 1997, the Central Vigilance Commissioner had constituted a Committee of CVOs to go into the system of contracts prevalent in PSUs and to suggest, wherever required, methods of streamlining the contracting provisions. The Committee after going through the contract system of various organisations had made recommendations on consultants as under:-

Consultants:- A firm which has been engaged by the PSU to provide goods or works for a project and any of its affiliates will be disqualified from providing consulting services for the same project. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, will be disqualified from subsequently providing goods or works or services related to the initial assignment for the same project. Consultants or any or their affiliates will not be hired for any assignment, which by its nature, may be in conflict with another assignment of the consultants.

3. It has come to the notice of the Commission that in a tendering process of a PSU, the consultant was also permitted to quote for work for which they had themselves estimated the rates and the consultant quoted 20% above their own estimated rates as against the awarded rates which were 20% below the estimated cost. Such over dependence on the consultant can lead to wasteful and infructuous expenditure which the organisation regrets in the long run. Meticulous and intelligent examination of the consultants proposal is therefore essential for successful and viable completion of the project.

4. The Commission reiterates the recommendations made by the committee that the consultants/ firm hired to provide consulting services for the preparation or implementaion of a project, and any of its affiliates, will be disqualified from subsequently providing goods or service related to the initial assignment for the same project.

Sd/-
Dube)
Secretary

(Anjana
Deputy

To
All Chief Vigilance Officers

No.004/ORD/9
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 10th December, 2004

Office Order No.72/12/04

Subject: Transparency in tendering system-Guidelines regarding.

In order to maintain transparency and fairness, it would be appropriate that organisations should evolve a practice of finalizing the acceptability of the bidding firms in respect of the qualifying criteria before or during holding technical negotiations with him. Obtaining revised price bids from the firms which do not meet the qualification criteria, would be incorrect. Therefore the exercise of shortlisting of the qualifying firms must

be completed prior to seeking the revised price bids. Moreover, the intimation of rejection to the firms whose bids have been evaluated but found not to meet the qualification criteria, along with the return of the unopened price bid, will enhance transparency and plug the loop-holes in the tendering system. All organisations/departments are advised to frame policy accordingly.

Sd/-
(Anjana Dube)
Deputy Secretary

All Chief Vigilance Officers

No.38011/27/2003
Government of India
Ministry of Coal and Mines
Department of Coal

New Delhi, dated 02.11.2004

To

The Chairman,
10, Netaji Subhas Road,
Coal India Limited,
Kolkata-700 001.

**Sub: Extension of Purchase Preference for products and services of
Central Public Sector Enterprises beyond 31.3.2004.**

Sir,

I am directed to forward herewith a copy of Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises OM No. DPE/13(12)/2003-Fin. Dated the 26th October, 2004, for your information and record.

Yours faithfully,

Sd/-
(S.K.Kakkar)
Under Secretary

**DPE/13(12)/2003-Fin.
Government Of India
Ministry Of Heavy Industries & Public Enterprises
Department Of Public Enterprises**

14,C.G.O Complex

Lodi Road,
New Delhi-110 023
Dated the 26th October, 2004

OFFICE MEMORANDUM

Subject: **Extension of Purchase Preference for products and services of Central Public Sector Enterprises beyond 31.3.2004.**

The undersigned is directed to refer to DPE's O.M. No.13(1)/2002 dated 14th June, 2002 extending thereby the Purchase Preference Policy for a period of two more years up to 31.3.2004. The Government have reviewed the matter further and decided to extend the Purchase Preference Policy for a period of one more year w.e.f. 1.4.2004 to 31.3.2005. Accordingly, other things being equal, purchase preference will be granted to the Central Public Sector Enterprises (CPSEs) at lowest valid price bid (L1) if the price quoted by a CPSE is within 10% of the L1 price. The salient features of the policy are as under:

- (i) The 10% purchase preference would extended to tenders/NET of rupees 5 crore and above;
- (ii) CPSEs registered under the Companies Act, 1956 and Statutory CPSEs will be eligible for purchase preference as before. Joint venture companies where holding of Government and/or CPSEs 51% or more and joint ventures which are subsidiaries of CPSEs with CPSEs holding 51% equity or more will also be eligible for purchase preference;
- (iii) A minimum Value addition of 20% by the Copses/Joint Venture Units by way of manufacturing and/or services would be a prerequisite for availing of purchase preference;
- (iv) Ministries/Departments/ CPSEs and autonomous bodies under Central Government will continue to grant purchase preference to CPSEs;
- (v) Respective Ministries/Departments/autonomous bodies/ CPSEs will be responsible for implementing the Purchase Preference Policy in letter and spirit strictly;
- (vi) As per the extant policy, the provision relating to purchase preference should be specified in the Notice Inviting Tender (NIT) for rupees 5 crore and above. For any deviation including exclusion of the purchase preference clause from the NIT, it will be obligatory on the concerned Ministry/Department/ CPSEs autonomous bodies to obtain

prior exemption from the Cabinet or the agency authorized by it in

consultation with the Department of Public Enterprises on case to case basis; and

(vii) Other provision of the purchase preference policy remain unaltered.

2. The cases which were under consideration from 1.4.2004 till the date of issue of this O.M. would stand covered under this policy, except those which have already been decided otherwise.

3. All the Ministries/Departments are requested to immediately bring the contents of this O.M. to the notice of all the concerned officers, Central Public Sector Enterprises (CPSEs), Autonomous Bodies and other organisations under their administrative control for strictly following the Purchase Preference Policy in letter and spirit.

Sd/-

(R. L. Meena)

Joint Director

Tel.No.24362061

Fax.No.24362613/24362646

All the Secretaries of the Ministries/Departments in the Government of India

Copy for information and necessary action to the Chief Executives of all Central Public Sector Enterprise.

Copies for information also to :

- (1) The Prime Minister's Office
- (2) The Cabinet Secretariat w.r.t its U.O. Note No.24/CM/2004(i) dated the 18th October, 2004
- (3) PS to the Minister of State (Independent Charge) in the Ministry of Heavy Industries and Public Enterprises
- (4) PS to Secretary (HI and PE)
- (5) PS to JS (PE)
- (6) All Officers in DPE

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 2nd July 2004

Office Order No.43/7/04

Subject: Improving Vigilance Administration – Increasing transparency in procurement/tender Process-use of web-site regarding.

The Central Vigilance Commission has issued a directive on the above subject vide its Order No.98/ORD/1 dated 18th Dec. 2003 making it mandatory to use web-site in all cases where open tender system is resorted to. These instructions have been further extended vide Office Order No.10/2/04 dated 11.2.2004 to tenders of short-term nature (by whatever name it is called in different organizations). Various organizations have been corresponding with the Commission seeking certain clarifications with regard to the above directives. The main issues pointed out by organizations are as follows:

Issue 1 Size of Tender Documents

In case of works/procurement of highly technical nature, tender documents run into several volumes with large number of drawings

and specification sheets, etc. It may not be possible to place these documents on website.

Clarification: These issues have been discussed with the technical experts and in their opinion, there is no technical and even practical difficulty in doing the same. These days almost all the organizations do their typing work on computers and not on manual typewriters. There is no significant additional effort involved in uploading the material typed on MS Word or any other word processing softwares on the website irrespective of the number of pages. The scanning of drawings is also a routine activity. Moreover if the volume and size of tender document is so large as to make it inconvenient for an intending tendering party to download it, they always have the option of obtaining the tender documents from the organization through traditional channels. The Commission has asked for putting tender documents on website in addition to whatever methods are being presently used.

Issue 2 Issues Connected with Data Security, Legality and Authenticity of Bid Documents.

Certain organizations have expressed apprehensions regarding security of data, hacking of websites etc. They have also pointed out that certain bidding parties may

alter the downloaded documents and submit their bids in such altered tender documents which may lead to legal complications.

Clarification: This issue has been examined both from technical and legal angles. Technically a high level of data security can be provided in the websites. The provisions of digital signatures through Certifying Authority can be used to ensure that in case of any forgery or alteration in downloaded documents it is technically feasible to prove what the original document was. There are sufficient legal provisions under IT Act to ensure that e-business can be conducted using the website. A copy of the remarks given by NIC on this issue are enclosed herewith.

Issue 3 Some organizations have sought clarification whether web site is also to be used for proprietary items or items which are sourced from OEMs (Original Equipment Manufacturers) and OESs (Original Equipment Suppliers).

Clarification:

It is clarified that Commission's instructions are with regard to goods, services and works procured through open tender system, so these instruction do not apply to proprietary items and items which necessarily need to be procured through OEMs and OESs.

Issue 4 Do the instructions regarding 'short term tenders' given in the CVC order No.98/ORD/1 dated 11th Feb., 2004 apply to limited tenders also?

Clarification:

In many organizations goods, services and works which as per laid down norms are to be procured/executed through open tender system many times due to urgency are done through short term tenders without resorting to wide publicity in newspapers because of time constraint. In all such cases short term tenders (by whatever name it is called) etc. should also be put on the website of the dept. as it does not involve any additional time or cost. Regarding applicability of these instructions to limited tenders where the number of suppliers/contractors is known to be small and as per the laid down norms limited tender system is to be resorted to through a system of approved/registered vendors/contractors, the clarification is given below.

Issue 5 Some organizations have pointed out that they make their procurement or execute their work through a system approved/registered vendors and contractors and have sought clarification about the implications of CVC's instructions in such procurements/contracts.

Clarification:

The Commission desires that in all such cases there should be wide publicity through the web site as well as through the other traditional channels at regular intervals for registration of contractors/suppliers. All the required proforma for registration, the pre-qualification criteria etc. should be always available on the web-site of the organization and it should be possible to download the same and apply to

the organization. There should not be any entry barriers or long gaps in the registration of suppliers/contractors. The intervals on which publicity is to be given through website and traditional means can be decided by each organization based on their own requirements and developments in the market conditions. It is expected that it should be done atleast once in a

year for upgrading the list of registered vendors/contractors. The concerned organisation should give web based publicity for limited tenders also except for items of minor value. If the organization desires to limit the access of the limited tender documents to only registered contractors/suppliers they can limit the access by issuing passwords to all registered contractors/suppliers. But it should be ensured that

Password access is given to all the registered contractors/suppliers and not denied to any of the registered suppliers. Any denial of password to a registered supplier/contractor will lead to presumption of malafide intention on the part of the tendering authority.

Sd/-
(Balwinder Singh)
Addl. Secretary

To

- (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 Chair man, Union Public Service Commission
- (v) The Chief Executives of all PSEs/ Public Sector Banks/Insurance
- (vi) Companies/Autonomous Organisations/Societies.
- (vii) The Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector (viii)
Banks/Insurance Companies/Autonomous Organisations/Societies
- (ix) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/
Rajya Sabha S/PMO

No.4CC-1-CTE-2
Government of India
CENTRAL VIGILANCE COMMISSION
(CTEs Organisation)

Satarkta Bhawan, Block 'A'
INA Colony
New Delhi-110 023
Dated the 8.6. 2004

Office Order No.40/06/04

OFFICE MEMORANDUM

Sub: Mobilization Advance

In order to address the problem of misuse of mobilization advance provision in the civil and other works, the Commission had issued an O.M. dt. 8.12.1997 for grant of interest bearing Mobilization Advance in selected works. In view of references from certain organizations on this issue, the Commission has reviewed the issue and it has been decided to modify and add the following provision in the existing O.M. This may be read as addendum to the Commission's O.M. dt. 8.12.1997.

- (i) If the advance is to be given, it should be expressly stated in the NIT Bid Documents, indicating the amount, rate of interest and submission of BG of equivalent amount
- (ii) The advance payment may be released in stages depending upon the progress of the work and mobilization of required equipments etc.
- (iii) There should be a provision in the contract for adjustment of advance progressively even as the bills are cleared for payment.

Sd/-
(Gyaneshwar Tyagi)
Technical Examiner

Copy to: -

All CVO: Ministries/Departments/PSUs/Banks/Uts

No.05-04-1-CTE-8
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated: 8.6.2004

OFFICE MEMORANDUM

Subject: Receipt and Opening of Tenders

In the various booklets issued by the CTE Organisation of the Commission, the need to maintain transparency in receipt and opening of the tenders has been emphasized and it has been suggested therein that suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located tender boxes need to be ensured. A case had come to the notice of the Commission, where due to the bulky size of tender documents the bid conditions envisaged submission of tenders by hand to a designated officer. However, it seems that one of the bidders while trying to locate the exact place of submission of tenders, got delayed by few minutes and the tender was not accepted leading to a complaint. In general, the receipt of tenders should be through tender boxes as suggested in our booklets. However, in cases where the tenders are required to be submitted by hand, it may be ensured that the names and designation of atleast two officers are mentioned in the bid documents. The information about these officers should also be displayed at the entrance/ reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders. The tenders after receipt should be opened on the stipulated date and time in presence of the intending bidders.

Sd/-
(Gyaneshwar Tyagi)
Technical Examiner

Copy to:-
All CVOs: Ministries/Departments/PSUs/Banks/Uts.

No.12-02-6-CTE-SPI(I)-2
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 21st April, 2004

Office Order No.25/04/04

Subject: Consideration of Indian Agents.

The Commission has received a complaint alleging that in Government tender an agent participates by representing a company officially and another bid is submitted as a 'direct offer' from the manufacturer. At times, the agent represents a foreign company in one particular tender and in another tender the said foreign company participates directly and the agent represent another foreign company. There is a possibility of caterlisation in such cases and thus award of contract at higher prices.

2. The issue has been deliberated in the Commission. In order to maintain the sancity of tendering system, it is advised that the purchases should

preferably be made directly from the manufacturers. Either in Indian Agent on behalf of the foreign principal or the foreign principal directly could bid in a tender but not both. Further, in cases where an agent participates in a tender on behalf of one manufacturer, he should not be allowed to quote on behalf of another manufacturer alongwith the first manufacturer in a subsequent/parallel tender for the same item.

3. It is suggested that these guidelines may be circulated amongst the concerned officials or your organization for guidance.

Sd/-
(A. K. Jain)
Technical Examiner
For Chief Technical Examiner

To
All CVOs of Ministries/Departments/PSUs/Banks/InsuranceCompanies/Autonomous Organisation/Uts.

**No.98/ORD/1
Government of India
Central Vigilance Commission**

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 8th April 2004

Office Order No.204/04

Sub: Improving Vigilance Administration: Increasing Transparency and cutting delays by e-payments and e-receipt by Govt. Organisations etc.

The Commission has been receiving complaints about inordinate delays in making payments to the vendors and other suppliers to the Govt. 52rganizations, Public Sector Undertakings etc. Similarly complaints are received about delays in getting refunds from taxation dept. and other departments. Apart from increasing the cost of procurement, the delays lead

to opportunities for corruption. A number of measures are required to cut down on delays in making payments. One such step is resorting to mechanism of e-payments and e-receipts where such banking facilities exist.

In the last few years tremendous progress has been made by the banking sector in computerization including net-working of branches, making it possible to do e-banking by making use of facilities like electronic clearing system (ECS) and electronic fund transfer (EFT) etc. These facilities are available in most of the banks including the State Bank of India as well as in private banks. A large number of corporate including public sector undertakings are already making e-payments to vendors and employees instead of mailing payments by issue of cheques.

The Commission has been receiving complaints that delay is intentionally caused with ulterior motives in the issue and dispatch of cheques in the accounts and finance wings of a large number of Govt. Organisations. As the e-payment facility is already available in the metros as well as practically in all the main urban centres of the country, in order to curb the above mentioned malpractices, the CVC in the exercise of powers conferred on it under Section 8(1) issues following instructions for compliance by all Govt. Departments, PSUs, banks and other agencies over which the Commission has jurisdiction.

1. The payment to all suppliers/ vendors, refunds of various nature, and other payments which the 53rganizations routinely make shall be made through electronic payment mechanism at all centres where such facilities are available in the banks.
2. Salary and other payments to the employees of the concerned 53rganizations at such centres shall also be made through electronic clearing system (ECS) wherever such facilities exist.

As the 53rganizations will have to collect bank account numbers from the vendor, suppliers, employees and others who have interface of this nature with the Govt. orgsnisatgion, the concerned 53rganizations may plan to switch over to e-payment system in a phased manner starting with transactions with the major suppliers in the beginning or in whatever manner is found more convenient.

It is expected that in three months i.e. by 1st July, 2004, 50% of the payment transactions both in value terms as well as in terms of number of transactions shall be made through ECS/EFT mechanism instead of payment through cheques. The remaining 50% payment transactions at all centres where such facilities exist shall be made by 31st Dec. 2004.

These instructions are applicable to all the metro cities and other urban centres where the banks provide ECS/EFT and similar other facilities.

The departments, PSUs, Banks etc. should also provide an enabling environment and facilities so that businessmen and other citizens can make payment of Govt. dues and payments to PSUs, etc. electronically.

In addition to significantly reducing processing costs in preparation and dispatch of cheques, the above measures also reduce the risk or frauds by providing speed, efficiency and easier reconciliation of accounts.

Sd/-
(Anjana Dube)
Deputy Secretary

To

- (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 Chair man, Union Public Service Commission
- (v) The Chief Executives of all PSEs/ Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies.
- (vi) All 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

No.98/ORD/1

Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 11th February, 2004

Office Order No.10/2/04

To

All Chief Vigilance Officers

Subject: Improving Vigilance Administration – Increasing transparency in procurement/tender Process-use of web-site regarding.

In CPWD, MCD, Civil Construction Division of Post & Telecom departments and in many other departments/organizations, there is system of short term tenders (by whatever name it is called in different organizations), wherein works below a particular value are undertaken without resorting to publicity as is required in the open tenders. This practice is understandable because of cost and time involved in organizing publicity through newspapers. In all such cases, notice can be put on the web-site of the department as it does not take any time compared to giving advertisements in the newspapers and it practically does not cost anything. This will benefit the department by bringing in transparency and reducing opportunities for abuse of power. This will also help the organizations by bringing in more competition.

2. In view of the reasons given above, the Commission has decided that instructions given in the Commission's circular (No.98/ORD/1 dated 18.12.2003) for the use of web-site will also apply to all such works awarded by the department/PSEs/other organizations over which the Commission has jurisdiction.

Sd/-
(Balwinder Singh)

No.OFF-1-CTE-I
Government of India
Central Vigilance Commission

Satarkata Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110023
Dated-5.2. 2004

OFFICE MEMORANDUM-8/2/04

Subject: Common Irregularities in the award of contracts.

The CTE Organisation of the Central Vigilance Commission conducts independent intensive examinations of various types of works and contracts executed by the organisations under its purview. The lapses and deficiencies observed during the course of such examinations are brought to the notice of the CVOs, for suitable corrective action. With a view to prevent recurrence of such lapses and irregularities and for improving the systems and procedures in the organisations, a few booklets have also been issued by the CTEO. However, it is observed that certain common deficiencies and irregularities continue to plague the systems in a large number of organisations. Some of these noticed during recent inspections are enumerated as under.

- Appointment of consultants continue to be done in arbitrary manner. At times two or even three consultants are appointed for a work with no clear cut and sometimes over lapping responsibilities. A PSU, in a recent case, in addition to the engineering and project management consultants appointed an inspection and expediting consultant with no well defined role for them.

- The tendency of over dependence on the consultants continues. All activities are left completely to the consultants. In a recent inspection of an Oil PSU, the tenders for a big work of about Rs.20 crores were issued on the basis of a single page estimate submitted by the consultants and the same was revised by the latter upwards by 20% after opening of price bids, in order to justify the quoted rates. A detailed and realistic estimate must be prepared before issue of tender.
- Some organizations prefer limited tendering system, restricting competition to their approved contractors. The selection of these contractors at times is arbitrary and due to lack of competition or cartel formation amongst such a group of contractors, the contracts are awarded at high rates. This needs to be discouraged and the organizations must ensure that contracts are awarded on the basis of competitive bidding at reasonable rates.
- The works are awarded without preparing any market rate justification. The comparison at times is made with works which were awarded few years back.

This procedure cannot be considered objective and appropriate for justifying the awarded rates. The justification should be based on realistic prevailing rates.

- In a recent inspection of an oil PSU, it was noticed that revised price bids were asked from all the bidders, as rates were high vis-à-vis the estimate. This tantamounts to negotiations with firms other than L-1 and is a clear violation of CVC instructions in this regard. The negotiations should be an exception rather than a rule and should be conducted if required, only with the L-1 bidder.
- The organizations generally make provisions for a very small amount of say Rs.50,000/- or Rs.1 lac as earnest money. This amount is grossly insufficient to safeguard the organization's interest in high rate tenders running into several crores of rupees. This needs to be revised to a sufficient amount.
- The post award amendments issued by the organizations, at times recommended by consultants, without taking into account the financial implications favour the contractors. Such post award deviations without financial adjustments are unwarranted and against the principles of competitive tendering.
- The tender documents, and the agreement are maintained in loose condition, are not page numbered and not signed by both the parties. This

is highly objectionable. In order to ensure that the agreements are enforceable in court of law, it is imperative that the agreements are well bound page numbered, signed by both the parties and well secured. This shall also prevent any possibility of interpolation and tampering of the documents.

- Loose & incomplete implementation of contract clauses pertaining to insurance, Workmen's Compensation Act, ESIC Labour Licenses etc., has been noticed, which give undue financial benefit to the contractors.
- Time is the essence of any contract. It has been observed that the work is extended and even payments released without a valid extension to the agreement. This has legal implications and in case of disputes, may jeopardize the interest of the organizations. Timely extensions to the contracts and BGs if any must be ensured.

In order to make contract management more transparent and professional, CVOs are requested to circulate this memorandum to the concerned officials in their organizations. This OM is also available in the Commission's website www.cvc.nic.in.

Sd/-
(M.P.JUNEJA)
Chief Technical Examiner

To
All CVOs of Ministries/Departments/PSUs/Banks/Insurance Cos./Autonomous
Organisations/Societies/Uts

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 5th February, 2004

Office Order No.9/2/04

To

All Chief Vigilance Officers

Subject: Improving Vigilance Administration – Increasing transparency in procurement/sale-use of web-site regarding.

The Commission has issued a directive vide No. 98/ORD/1 dated 18th December 2003 wherein detailed instructions are issued regarding the use of website for tendering process. The objective is to improve vigilance administration by increasing transparency. The instructions were to take effect from 1st January 2004. It is noticed that many organisations whose web-sites are functional are still not putting their tenders on the web-site. The Commission has desired that CVOs should ensure compliance of the above directive. They should regularly pursue the Newspaper advertisements, the web-site of their organisation and in general keep track to ensure that the directives of the Commission on this subject are complied with. Further, the Commission has desired that the CVOs should indicate in their monthly report in the column pertaining to tender notices whether all the tenders have been put on the web-site, and if not, the reasons for non-compliance. The explanation of the concerned officers who are not complying with these directions should be called and further necessary action taken.

Sd/-
(Balwinder Singh)
Additional Secretary

**No.98/ORD/1
Government of India**

Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 18th December 2003

Subject: Improving Vigilance Administration: Increasing Transparency in Procurement/Sale etc.

The Commission is of the opinion that in order to bring about greater transparency in the procurement and tendering processes there is need for widest possible publicity. There are many instances in which allegations have been made regarding inadequate or no publicity and procurement officials not making available bid documents, application forms etc. in order to restrict competition.

2. Improving vigilance administration is possible only when system improvements are made to prevent the possibilities of corruption. In order to bring about greater transparency and curb the mal-practices mentioned above the Central Vigilance Commission in the exercise of the powers conferred on it under Section 8(1)(h) issues following instructions for compliance by all govt. departments, PSUs, Banks and other agencies over which the Commission has jurisdiction. These instructions are with regard to all cases where open tender system is resorted to for procurement of goods and services or for auction/sale etc. of goods and services.
 - (i) In addition to the existing rules and practices regarding giving publicity of tenders through newspapers, trade journals and providing tender documents manually and through post etc. the complete bid documents along with application form shall be published on the web site of the organization. It shall be ensured by the concerned organization that the parties making use of this facility of web site are not asked to again obtain some other related documents from the department manually for purpose of participating in the tender process i.e. all documents up to date should remain available and shall be equally legally valid for participation in the tender process as manual documents obtained from the department through manual process.

- (ii) The complete application form should be available on the web site for purposes of downloading and application made on such a form shall be considered valid for participating in the tender process.
 - (iii) The concerned organization must give its web site address in the advertisement/NIT published in the newspapers.
 - (iv) If the concerned organization wishes to charge for the application form downloaded from the computer then they may ask the bidding party to pay the amount by draft/cheques etc. at the time of submission of the application form and bid documents.
3. While the above directions must be fully complied with, efforts should be made by organizations to eventually switch over to the process of e-procurement/e-sale wherever it is found to be feasible and practical.
 4. The above directions are issued in suppression of all previous instructions issued by the CVC on the subject of use of web-site for tendering purposes. These instructions shall take effect from 1st January, 2004 for all such organizations whose web sites are already functional. All other organizations must ensure that this facility is provided before 1st April, 2004.

Sd/-

(P. Shankar)

Central Vigilance Commissioner

To

- (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 Chair man, 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

**No.06-03-02-CTE-34
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 20.10. 2003

OFFICE MEMORANDUM

**Sub:
to back tie up by PSUs-instructions regarding**

Back

It has been observed during intensive examination of various works/contracts awarded by construction PSUs on back to back basis that the works are being awarded in an ad-hoc and arbitrary manner without inviting tenders and ascertaining the performance, capability and experience of the tenderer. In some cases, the works were awarded on single tender basis/limited tender basis though sufficient time was available with the Organisation to invited open tenders.

2. Some of the common irregularities/lapses observed during the examination of works were as under:
 - a) No transparency in selection of contractor for the back to back tie up which is the main source of corruption.
 - b) Collusion among the contractors was observed where more than one contractors were involved at various stages.
 - c) Ineligible contractor obtains the contract through the PSUs.
 - d) Purchase preference misused by the PSUs.
 - e) PSUs sublet the complete work to a private contractor without obtaining permission from the client which invariably put a condition insisting such permission since the client is generally not interested in such back to back sublet of the work.
 - f) Infructuous work (to the exchequer) due to the involvement of intermediary PSUs and cost of project goes up ultimately.
 - g) No supervision by the PSU as they put the staff mainly for coordination work.
 - h) Quality ultimately suffers due to lack of supervision by the PSUs.
3. Commission is of the view that the practice of award of works to PSUs on nomination basis by Govt. of India/PSUs needs to be reviewed forthwith.
4. The irregularities observed during intensive examination of work and difficulties being faced by the PSUs in inviting tenders were considered and it has been decided that the procedure to be followed for award of work by Construction PSUs shall be finalised taking into account the following points:
 - a) PSUs (when bag the contract from the client Department) as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back to back basis.
 - b) Open tenders to be invited for selection of sub-contractors as far as possible.

- c) In case, it is not possible to invite open tenders, selection should be carried out by inviting limited tenders from the panel approved in the following manner. Panel of contractors are to be prepared for different categories, monetary limits, regions, in a transparent manner clearly publishing the eligibility criteria etc. The above panel is to be updated every year.
 - d) Tenders to be opened confidentially by a high level committee to maintain the secrecy of rates, if required. Tender opening register should be maintained in this regard duly signed by the officers opening the tender and kept confidentially. This should be available for perusal when required by audit/vigilance.
 - e) The terms and conditions of the contract of the client especially those pertaining to subletting of works should be strictly adhered to by the PSUs.
 - f) Adequate staff to be deployed by the PSUs to ensure quality in construction etc.
 - g) The record of enlistment/updating of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.
- 5) It is, therefore, suggested that the procedure for award of work on back to back basis be finalised keeping in view the above points and circulated amongst the concerned officials of your organisation for strict compliance in future works.

Sd/-
(R.A.Arumugam)
Chief Technical Examinar

To

All CVOs of Ministries/Departments/ PSUs etc.

No.2EE-1-CTE-3
Government of India
Central Vigilance Commission
CTE's Organisation

Satarkata Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110023
Dated-15.10. 2003

OFFICE MEMORANDUM

Subject:
Sample Clause

Tender

The

Commission has received complaints that some organizations, while procuring clothing and other textile items insist on submission of a tender sample by the bidders though detailed specifications for such items exist. The offers are rejected on the basis of tender samples not conforming to the requirements of feel, finish and workmanship as per the 'master sample' though the bidders confirm in their bids that supply shall be made as per the tender specifications, stipulated in the bid documents.

2. While it is recognized that samples may be required to be approved to provide a basis in respect of indeterminable parameters such as shade, feel, finish & workmanship for supplies of such items but system of approving/rejecting tender samples at the time of decision making is too subjective and is not considered suitable, especially for items which have detailed specifications. The lack of competition in such cases is also likely to result in award of contracts at high rates.
3. It is thus advised that Government Departments/Organizations should consider procurement of such items on the basis of detailed specifications. If required, provision for submission of an advance sample by successful bidder(s) may be stipulated for indeterminable parameters such as, shade/tone , size, make-up, feel, finish and workmanship, before giving clearance for bulk production of the supply. Such a system would not only avoid subjectivity at the tender decision stage but would also ensure healthy competition among bidders and thus take care of quality aspect as well as reasonableness of prices.
4. It is requested that these guidelines may be circulated amongst the concerned officials of your organization for guidance. These are also available on the CVC's website, <http://cvc.nic.in>.

Sd/-

(A.K. Jain)
For Chief Technical Examiner

To

All CVOs of Ministries/ Departments/ PSUs/ Bank /Insurance Companies/
Autonomous Organizations/Societies/Uts.

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 11th September 2003

Office Order No.46/9/03

To

All Chief Vigilance Officers

Sub: **E-procurement/Reverse Auction.**

Sir/Madam,

The Commission has been receiving a number of references from different departments/organisations asking for a uniform policy in this matter. The departments/organisations may themselves decide on e-procurement/reverse auction for purchases or sales and work out the detailed procedure in this regard. It has, however, to be ensured that the entire process is conducted in a transparent and fair manner.

Yours faithfully,

Sd/-
(Mange Lal)
Deputy Secretary
Telefax-24651010

No.98/ORD/1
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 04.09.2003

Office Order No.44/9/03

To

All Chief Vigilance Officers

Sub:

s in the award of contracts.

Irregularitie

Sir/Madam,

While dealing with the case of a PSU, the Commission has observed that the qualification criteria incorporated in the bid documents was vague and no evaluation criterion was incorporated therein. It is also seen that the category-wise anticipated TEUs were not specified in the bid documents and the same was left for assumptions by Tender Evaluation Committee for comparative evaluation of financial bids, which led to comparative evaluation of bids on surmises and conjectures. Further, it was also provided as a condition in the tender bid that the tenderer should have previous experience in undertaking handling of similar works and/or

transportation works preferably of ISO containers, however, no definition of 'similar works' was, indicated in the bid documents.

2. It should be ensured that **pre-qualification criteria, performance criteria and evaluation criteria are incorporated in the bid documents in clear and unambiguous terms as these criterion very important to evaluate bids in a transparent manner. Whenever required the departments/organisations should have follow two-bid system, i.e. technical bid and price bid. The price bids should be opened only of those vendors who were technically qualified by the Deptt./Organisation.** The Commission would therefore advise that the Deptt./Organisation may issue necessary guidelines in this regard for future tenders.

3. It has also observed that the orders were allegedly split in order to bring it within the powers of junior officers and that the proper records of machine breakdown were not being kept. It is therefore, decided that in the matters of petty purchase in emergency items all departments/organisations must keep proper records of all machine breakdown etc.

4. All CVOs may bring this to the notice of all concerned.

Yours faithfully,

Sd/-
(Anjana Dube)
Deputy Secretary

No.98/ORD/1
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 9th July, 2003

Office Order No.33/7/03

To

All the Chief Vigilance Officers

**Subject:
comings in bid documents.**

Short-

Sir/Madam,

The Commission has observed that in the award of contracts for goods and services, the detailed evaluation/exclusion criteria are not being stipulated in the bid document and at times is decided after the tender opening. This system is prone to criticism and complaints as it not only leads to a non-transparent and subjective system of evaluation of tenders but also vitiates the sanctity of the tender system.

2. The Commission would reiterate that whatever pre-qualification, evaluation/exclusion criteria, etc. which the organization wants to adopt should be made explicit at the time of inviting tenders so that basic concept of transparency and interests of equity and fairness are satisfied. The acceptance/rejection of any bid should not be arbitrary but on justified grounds as per the laid down specifications, evaluation/exclusion criteria leaving no room for complaints as after all, the bidders spend a lot of time and energy besides financial cost initially in preparing the bids and, thereafter, in following up with the organizations for submitting various clarifications and presentations.

This is issued for strict compliance by all concerned.

Yours faithfully,

Sd/-
(Mange Lal)
Deputy Secretary
Telefax No.24651010

**No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023

Dated the 5th May, 2003

To

- (1) Chief Executive of all PSUs/PSBs/Insurance Sector/Organisations
- (2) All Chief Vigilance Officers

Subject: Purchase of computer systems by Govt. departments/organisation.

Sir/Madam,

It has come to the notice of the Commission that some departments/organisations are issuing tenders for purchase of computers where they mention and insist on the international brands. This not only encourages the monopolistic practices but also vitiates the guidelines issued by the Ministry of Finance, D/o Expenditure vide its OM No. 8(4)-E.II(A)98 dated 17.12.1998 (copy enclosed).

2. It is, therefore, advised that departments/organisations may follow the instructions issued by the Department of Expenditure.

Yours faithfully,

Sd/-
(Anjana Dube)
Deputy Secretary

No.98/ORD/1(Pt.IV)
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated the 12.03. 2003

To

All Chief Vigilance Officers

Subject: Use of web-site in Government procurement or tender process.

Sir,

Attention is invited to the instructions issued by the Commission vide communication No.98/ORD/1 dated the 28.03. 2002 regarding publishing of tender documents on the web-site.

2. The Commission has received a number of references from various departments/organisations expressing reservations in implementation the said instructions in toto. The matter has been reviewed in the Commission and it is observed that it is a fact that use of web-site for accessing the information has so far not picked up in the country and it would not be possible for the vendors to access the web-site for the tenders.
3. Therefore, it has been decided by the Commission that till such time the penetration of Information Technology is adequate and a dedicated web-site for Government tenderers is available, Departments/Organisations may continue with publishing of NIT in newspapers in concise format and put the detailed information in their respective web-site.

Yours faithfully,
Sd/-
(Mange Lal)
Deputy Secretary
T.No.24651010

**No.12-2-6-CTE/SPI (i)-2
Government of India
Central Vigilance Commission
CTE's organization

Satarkata Bhawan
Block 'A' Gpo Complex,

INA, New Delhi-110023

Dated 7th January 2003

OFFICE MEMORANDUM

Subject:

n of Indian Agents

Consideratio

The Commission has received a complaint alleging that in Government tenders at times an Indian Agent participates on behalf of two different foreign suppliers and in the event of only offers of these two suppliers getting short-listed, then the Indian representative knowing the prices of the two foreign suppliers/manufactures may taken an undue advantage.

2 The issue has been deliberated in the commission. In order to maintain sanctity of the tender system, it is advised that one Agent cannot represent two suppliers or quote on their behalf in a particular tender.

7. 3. It is suggested that these instructions may be circulated amongst the concerned officials of your organization for guidance.

Sd/-
(Niranjan Singh)
Under Secretary

To

All CVOs of Ministries /Departments /PSUs /Banks /Insurance Companies/
Autonomous Organisation/ Societies/Uts.

No.12-02-1-CTE-6
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkata Bhavan,
Block A, GPO Complex,
INA, New Delhi-110023
Dated the 17th December 2002

OFFICE MEMORANDUM

Subject: Prequalification criteria (PQ)

The Commission has received complaints regarding discriminatory prequalification criteria incorporated in the tender documents by various Deptts./Organisations. It has also been observed during intensive examination of various works/Contracts by CTEO that the prequalification criteria is either not clearly specified or made very stringent/very tax to restrict/facilitate the entry of bidders.

2. The prequalification criteria is a yardstick to allow or disallow the firms to participate in the bids. A vaguely defined PQ criteria results in stalling the process of finalizing the contract or award of the contract in a non-transparent manner. It has been noticed that organizations, at times pick up the PQ criteria from some similar work executed in the past,

without appropriately amending the different parameters according to the requirements of the present work. Very often it is seen that only contractors known to the officials of the organisations and to the Architects are placed on the select list. This system gives considerable scope for malpractices, favouritism and corruption. It is, therefore, necessary to fix in advance the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.

3. Some of the common irregularities/lapses observed in this regard are highlighted as under:-

- (i) For a work with an estimated cost of Rs.15 crores to be completed in two years, the criteria for average turnover in the last 5 years was kept as Rs.15 crores although the amount of work to be executed in one year was only Rs.7.5 crores. The above resulted in prequalification of a single firm.
- (ii) One organization for purchase of Computer hardware kept the criteria for financial annual turnover of Rs.100 crores although the value of purchase was less than Rs.10 crores, resulting in disqualification of reputed computer firms.
- iii) In one case purchase of Computer hardware, the prequalification criteria stipulated was that the firms should have made profit in the last two years and should possess ISO Certification. It resulted in disqualification of reputed vendors including a PSU.
- iv) In a work for supply and installation of A.C. Plant, retendering was resorted to with diluted prequalification criteria without adequate justification, to favour selection of a particular firm.
- v) An organization invited tenders for hiring of D.G. sets with eligibility of having 3 years experience in supplying D.G.Sets. The cut-off dates regarding work experience were not clearly indicated. The above resulted in qualification of firms which had conducted such business for 3 years, some 20 years back. On account of this vague condition, some

firms that were currently not even in the business were also qualified.

- vi) In many cases, “Similar works” is not clearly defined in the tender documents. In one such case, the supply and installation of A.C. ducting and the work of installation of false ceiling were combined together. Such works are normally, not executed together as A.C. ducting work is normally executed as a part of A.C. work while false ceiling work is a part of civil construction or interior design works. Therefore, no firm can possibly qualify for such work with experience of similar work. The above resulted in qualification of A.C. Contractors without having any experience of false ceiling work although the major portion of the work constituted false ceiling work.

- 4. The above list is illustrative and not exhaustive. While framing the prequalification criteria, the end purpose of doing so should be kept in view. The purpose of any selection procedure is to attract the participation of reputed and capable firms with proper track records. The PQ conditions should be

exhaustive, yet specific. The factors that may be kept in view while framing the PQ Criteria includes the scope and nature of work, experience of firms in the same field and financial soundness of firms.

- 5. The following points must be kept in view while fixing the eligibility criteria:-

A) For Civil/Electrical Works

- i) Average Annual financial turnover during the last 3 years, ending 31st March of the previous financial year, should be at least 30 % of the estimated cost.
- ii) Experience of having successfully completed similar works during last 7 years ending last day of month previous to the one in which applications are invited should be either of the following : -
 - a. Three similar completed works costing not less than the amount equal to 40% of the estimated cost.

Or

- b. Two similar completed works costing not less than the amount equal to 50% of the estimated cost.

Or

- c. One similar completed work costing not less than the amount equal to 80% of the estimated cost.

- (iii) Definition of “similar work” should be clearly defined. In addition to above, the criteria regarding satisfactory performance of works, personnel, establishment, plant, equipment etc. may be incorporated according to the requirement of the Project.

B) For Store/Purchase Contracts

Prequalification/Post Qualification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (i) experience and past performance on similar contracts for last 2 years (ii) capabilities with respect to personnel, equipment and manufacturing facilities (iii) financial standing through latest I.T.C.C., Annual report (balance sheet and Profit & Loss Account) of last 3 years. The quantity, delivery and value requirement shall be kept in view, while fixing the PQ criteria. No bidder should be denied Prequalification/Post qualification for reasons unrelated to its capability and resources to successfully perform the contract.

- 6. It is suggested that these instructions may be circulated amongst the concerned officials of your organization for guidance in fixing Prequalification criteria. These instructions are also available on CVC's website, <http://cvc.nic.in>.

(M.P.Juneja)
Chief Technical Examiner

To

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

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 29th April, 2002

To

- (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

Subject: **Applicability of CVC's Instruction No.8 (I)(h)/98(I) dated 18.11.98 on post tender negotiation.**

Sir,

The undersigned has been directed to refer to the Commission's letter of even number dated 28.03.2002, on the above subject, and to say that the instructions contained therein are hereby withdrawn.

Yours faithfully,

Sd/-
(K. L. Ahuja)
Officer on Special Duty

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 28th March, 2002

To

- (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 (1) Companies/A
utonomous 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

Subject: **Applicability of CVC's Instruction No.8 (I)(h)/98(I) dated 18/11/98 on post tender negotiation.**

During the review meeting of the CVOs in Mumbai on 18.01.2002 one of the issue raised the applicability of the CVC guidelines banning post tender negotiation except with L-1 to such projects as are funded by sources other than the consolidated Fund of Government of India.

2. It has been decided after due consideration that in so far as funding from sources other than consolidated Fund of Government of India, the Commission's instruction dated 18.11.1998 is not applicable.

All concerned may ensure strict compliance of this instruction.

Sd/-
(C. J. Mathew)
Deputy Secretary

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 3 August, 2001

To

- (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 (1) Companies/A
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

Subject: **Improving Vigilance Administration-Tenders.**

Sir,

Please refer to the instructions issued by Commission vide its communication No.8 (I)(h)/98(I) dated 18/11/98, banning post tender negotiations except with L-1.

2. It is clarified that the CVC's instructions dated 18.11.1998, banning post-tender negotiations except with L-1 (i.e. the lowest tenderer), pertain to the award of work/supply orders etc., where the Government or the Government company has to make payment. If the tender is for sale of material by the Government or the Government company, the post-tender negotiations are not to be held except with H-1 (i.e. the highest tenderer), if required.

Yours faithfully,

Sd/-

(K. L. Ahuja)
Officer on Special Duty

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A'
GPO Complex, INA,
New Delhi-110 023
Dated 24th August, 2000

To

- (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

Subject: Improving Vigilance Administration-Tenders.

Sir,

Please refer to the instructions issued by Commission vide its communication No.8 (I)(h)/98(I) dated 18/11/98, banning post tender negotiations except with L-1.

2. The Commission has been getting a number of queries on how to handle the matter if the quantity to be ordered is more than L-1 can supply or about placement of orders on Public Sector Undertakings. It is requested that such matters may be dealt with in accordance with the clarifications issued by the Commission vide its letter of even number dated 15.3.99 (copy enclosed).

3. Some of the organisations have sought clarifications as to whether they can consider the L-2 offer or negotiate with that firm if L-1 withdraws his offer before the work order is placed, or before the supply or execution of work order takes place. In this regard, it is clarified that such a situation may be avoided if a two-bid system is followed (techno-commercial) so that proper assessment of the offers is made before the award of work order. Therefore, if L-1 party backs out, there should be retendering in a

transparent and fair manner. The authority may in such a situation call for limited or short notice tender if so justified in the interest of work and take a decision on the basis of lowest tender.

4. The Commission has also been getting references for its advice on the procedures being followed in individual cases of tenders. The Commission would not involve itself in the decision making process of individual organisations. It, however, would expect the organisations to implement its instructions dated 18.11.98, in its spirit and to ensure that the decision of administrative authorities are transparent.

Yours faithfully,

Sd/-
(K. L. Ahuja)
Officer on Special Duty

No.CDD-5-CTE-6
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhavan, Block "A"
GPO Complex, I.N.A.
New Delhi-110023
Dated the 21st February, 2000

Subject:- Procedure for acquisition of accommodation on lease / rental basis etc

In continuation of this office memorandum of even number dt 8/9/99, it is clarified that the transaction in the PSU or Government or Public Financial Institutions shall be covered by the exemption from advertisements.

Sd/-

(M P Juneja)

Technical Examiner.

Chief

No.3(V)/99/9
Government of India
Central Vigilance Commission

Satarkta Bhavan, Block "A"
GPO Complex, I.N.A.
New Delhi-110023
Dated the 1st October, 1999

Subject:- Applicability of CVC's instruction No.8 (I)(h)/98(I) dated 18/11/98 on post-tender negotiations to Projects of the World Bank & other international funding agencies.

The Commission has banned post-tender negotiations except with L-1 vide its instruction No.8 (I)(h)/98(I) dated 18/11/98. Subsequently, the Commission had also issued a clarification vide No.98/ORD/1 dated 15/3/99. Notwithstanding the clarifications issued by the Commission, many Departments/Organisations have been approaching the Commission on specific issues which were clarified to the individual departments/organisations.

2. A clarification sought by many Departments/Organisation, which is vital and has relevance to many of the organisations relates to the applicability of the above said instruction of CVC to World Bank Projects. It has been decided after due consideration, that in so far as the World

Bank Projects and other international funding agencies such as IMF, ADB etc. are concerned, the department/organisations have no other alternative but to go by the criteria prescribed by the World Bank/concerned agencies and the Commission's instruction would not be applicable specifically to those projects. However, the instruction of the CVC will be binding on purchases/sales made by the departments within the Country. The CVC's instruction of 18/11/98 will apply even if they are made with sources outside the Country and if they are within the budget provisions and normal operations of the Department/Organisation.

3. All CVOs may ensure strict compliance of this instruction
4. This instruction is also available on CVC's Website at <http://cvc.nic.in>

Sd/-
(N. Vittal)
Central Vigilance Commissioner

To

- (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

No.6DD-5CTE-6
Government of India
Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhavan, Block "A"
GPO Complex, I.N.A.
New Delhi-110023
Dated the 8th September, 1999

OFFICE MEMORANDUM

Subject: Procedure for acquisition of accommodation on lease/rental basis etc.

In partial modification of this office Memo. of even number, dated 6/7/99, it is clarified that press advertisement is not necessary in case of office accommodation with monthly rent upto Rs. One lakh in metro towns of Delhi, Mumbai, Calcutta and Chennai. For other places advertisement is not necessary for monthly rent upto Rs. 50,000/-. It is further clarified that no publicity is essential for the residential accommodation to be leased. It is also clarified that no advertisement is necessary in case of transactions between PSU to PSU, Govt. to Govt. and Govt. to PSU.

Sd/-

(M.K.Singhal)
Chief Technical Examiner

**No.6DD-5CTE-6
Government of India**

**Central Vigilance Commission
(CTE's Organisation)

Satarkta Bhawan, Block "A"
GPO Complex, I.N.A.
New Delhi-110023
Dated the 8th July, 1999

OFFICE MEMORANDUM

Subject: Procedure for acquisition of accommodation on lease/rental basis etc.

Whenever new commercial/residential premises are to be acquired on lease/rent or otherwise, an advertisement in the local as well as national newspapers with maximum circulation in the area must be given. The advertisement should contain salient features like area of accommodation required, approximate location and other terms and conditions to be quoted by the tenderer. Preferably, tenders shall be invited by the two bid system, viz. technical and financial. Technical bid shall be opened in the first instance and suitability of the accommodation, terms and conditions offered, specifications and other liabilities assessed. The market rate justification for the areas at which property is available shall also be assessed before opening the financial bid. These instructions shall be strictly followed.

Sd/-

(M.K.Singhal)
Chief Technical
Examiner

No.98/ORD/1
Government of India
Central Vigilance Commission

Satarkta Bhawan Block-A
GPO Complex, ...
New Delhi-110023
Dated the 15th March, 1999

To

- (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) Chief Executives of All PSUs/Banks/Organisations
- (vi) All 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

Subject :- **Improving**
Vigilance Administration – Tenders

Sir,

Please refer to CVCs instructions issued under letter No. (1)(h)98(1) dated 18/11/98 banning post tender negotiations except with L-1 i.e., the lowest tenderer. Some of the organisations have sought clarifications from the Commission as they are facing problems in implementing these instructions. The following clarifications are, therefore, issued with the approval of Central Vigilance Commissioner.

- (i) The Government of India has a purchase preference policy so far as the public sector enterprises are concerned. It is clarified that the ban on the post tender negotiations does not mean that the policy of the Government of India for purchase preference for public sector should not be implemented.

(ii) Incidentally, some organisations have been using the public sector as a shield or a conduit for getting costly inputs or for improper purchases. This also should be avoided.

(iii) Another issue that has been raised is that many a time the quantity to be ordered is much more than L1 alone can supply. In such cases the quantity order may be distributed in such a manner that the purchase is done in a fair transparent and equitable manner.

Yours faithfully,
Sd/-
(P.S.Fatehullah)
Director

No.8(4)-E.II(A)/98
Government of India
Ministry of Finance
(Department of Expenditure)

New Delhi, the 17th December, 1998

OFFICE MEMORANDUM

Subject: Purchase of Computer System by Government Departments.

The undersigned is directed to invite attention to the provisions of GFR 102(1) and the Annexure to the same according to which “Open Tender” system (that is, invitation to tender by public advertisement) should be used as a general rule in all cases in which the estimated value of demand is Rs. 50,000/- and above.

2. It has been brought to the notice of this Ministry by Deptt. of Electronics that certain Ministries/Deptts etc. issue tenders for purchase of personal computers where they specify the international brands like IBM, Compaq, HP, Digital, DELL or Gateway Micron. This vitiates the guidelines for open tender system laid down in GFRs and deprives other brands including domestic manufacturers of an opportunity to participate in the tender. Further Deptt. of Electronics have pointed out that brand names do not have any great advantage since at the broad level there is hardly any difference between the competing products because they predominantly use Intel microprocessors.

3. Separately, DGS&D have informed that generalised specifications for personal computers have been finalised and the process of concluding rate contract is being initiated.
4. It is, therefore advised that Ministries/Departments should follow the open tender system without vitiating it by specifying brand names in accordance with the provisions in GFRs for purchase of personal computers till a rate contract for computers is concluded by DGS&D. Thereafter, computers could be purchased on rate contract basis.

Sd/

(Narain Das)

Under Secretary to the Govt. of India

No.8(1)(h)/98(1)
Government of India
Central Vigilance Commission

Jaisalmer House, Man Singh Road.
New Delhi-110011
Dated the 18th November 1998

Sub:
vigilance administration

Improving

The Central Vigilance Commission Ordinance 1998 under Section (1)(h) directs that the power and function of the CVC will be the following:

“exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government”.

2. Improving vigilance administration is possible only if system movements are made to prevent the possibilities of corruption and also courage a culture of honesty. In exercise of the powers conferred on the CVC Section 8(1)(h), the following instructions are issued for compliance.

2.1 Creating a culture of honesty

Many organisations have a reputation for corruption. The junior employees and officers who join the organisations hopefully may not be so corruption minded as those who have already been part of the corrupt system. In order to ensure that a culture of honesty is encouraged and the junior officers do not have the excuse that because their seniors are corrupt, that they have to adopt the corrupt practices, it is decided with immediate effect that junior employees who initiate any proposal relating to vigilance matters which is likely to result in a reference to the CVC can send a copy directly to the CVC by name. This copy will be kept in the office of the CVC and data fed into the computer. If within a reasonable time of say three to six months, the reference does not come to the CVC the CVC then can verify with the concerned authorities in the department as to what happened to the vigilance case initiated by the junior employee. If there is an attempt to protect the corrupt or dilute the charges, this will also become visible. Above all the junior officers will not have the excuse that they have to fall in line with the corrupt seniors. Incidentally, the seniors also cannot treat the references made directly to the CVC as an act of indiscipline because the junior officers will be complying with instructions issued under Section 8(1)(h) of the CVC Ordinance 1998. However, if a junior officer makes a false or frivolous complaint it will be viewed adversely.

2.2 Greater transparency in administration

- 2.2.1. One major source of corruption arises because of lack of transparency. There is a scope for patronage and corruption especially in matters relating to tenders, cases where exercise of discretion relating to out of turn conferment of facilities/privileges and so on. Each organisation may

identify such items which provide scope for corruption and where greater transparency would be useful. There is a necessity to maintain secrecy even in matters where discretion has to be exercised. But once the discretion has been exercised or as in matters to tenders, once the tender has been finalised, there is no need for the secrecy. A practice, therefore, must be adopted with immediate effect by all organisations within the purview of the CVC that they will publish on the notice board and in the organisation's regular publication the details of all such cases regarding tenders or out of turn allotments or discretion exercised in favour of employee/party. The very process of publication of this information will provide an automatic check for corruption induced decisions or undue favours which go against the principles of healthy vigilance administration.

2.2.2 The CVC will in course of time take up each organisation and review to see whether any additions and alterations have to be made to the list of items which the organisation identified in the first instance for the monthly communications for publicity in the interests of greater transparency. This may be implemented with immediate effect.

2.3 Speedy departmental inquiries

2.3.1 One major source of corruption is that the guilty are not punished adequately and more important they are not punished promptly. This is because of the prolonged delays in the departmental inquiry procedures. One of the reasons for the departmental inquiry being delayed is that the Inquiry Officers have already got their regular burden of work and this inquiry is to be done in addition to their normal work. The same is true for the Presenting Officers also.

2.3.2 Each organisation, therefore, may immediately review all the pending cases and the Disciplinary Authority may appoint Inquiry Officers from among retired honest employees for conducting the inquiries. The names of these officers may be got cleared by the CVC. The CVC will also separately issue an advertisement and start building a panel of names all over India who can supplement the inquiry officers work in the department. In fact, it will be a healthy practice to have all the inquiries to be done only through such retired employees because it can then be ensured that the departmental inquiries can be completed in time. If any service/departmental rules are in conflict with the above instructions they must be modified with immediate effect.

2.3.3 In order to ensure that the departmental inquiries are completed in time, the following time limits are prescribed:

- (i) In all cases which are presently pending for appointment of Inquiry Officer and Presenting Officer, such appointment should be made within one month. In all other cases, the Inquiry Officer and the Presenting Officer should be appointed, wherever necessary, immediately after the receipt of the public servant's written statement of defence denying the charges.
- (ii) The Oral inquiry, including the submission of the Inquiry Officer's report, should be completed within a period of 6 months from the date of appointment of the Inquiry Officer. In the preliminary inquiry in the beginning requiring the first appearance of the charged officers and the Presenting Officer, the Inquiry Officer should lay down a definite time-bound programme for inspection of the listed documents, submission of the lists of defence documents and defence witnesses and inspection of defence documents before the regular hearing is taken up. The regular hearing, once started, should be conducted on day-to-day basis until completed and adjournment should not be granted on frivolous grounds.

2.3.4 One of the causes for delay is repeated adjournment. Not more than two adjournments should be given in any case so that the time limit of six months for departmental inquiry can be observed.

2.3.5 The IO/PO., DA and the CVO will be accountable for the strict compliance of the above instructions in every case.

2.4 Tenders

Tenders are generally a major source of corruption. In order to avoid corruption, a more transparent and effective system must be introduced. As post tender negotiations are the main source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiations with L1 (i.e. Lowest tenderer).

3. Hindi version will follow.

Sd/-
(N. Vittal)

Central Vigilance Commissioner

To

- (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) All Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies
- (vi) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO.

**N0.98/VGL/42
Government of India**

Central Vigilance Commission

1st Floor, Bikaner House,

No.1, Pandara Road,

New Delhi-110011

Dated, the 17th November, 1998

To

Chairman & Managing Directors,

(All Public Sector Undertakings)

Sub: Delegation of powers to personnel at Project Site and other formations-Instructions regarding.

Sir,

The Commission has been taking various measures to improve the over all functioning of the PSEs/organization vis-à-vis the vigilance administration. While doing so, it is observed that some PSEs who have their Headquarters at places other than Delhi/New Delhi have created infrastructure, namely, sub-office, hostel, staff cars, etc. for the use of their employees at Delhi/New Delhi. Also, there are instances which have come to the notice wherein inadequate delegation of powers to the personnel at the Project Sites and other sub-offices/formations, which are away from the headquarters had not only lead to delays but also resulted in cost escalations.

2. The Commission would, therefore, advise that all Public Sector Enterprises may review the position with regard to delegation of powers to personnel functioning in the Projects and adequate powers commensurate with the requirement so that functioning of such Projects and formations are smooth and effective. It would further be appreciated if existence of such infrastructure or formations are not found to be viable/justified, the same could be dispensed with or curtailed to the bare minimum after review as they are potential spots of corruption by way of misuse of state cars, guest houses etc.

3. This issues with the concurrence of the Central Vigilance Commissioner.

4. Kindly acknowledge receipt and intimate action taken in the matter in due course.

Yours faithfully,

Sd/-

(P. S. Fatehullah)
Director
