

COMMON IRREGULARITIES/LAPSES OBSERVED IN STORES/PURCHASE CONTRACTS AND GUIDELINES FOR IMPROVEMENT IN THE PROCUREMENT SYSTEM



सत्यमेव जयते

BY CHIEF TECHNICAL EXAMINER'S ORGANISATION

CENTRAL VIGILANCE COMMISSION
GOVERNMENT OF INDIA

“If you think you are too small an entity to play any role in the fight against corruption, think of the potential of an atom!”

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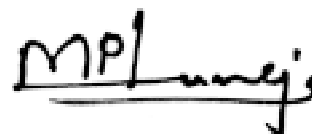
**CENTRAL VIGILANCE COMMISSION
GOVERNMENT OF INDIA**

**“Unselfishness is more paying,
only people have not the
patience to practise it”**

Swami Vivekananda

PREFACE

1. The Chief Technical Examiner's Organization of this Commission conducts a concurrent technical examination of various types of works/ contracts awarded and executed by the organizations, falling within the jurisdiction of the Commission.
2. The preponderance of examination is in detecting the malpractices in the award and execution of works/contracts and also the recklessness and financial imprudence on the part of the officials resulting in infructuous, and/or avoidable expenditure resulting in loss to the Government. The organization also suggests remedial measures to prevent recurrence of such instances so that there is better technical and financial control.
3. Until March' 1999, the CTE Organization was undertaking examination of civil / electrical and other allied works only. However, keeping in view the exponential growth in expenditure by the Central Government Ministries/Departments and PSUs in purchase of materials, the examination of stores/purchase contracts was also brought within the purview of the CTE Organization in March'1999 in addition to the works contracts. The inspection of purchase contracts was started from September'1999.
4. Based on the inputs received during the inspection/examination of various contracts in the last two years, an effort has been made in this booklet to list out the most common irregularities/lapses observed in the stores/purchase contracts along with the guidelines to be followed in such contracts so that similar lapses do not recur.
5. Any error or omission and suggestions for improvement may please be brought to the notice of the undersigned.



(M.P. Juneja)

Chief Technical Examiner
Central Vigilance Commission

New Delhi
Dated 15.01.2002

**“Non-cooperation with evil is as much
a duty as is co-operation with good”**

Mahatma Gandhi

COMMON IRREGULARITIES / LAPSES OBSERVED IN STORES/PURCHASE CONTRACTS AND GUIDELINES FOR IMPROVEMENT IN THE PROCUREMENT SYSTEM

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.

2.0 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 case of urgency, 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 needs 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.

3.2 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.

4.0 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 suppliers, give biased recommendations in favour of a particular 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.

5.0 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 rate 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

6.1 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 results 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 the Indian Missions /Embassies of major trading countries in case of imported stores.

6.2 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 or just one day prior to 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.

6.3 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.

7.0 Tender/ Bid Document

7.1 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.

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

The important clauses relating to Earnest money, Delivery Schedule, Payment terms, Performance/Warrantee Bank Guarantee, Pre-despatch 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.

7.2 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.

7.3 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 back 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.

7.4 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% could be added to the quoted prices of bidders offering deliveries later than the earliest delivery period specified in the bid documents.

7.5 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 account the financial implications for the deviations in terms and conditions, in line with unequivocal evaluation criteria specified in the bidding documents.

In one of the 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.

7.6 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.

7.7 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 Department 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.

7.8 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.

8.0 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 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.

9.0 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.

10.0 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 opaqueness 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 and dated on the first page. Each page of the tender should also be 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.

11.0 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.

12.0 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.

13.0 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, 31.10.97, 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.

14.0 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 :-

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

15.0 Reasonableness of Prices

It has been noticed that the purchases are being made by some of

the organizations in an adhoc 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: -

- i. 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.
 - ii. 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.
 - iii. 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.

16.0 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.

In one of the cases, 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.

- (iv) 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 Assignment’ and without any BG was authorized. 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.

17.0 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.

18.0 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 delivery are on CIF basis/ FOR destination basis.
- ii. 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.

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- 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.

19.0 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.

20.0 Post-contract Management

20.1 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.
 - iv. The submission of Performance Bank Guarantee was waived.
 - v. 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.

20.2 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.
 - v. It has also been noticed that although there had been delay attributable on the part of the supplier in making the timely supplies, however, the organizations are extending the letter of credit with the proviso that the L/C extension charges shall be borne by the organization, thereby giving undue benefit to 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 supplies 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.



“By unrighteousness men may prosper, men may attain what they desire but they perish at the roots”

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