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(a) Examination Of Works By The CTE Organization - Full Co-operation To Be Extended

In order to conduct an independent and effective examination of civil and other works from the vigilance angle, the CTE's Organisation has been functioning in the Commission since Nov 1964. The main function of this organization is to offer technical advice on the civil and other construction works being executed by the Central Government Departments/ Undertakings etc and to carry out vigilance oriented inspections of works undertaken by such organizations. The jurisdiction of this organization is co-terminus with that of the CVC.

In order to enable the CTE Organisation to carry out its functions effectively, it is necessary that full cooperation is extended to them by arranging necessary records such as certified true copies of the contract documents, latest running account bills paid to the contractors and other relevant documents/records as may be necessary. Further in order to enable them to concentrate on those civil works which had been carried out under the supervision of the officers appearing on the "agreed lists", a copy of the "agreed list", when desired by the CTE Organisation may also be supplied to them.

(CVC O.M. No 5T DSP 18 dated 02nd Jun 1989)

(b) The Contracting Systems In Public Sector Undertakings

During the CVO's Conference convened by the Central Vigilance Commission on the 11th and 12th September, 1997, the Central Vigilance Commissioner had constituted a Committee to go into the system of contracts prevalent in our Public Sector Undertakings and to suggest, wherever required, methods of streamlining the contracting provisions. The Commission is pleased to enclose a copy of the "Report of the Committee of CVOs on the Contracting Systems in Public Sector Undertakings". The Commission feels that the suggestions made in the report are very practical and could constitute a strong framework for preventive vigilance in the area of contracting which today seems to be vulnerable to the manipulations of interested parties. The suggestions, if followed, could make Contracting of Works: I more transparent process and this in itself should be a step in the right direction. We are sure that your organization would keep in view the suggestions in the report for future award of contracts. With this end in view, you may ensure that all the relevant departments in your organisation are aware of the contents of the report.

(CVC letter No 98/MST/001 dated 26th Mar 1998)

(c) 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.

2. CVOs should bring this to the notice of all concerned.

(005/VGL/66 Dated 9th Dec 2005)

(d) Time bound processing of procurement

The Commission has observed that at times the processing of tenders is inordinately delayed which may result in time and cost overruns and also invite criticism from the Trade Sector. It is, therefore, essential that tenders are finalized and contracts are awarded in a time bound manner within original validity of the tender, without seeking further extension of validity. While a short validity periodicals for prompt finalization by observing specific time-line for processing, a longer validity period has the advantage of vendors loading their offers in anticipation of likely increase in costs during the period. Hence, it is important to fix the period of validity with utmost care.

2. The Commission would, therefore, advise the organizations concerned to fix a reasonable time for the bids to remain valid while issuing tender enquiries, keeping in view the complexity of the tender, time required for processing the tender and seeking the approval of the Competent Authority, etc., and to ensure the finalization of tender within the stipulated original validity. Any delay, which is not due to unforeseen circumstances, should be viewed seriously and prompt action should be initiated against those found responsible for non-performance.

3. Cases requiring extension of validity should be rare. And in the exceptional situations where the validity period is sought to be extended, it should be imperative to bring on record in real time, valid and logical grounds, justifying extension of the said validity.

(008VGL1083 Dated 6th Nov 2008)

(e) 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 organizations under its purview. The lapses and deficiencies observed during the course of such examinations are brought to the noticed 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 organizations, 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 organizations. Some of these, noticed during recent inspections are enumerated as under:

Appointment of consultants continues to be done in an arbitrary manner. At times two or even three consultants are appointed for a work with no clear cut and some times overlapping 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 later 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 group of contractors, the contracts are awarded at high rates. This need 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-a-vis the estimate. This tantamount 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 R.1 lakh 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 parties. This is highly objectionable. In order to ensure that 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 at times 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 interests of the organization. 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

(OFF-1-CTE-1Dated 5th Feb 2004)

(f) 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.

(CVC Office Order No. 18/3/05 issued vide letter No.000/VGL/161 dated:24.3.2005)

(g) Referring Cases Of Procurement To The Commission

The Commission has noted a significant rise in the number of references made to it involving procurement at different stages. These relate to specific cases and are not generic in nature. Essentially they belong to the domain of managerial decision making and the matter needs to be decided at that level. The Central Vigilance Commission and its Chief Vigilance Officers, as a matter of policy do not interfere in the process of decision making, which is a management function of the respective organization.

The Commission has issued various circulars/guidelines /instructions in order to promote transparency, improve competition and ensure equity among participants. However, if any organization faces difficulty in the application of any of the circulars/guidelines/instructions issued by the Commission, then it may approach the Commission bringing out the difficulties along with a proposed generic solution listing out the ingredients of the special circumstances for examination and review by the Commission. References of a general nature having elements of managerial decision making and concerning a particular procurement should be avoided.

(No.008 /CRD/008 Dated 24th Jul 2008)

(h) Selection of Sub-contractor

In certain cases of Defence Sector and Power Sector mainly related with the turnkey projects, the Commission has observed that the process of selection of subcontractors by the main contractor lacks requisite transparency. In such cases, it is found that the principal (client) incorporates a condition in the bid documents stating therein that the sub-contract cannot be given to any vendor without the approval of the Principal. At the time of selection of sub-vendors, the principal accepts or rejects the firms arbitrarily, thereby misusing the provisions of the contract.

2. In order to make the process of selection of sub-vendors more transparent, the condition of seeking prior approval from Principal for selection of sub-vendors should be dispensed with. However, to ensure that the work is sub-contracted to a genuine and reliable firm, the principal may specify a suitable qualification criteria and may even suggest an approved list of sub vendors to the main contractor. In case the main contractor happens to be a PSU company, the selection of sub vendors may be done preferably by calling open tenders or through limited tenders from the empanelled firms meeting with the qualification criteria specified by the principal. The list of sub vendors given by the Principal may also be added to the existing panel of sub vendors so as to generate adequate competition.

(CVC Letter No.2EE-1-CTE-3 (Part) Dated 24 May 2005)