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1. INTRODUCTION

1.1 The Chief Technical Examiner's Organization was created in 1957, in the Ministry of works, Housing & supply for the purpose of conducting a concurrent technical audit of works of the Central Public Works Department with a view to secure economy in expenditure and a better technical as well as financial control.

1.2 Santhanam Committee on prevention of corruption set up in 1963 observed that the CTE Cell had been doing extremely good work and recommended that this organization not only needed to be continued, but be strengthened to enable it to work more effectively. The Committee further recommended that the jurisdiction of the CTE organization should be extended to cover construction works undertaken by other ministries/departments, as well and to place it under the administrative control of the Central Vigilance Commission. The recommendation was accepted by the Government of India and the Chief Technical Examiner's Organization now functions under the administrative control of the Central Vigilance Commission.

1.3 Initially, CTE's organization was conducting intensive examination of construction works of civil and electrical, but with the growing expenditure on stores/ purchases including IT related purchases and outsourcing of services, CTE's Organisation started examining these contracts also. All the outsourcing activities of the government i.e. execution of works, various purchases and hiring of various services etc. clubbed together is defined as public procurement.

2. DEFINITION AND PRINCIPLES OF PUBLIC PROCUREMENT

2.1 Public Procurement can be defined as the procurement of goods, works and services by all Govt. Ministries, Departments, Agencies, Statutory Corporations and Public Sector Undertakings in the Centre and the States, Municipal Corporations and other local bodies and even by private Public Sector Undertakings providing public services on monopoly basis.

2.2 Public procurement is only an extension of the personal procurement by two key words i.e. transparency and fairness. When we take up any construction work for ourselves or make personal purchases or hire of any services, we always try to ensure that we get the value for money, good quality product and timely delivery. In case of public procurement we have to go a little further i.e. in addition ensure that procurement is done in a transparent fair and equitable manner.

2.3 The cannon of Public Procurement is to procure work, material, services of the specified quality within the specified time at the most competitive prices in a fair, just and transparent manner.

2.4 In brief, the watchwords in this context are

- Transparency
- Fairness
- Value for money
- Quality
- Time

2.5 Adhering to the canons of public procurement is in fact a tight rope walk involving a balance between transparent and fair action on one side and achieving timely delivery of quality goods at competitive rates on the other side. It is indeed going to be more demanding to perform the task with the implementation of the Right to Information Act 2005. Now all our actions and decisions are open for scrutiny by public at large.

2.6 During intensive examinations of public procurements done by central public authorities, the CTEO have observed a number of irregularities indicating that canons of public procurements have not been adhered to in totality. Some of the irregularities are common in nature which can be easily avoided by being alert and vigilant through the process. Towards preventive vigilance measures, the Central Vigilance Commission has been issuing guidelines/instructions from time to time.

2.7 CTEO has also published various instructions, guidelines, circulars and booklets enumerating various irregularities observed during various intensive technical examinations. All these circulars and publications are available on the CVC Web Site (http://www.cvc.gov.in). In this Handbook we have tried to put these instructions / guidelines compiled in a structured manner.

3. APPOINTMENT OF CONSULTANT

3.1 Earlier the public organizations were undertaking the planning and supervisory activities in-house. Nowadays, in this era of large-scale infrastructure development, the in-house resources available with public organizations are felt inadequate to deal with the growing demand. Therefore, outsourcing various project activities such as IT Projects, Architectural services, preparation of DPR, Project Management Consultancy, and Quality Assurance etc. has become necessary.

3.2 Many times the Consultants are appointed either without a genuine need or in an arbitrary and non-transparent manner. Further, once the Consultant is appointed all the responsibility is abdicated to the Consultant. Sometimes even multiple Consultants are appointed without individual well defined responsibilities. At times the proposals put up by the Consultant(s) are accepted without question or any scrutiny.

3.3 Commission has issued the following guidelines on appointment of consultants:

(a) Irregularities/lapses observed in the construction works undertaken by Public sector undertakings/banks

The Chief Technical Examiner's Organization 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:-

i). Employment of consultant without verifying his credentials and capacity or capability to do the work assigned to him.

ii). Inadequate planning of work and incorrect preparation or non-preparation of detailed estimates by consultants.

iii). Non-preparation of justification statement for the rates quoted in tender, resulting in contract being awarded at very high rates.

iv). 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.

v). Improper evaluation of tenders, leading to allotment of works wrongly with ultimate loss to the public undertaking.

vi). 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.

vii). 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 of prices.

viii). 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.

ix). Substitution of low-rated items by higher-rated items beneficial to contractor.

x). Lack of proper supervisory arrangement by the undertakings 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 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.

(CVC Circular No.3L PRC 1 dated 12.11.1982)

(b) Appointment of consultants

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-025/78/Prodn/PCR/2/77/BPE/Prodn dated 15th Jul 1978.

In brief he guidelines laid down are:-

A. For any new projects, expansions, modernization/modification of the existing projects involving an expenditure of Rs.5 crores and above these guidelines are applicable.

B. The pre-qualification public notice should be issued to enlist names of suitable consultants.

C. The pre-qualification bid should be screened by a scrutinizing committee.

D. The final selection and commissioning of the consultant should be done with the approval of the board of public sector enterprise.

E. 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 consideration to their suitability competence and proven track 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 brought to your 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 BPE 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 broad outlines given by BPE.

This may be given priority and progress made in formulation of rules and procedure may be reported by 31.3.1983.

(CVC letter No 3L PRC 1 dated 10th Jan 1983)

(c) Improving vigilance administration in Banks - Computerization in the Indian Banking Sector

The Commission vide communication No. 8 (1) (h) 98(2) dated 27th November 1998 had instructed the banks to ensure that 70% of their business is captured through computerization before 01.01.2001. It has been brought to the notice of the Commission that some of the banks are appointing IT Consultants to guide them in the completion of this task. Subsequently, those consultants also participate as vendors in the tendering process of the same bank. The Commission has observed that the consultants wherever appointed by the organisations to advise them on various contractual matters normally take the organisation for a ride and at times in collusion

with the contractors. The Commission is, therefore, of the view that permitting the consultant, who inter-alia, is assigned the job of framing specifications and evaluating tenders to participate as a vendor in the tender of the same organisation, is not at all conductive to transparency and fairness in the tendering process. Therefore, the banks are advised to ensure that the consultants appointed by them or the firms in which they have some interests do not participate in the tender process of the bank in the capacity of a vendor.

(CVC letter No. 000/VGL/14 dated 6th March 2000)

(d) Appointment of Consultants

While highlighting the common lapses/ irregularities observed in the Construction works undertaken by the PSUs/Banks, under the guidance of Consultants, the Commission had issued certain guidelines vide letter No. 3L PRC 1 dated 12.11.1982 [copy enclosed-Annexure-1] so as to avoid recurrence of such lapses. These were further emphasized vide letter No. 3L-IRC-1 dated 10.1.1983 [copy enclosed-Annexure-II], inter-alia, bringing out the guidelines circulated by the Bureau of Public Enterprises in their letter no. DPE/GL-025/78/Prodn./PCR/2/77/BPE/Prodn. Dated 15.07.1978 and it was reiterated that the appointment of Consultants should be made in a transparent manner.

2. However, it has been observed during intensive examination of various works/contracts by the CTEO that these instructions are not being followed by a large number of organizations. The consultants are still appointed in an ad-hoc and arbitrary 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 indicating the job content and consultation fee payable to them. Often the scope of work entrusted to the consultants is either not defined property or the consultants are given a free hand to handle the case due to which they experiment with impractical, fanciful and exotic ideas resulting in unwarranted costs. The organizations display an over-dependence on consultants and invariably abdicate their responsibility completely to the latter. The officials do not 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 / payment for inadmissible items and also give undue benefit to the contractors like non-recovery of penalties for the delayed completion. The position in respect of projects with multiple consultants is still worse as the self-interest of so many outside agencies takes precedence over the loyalty towards the organization. These agencies tend to collude or collide with each other, and both the situations are detrimental to the smooth implementation of the project.

3. Some of the common irregularities/lapses observed during the last four years or so in this regard are highlighted as under:-

i) One organization engaged architect from a very old panel, prepared about 15 years back.

ii) An organization 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 organization. Extra amount on account of travel expenses, boarding and lodging was also sanctioned beyond contractual terms.

iii) A bank for construction of its Head Office in Mumbai, shortlisted three firms after a thorough scrutiny of offers submitted by a large number of bidders. The price bids of these firms were opened, but in a surprising manner, the work of consultancy was awarded to an L-2 firm thus compromising all ethics of tendering.

iv) The payment terms to the contractors are often allowed quite liberally. In one case, the consultant's fee was paid on quarterly basis without linking the same with the progress of the project. Full payments had been authorized even before the completion of the project. In another work, the consultants were paid substantial amount at an early stage of the project though they had submitted only preliminary drawings. Subsequently, the consultants failed to complete the job and the department took no action against them. In yet another case, the consultant was allowed extra payment for additional documents that he had to generate due to retendering of the case. However, the reasons for re-tendering were found attributable to the consultants and instead of penalizing; they were rewarded with extra payment.

v) The consultants tend to increase the cost of the work for more fees as generally the fee of the consultants is fixed at a certain percentage of the final cost of project. 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 unduly benefited as there was no maximum limit fixed for the consultant's fee.

vi) In the consultancy agreement generally the nature of repetitive type of work is not defined. 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 this, the organization suffered loss at the cost of the consultant.

vii) There is no check on consultant's planning, design and execution. In one work, pile foundation for a workshop building was designed with the capacity of the piles, capable of carrying twice the required load. In the same project, high capacity piles (450 mm Dia, 20 m deep) were provided for a single-storeyed ordinary office building, which did not require pile foundation at all.

viii) In another case, the project was for a 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 utilization 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 poor planning and supervision resulted in the project suffering heavy cost and time overruns.

ix) In one of the works for a bank in Mumbai, the substation equipment has been installed in the basement area, jeopardizing the safety aspect, as Mumbai gets its fair share of heavy rains and the area is also in close proximity to the sea.

x) In many cases, the consultants charge exorbitant travelling expenses. 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 ultimately paid to them were to the tune of Rs.7.5 lakhs.

xi) Sometimes the consultants pass on their responsibility to the contractor. In one work, the consultant was supposed to give design and drawing as per the consultancy agreement. While preparing the tender document for construction work, the responsibility for the preparation of drawings and structural design was entrusted with the construction contractor by adding a condition to that effect. The contractors loaded the quoted rates for the above work and the consultant was benefited at the cost of the organization.

xii) In case of road projects, it was observed that consultants under different categories like general consultants, planning & design consultants and construction management consultants were appointed for almost all the activities of the projects without competitive bidding. The work done by the consultants is not checked by the departmental engineers who feel their job is mainly to issue cheques to the consultants/ contractors.

5. The above list is only illustrative and not exhaustive. The Commission would like to reiterate the instructions regarding appointment of consultants. The appointment of consultants should be absolutely need based and for specialized 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 penalizing 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. There should be no major deviation in the scope of work after the contract is awarded and the consultant should be penalized for poor planning and supervision if the deviations result in excessive cost overruns. Further, the consultant's fee should be pegged based on the original contract value. The role of the consultants should be advisory and recommendatory and final authority and responsibility should be with the departmental officers only. It is suggested that these instructions may be circulated amongst the concerned officials of your organization for guidance in

appointment/working of consultants in the engineering works/contracts. These instructions are also available on CVC's web site, http://cvc.gov.in

(CVC letter No. OFF 1 CTE 1 Dt. The 25th Nov 2002)

(e) Participation of consultants in tender- guidelines regarding.

Consultants are appointed by the organization for preparation of project report. These appointments are made for any new projects, expansions, modernization/ modification of the existing projects etc. The selection 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 organizations 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 of 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 organization regrets in the long run. Meticulous and intelligent examination of the consultant's 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 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.

(CVC Office Order No. 75/12/04 issued vide letter No.98/DSP/3 Dated 24.12.2004)

4. SPECIFICATIONS

Commission has issued the following guidelines on specifications:

(a) Use Of Products With Standard Specification

A case has come to the notice of the Commission that the user department of 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 store keeper although the same item of standard size was already 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.

(CVC Circular No. 14/4/07 issued vide letter No.98-VGL-25 dated 26.4.2007)

5. PRE-QUALIFICATION CRITERIA (PQ)

5.1 The success of a project largely depends on the capability of the contractor/vendor. Pre-qualification is a process to select competent contractors having technical and financial capability commensurate with the requirements of the particular procurement (Project / supply of goods/ hiring of services).

5.2 The pre-requisites of pre-qualification process are-

-Transparency
-Fairness
-Maintenance of competition

5.3 The purpose of any selection procedure is to attract the participation of reputed and capable firms with proven track record. It should be ensured that the PQ criteria are exhaustive, yet specific and there is fair and adequate competition. It should be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.

5.4 Commission has issued the following guidelines on Pre-qualification criteria (PQ):

(a) Pre-qualification criteria (PQ)

The Commission has received complaints regarding discriminatory prequalification criteria incorporated in the tender documents by various Deptts./Organizations. 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 lax 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 organization 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 of 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) <u>For Civil/Electrical Works</u>

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) <u>For Store/Purchase Contract</u>

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.

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.gov.in.

<u>(CVC OM No. 12-02-1-CTE-6 Dated 17th Dec 2002)</u>

(b) Pre-qualification Criteria (PQ)

Guidelines were prescribed in this office OM of even number dated 17/12/2002, on the above-cited subject to ensure that the pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the organizations may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.

(CVC OM No. 12-02-1-CTE-6 Dated 7th May 2004)

6. NOTICE INVITING TENDER / PREPARATION OF TENDER DOCUMENTS

Commission has issued the following guidelines on notice inviting tender / preparation of tender documents:

(a) Contract Matters - Simplification And Economizing In The Contract Procedure

The Central PWD contracting procedure envisaged preparation and approval of tender documents for sale to tenderers whenever tenders are to be invited. The tender documents inter-alia include the following:-

1. Index
2. PWD Form-6 (Notice Inviting Tenders)
3. Press Notice
4. PWD Form 7 or 8 containing General Rules and directions, Memorandum, Conditions of contract containing Schedules of Plant & Machinery (clause-34) and materials to be issued departmentally (Clause-10).
5. Correction slips to the PWD 7 or 8.
6. Specifications, in addition to stipulating the relevant CPWD Specifications (printed booklet) with Correction Slips, particular specifications for items not covered in the printed booklet or deviations/departures there from are stipulated.
7. Special conditions of contract, in which, conditions not occurring in the PWD Form 7 or 8 or deviations/departures there from are stipulated.
8. Bill of quantities.
9. Drawings (if any to be incorporated).
10. Letters exchanged between the Department/Contractor which are invariably made part of the contract agreement including the acceptance letter.

2. It is felt that every time a tender is to be invited; a lot of avoidable work has to be done in compiling the documents, correcting and attesting each correction initially in the Draft Tender Document and subsequently in the tender documents before stating to contractors. This gives considerable scope for errors and omissions which may result in contractual compilations and litigation. Earlier all the printed forms, such as, PWD 6, PWD 7 and PWD 8, used to be printed in Government of India Presses in large quantities (in lakhs) and were available for use by the departmental Engineers and the chance of mistakes occurring in each batch were remote. But in the past few years it is seen that either Government supplies are not forthcoming in required quantity or not being received at all and the Circles and Divisions of the CPWD are resorting to local purchase of such forms from local (unapproved) printers at various stations who have practically to control over the language and accuracy of such an important document which ultimately becomes a legal document. These printers are printing and supplying tender forms to various other Organisations such as DDA, P&T Civil Wing, All India Radio - Civil Wing, Municipal Corporation of Delhi, NDMC including some public sector undertakings that are following CPWD Form and they resort to changes in the forms to suit these agreements. It is often seen that the draft Tender Document approved by the competent authority includes forms printed by different printers or the same printer with a different printing block than those on which the tender documents are prepared by Divisions for sale to contractors. This further leads to avoidable complications. In order to solve this problem, it is suggested that the portion of PWD 7 or 8 containing the general rules and directions and the Conditions of Contract (excluding Schedules for issue of Plant & Machinery) and Materials but including labour regulations, safety codes and Model Rules can be get printed as a standard booklet and made available on sale to contractors and the general public and also issued to Engineers of CPWD.

3. This document (printed book) can be referred in PWD 6 Memorandum or Special Conditions of contract just as the printed specifications booklets are referred to making them a part of the contract. This will not only obviate the necessity of compiling bulky tender documents but will drastically reduce the expenditure on stationery and printing of such contract conditions. The manpower required to do the compilation, checking and correction work can be reduced substantially and will reduce the chances of mistakes creeping in, in the agreement finally entered into with the contractor. Also whenever tender documents are to be sold, the Divisions compile a large number of documents many of which are not sold thus resulting in infructuous avoidable expenditure and wastage of PWD forms 7 or 8. Therefore, it is felt that the above proposal will ultimately be economical to the Government. Also this suggested procedure will save a lot paper work which is at present being used for this purpose.

4. The Schedules of Plant, Machinery and Materials (referred to in Clauses 34 and 10 respectively) can be printed along with and made part of Memorandum which the contractors have to sign, get witnessed and return on the date of opening of tenders. The present system of cyclostyling the correction slips to PWD forms 7 and 8 at Circle/Zonal level, for incorporating in the tender documents can continue till a regular system of making the printed ones available at nominal/reasonable cost is brought into force. This will also ensure that all the correction slips forming part of the agreement are available.

5. It is also seen that each Zone, Circle and Division has formulated special conditions which quite often vary from one office to the other, in language, meaning and interpretation. It is preferable that such special conditions are not drafted in consultation with the Senior Counsel of PWD, and circulated to all offices in order to maintain uniformity in the Department.

6. Lastly, it may be stated that in many PSUs and Government Depts. like the Railways, DGS&D, the suggested system prevalent and functioning satisfactorily.

(CVC (CTE's Org) LETTER No 9Q-9-CTE-7 dated 04th Jul 1988)

(b) Contract Matters

1. It is observed that most of the PSUs and Financial Institutions leave the drafting of the standard conditions of contract to their Architects of Consultants. Very often the tender documents are badly drafted and result in serious contractual complications. Sometimes the contract conditions are ambiguous or contradictory to other conditions in the tender documents.

2. Under their letter No Adv(c)/Genl-53/71 Cir-103/73, dated 06 Feb 73 the BPE have issued a standard contract form. Subsequently, certain amendments to this contract form were circulated vide their letter No BPE/GL-019/75.Con/Adv(c)/Genl-53/71/128 dated 21 Jul 75. Guidelines for adoption of this standard contract form are laid down in Clauses 3.8.7 and 3.18 of the Booklet entitled "Government Policy on Management of PSUs - Volume II" published by SCOPE. The following recommendation has been made:

> "The standard contract form evolved by the BPE may be used as far as possible with suitable modifications to meet the local requirements for common types works like townships, simple factory buildings, storage buildings, offices etc."

3. The above guidelines are brought to the notice of all PSUs, Financial Institutions and Cooperative Societies for necessary action. Adoption of such a standard contract form will result in more effective contract management and considerable reduction in disputes with contractors. It is requested that this circular may please be given vide circulation among the Chief Engineer of your Organisation.

(CTE's Organisation) letter No 9Q-9-CTE-7 dated 05th Jun 1991)

(c) Short-comings in bid documents

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.

3. This is issued for strict compliance by all concerned.

(CVC Office Order No.33/7/03 issued vide letter No.98/ORD/1 dated the 9th July, 2003)

(d) Irregularities in the award of contracts

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 work 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 criteria are very important to evaluate bids in a transparent manner. Whenever required the departments/organisations should 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 been 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.

(CVC Office Order No.44/9/03 issued vide letter No.98/ORD/1 dated the 04.09.2003)

(e) Use of web-site in Government procurement or tender process

Attention is invited to the instructions issued by the Commission vide communication No. 98/ORD/1 dated 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 of every organisation to know the tender details. There is also no centralised 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-sites.

(CVC letter No. 98/ORD/1 (Pt IV) dated 12.3.2003)

(f) 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 Government 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 supersession 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.

(CVC letter No. 98/ORD/1 dated 18th Dec 2003)

(g) Improving Vigilance Administration –Increasing transparency in Procurement/sale - use of website 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 web-site 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 authorized 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 peruse the Newspaper advertisements, the web-site of their authorized 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.

(CVC Office Order 9/2/04 issued vide letter No.98/ORD/1 Dated 9th Feb 2004)

(h) Improving Vigilance Administration –Increasing transparency in procurement/ tender Process – use of website - 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 brining in more competition.

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.

(CVC Office Order 10/2/04 issued vide letter No.98/ORD/1 Dated 11th Feb 2004)

(i) Improving Vigilance Administration: Increasing Transparency in Procurement /sale etc. - use of website 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 cases of works/procurement of highly technical nature, tender documents run into several volumes with large number of drawings and specifications 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 software 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 web-site in addition to whatever methods are being presently used.

Issue 2 - Issues Connected with Data Security, Legality and Authenticity of Bid Document.

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 web-site. A copy of the remarks given by NIC on this issue is 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 are given below.

Issue 5 - Some organizations have pointed out that they make their procurement or execute their work through a system of 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 channel 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 at least once in a year for upgrading the list of registered vendors/contractors.

The concerned organization 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.

CENTRAL VIGILANCE COMMISSION
Technical note from National Informatics Center
Solution for Hosting of Signed Documents

1. **Integrity of Document**:

   The documents should be digitally signed by the person submitting them. The web server to which the documents are submitted for hosting, should verify the signature before hosting each

2. **Secure Hosting**:

   'HTTPS' should be used for both uploading and downloading of documents to avoid alteration of documents over the network.

3. **Digital Signing and submission**:

   The documents submitted for hosting may be in PDF or MS-WORD format. The document is digitally signed at the document submission end by a digital signing tool and by using a private key stored in a smart card. The detached (PKCS#7) signature file is generated. The document and the signature are uploaded to the server. The uploading procedure may be automated through a program. This involves development effort. The web server can verify the digital signatures programmatically when the files are uploaded. The files and their verified signatures are hosted for downloading by end users. This procedure will ensure that the signer is confident of what he/she is signing. The person involved in web hosting is sure that the documents are properly signed. The end users benefit that the document they are downloading is authentic and that the integrity of the document is maintained.

4. **Download procedure**:

   a. The user verifies the digital signature of the document on the web site.
   b. User downloads both the documents and the signature.
   c. User can verify the signature of the documents by using any standards Compliant Document Signing Tool which can verify a PKCS#7 detached by signature.

5. **Certificate for Digital Signature**:

a. The signature should be generated using a certificate issued by a Certification Authority (CA) trusted under Controller of Certifying Authorities (CCA). This is mandatory for legal validity of the digital signature.

b. The end user should ensure that the certificate used for signing the document is issued by a trusted CA.

(CVC Office Order No.43/7/04 issued vide letter No.98/0RD/1 Dated 2nd Jul 2004)

(j) Improving Vigilance Administration : Increasing Transparency in Procurement/Sale etc.-Use of Web Site

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). Some of the PSUs and other Govt. organizations dealing with defence and national security related subjects have sought clarification on the following issue:

Issue: Items and works, which are of sensitive nature from the point of view of national security. It has been pointed out that in some cases the tender documents and specifications given therein are of highly sensitive nature and putting such information on the web site can have national security implications or is not in the national interest.

Clarification: It needs to be clarified that instructions of the commission are with regard to open tenders only where organizations are already giving advertisements in newspapers thus it is presumed procurement or works are not of secret nature. However if still CMD/CEO of a PSU or head of an Ordnance factory or head of a sensitive organization in Defence, Atomic Energy or Space sectors or the concerned administrative ministries are of the opinion that it will not be feasible to put detailed tender documents on the website keeping in view their sensitive nature from national security point of view or from the point of view of national interest, they may take the decision not to put those documents or even the tender notice on website. But in all such cases the decision must be taken at the level of CMD or head of a PSU, head of an ordnance factory and in other government organizations at a level to be decided by the concerned administrative ministry. The specific reasons for not putting an open tender on web site should be recorded in the concerned file.

(CVC circular No. 98/ORD/1 Dated 5th Jul 2004)

(k) Central Vigilance Commission's Directives on Use of Website in Public Tenders

A copy of the guidelines on the above mentioned subject and further clarification in this regard are enclosed herewith for information and necessary action.

(Note: *CVC Guidelines dated 18.12.2003, 9.2.2004, 11.2.2004, 2nd July 2004 and 5th July 2004 as brought out above refers*)

(CVC Office Order No.47/7/04 issued vide letter No.98/ORD/1 Dated 13th Jul 2004)

(l) Improving Vigilance Administration: Increasing Transparency In Procurement / Sale Etc. – Use Of Web Site For Tenders Containing Classified / Secret Documentation.

The Central Vigilance Commission had issued a directive vide order No. 98/ORD/1 dt. 18.12.03 on the use of web site for publicizing open tenders pertaining to the procurement and / or auction / sale of goods and services. The directions included making the complete bid documents (along with drawings etc.) available on the web for the prospective bidders to down load and use for tender participation. Certain apprehensions have been received in the Commission regarding providing open web publicity to classified / secret documents. These classified / secret documents may include.

(i) Overall layouts of strategic installations like nuclear / atomic energy installations, refineries, power plants, research and defence installations etc.

(ii) Process schemes or process flow diagrams (e.g. for a refinery) which require prior approval of the process licensor before they are provided to the individual bidder.

(iii) Technology / design details which may be proprietary to a particular firm and require specific approval of the technology provide prior to making them available to the bidders.

2. The Commission has considered the representations and is of the view that for such open tenders which consist of documents of classified / secret nature, the organizations may go in for pre-qualification of the bidders in the first stage of the tender. Once the bidders are pre-qualified the complete tenders including the classified / secret documents which form a part of the tender may be made available to them for submitting their techno-commercial and price bids. The process of pre-qualification will involve publicizing the notice inviting tenders which could include the particulars of the tender along with the complete pre-qualification requirements. This notice inviting tender would follow all the procedures of publicity that are normally followed for open tenders including publicity on the web site. Once the suitability of the bidders has been assessed through the responses received against the pre-qualification notice, complete tenders will be issued to the pre-qualified bidders. The Organizations may adopt / follow their own procedures of maintaining secrecy of the classified / secret documents which form a part of these tenders. Thus only the select group of qualified bidders would be in possession of the classified / secret documentation. It may however be ensured that.

(i) Such procedure is followed only for the tenders which contain classified / secret documentation, after obtaining the approval of the competent authority for this purpose.

(ii) The NIT (having pre-qualification conditions) conforms to all extant instructions / guidelines for ensuring a transparent tendering.

(iii) Adequate opportunity and time is given to the pre-qualified bidders to bid for the work. Once the bidders have been pre-qualified, no further rejection takes place on the grounds of not meeting the prequalification criteria, in the later stages of the tender.

3. The post pre-qualification process of the tender may involve separate technical and financial bids. The pre-qualified bidders may be issued tenders directly or through web. In order to limit the access to the detailed tender documents on the web site at this stage, a password access can be resorted to organizations who need to put the classified / secret documents in their procurement / work tenders must put defined tendering procedures in place for such tenders in consultation with the CVO of the Organization, prior to operating such pre-qualification procedure for tenders containing classified / secret documents.

(CVC circular No. 005/VGL/7 Dated 28th Feb 2005)

(m) 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 un-opened price bid, will enhance transparency and plug the loop-holes in the tendering system. All organisations/departments are advised to frame a policy accordingly.

(CVC Office Order No.72/12/04 issued vide letter No.004/ORD/9 dated the 10.12.2004)

(n) Purchase of computer systems by Govt. departments/organization

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.

(CVC letter No.98/ORD/1 dated the 5th May 2003)

***** Copy of Ministry of Finance, D/o Expenditure vide its OM No. 8(4)-E.II(A) 98 dated 17.12.1998

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 Systems 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

To

All Ministries/Departments of Govt. of India

(o) <u>Tender Sample Clause</u>

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 confirming to the requirements of feel, finish and workmanship as per the 'Master Sample' through the bidders confirm in their bids that supply shall be made as per tender specifications, stipulated in the bid documents.

While it is recognized that samples may be required to be approved to provide a basis 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.

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.

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 web-site, http://cvc.gov.in

(No.2EE-1-CTE-3 Dated – 15th Oct 2003)

(p) Notice inviting tenders

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 organization 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.

(OFF-1-CTE-1(Pt) V Dated the 24th Mar 2005)

(q) Transparency in tendering system- Guidelines regarding.

In order to maintain transparency and fairness, it would be appropriate that authorized 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 short listing 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 un-opened price bid, will enhance transparency and plug the loop-holes in the tendering system. All authorized departments are advised to frame a policy accordingly.

(No.004/ORD/9 Dated 10th Dec 2004)

(r) Transparency in Tendering System

There have been instances where the equipment/plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of the various technical solutions available in the market to meet the desired objectives of a transparent procurement that ensures value for money spent simultaneously ensuring Upgradation of technology & capacity building.

The Commission advises that in such procurement cases where technical specifications need to be iterated more than once, it would be prudent to invite expression of interest and proceed to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. In such cases, two stage tendering process may be useful and be preferred. During the first stage of tendering, acceptable technical solutions can be evaluated after calling for the Expression of Interest (EOI) from the leading experienced and knowledgeable manufacturers/suppliers in the field of the proposed procurement. The broad objectives, constraints etc. could be published while calling for EOI. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, who are prima facie considered technically and financially capable of supplying the material or executing the proposed work. During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept.

Once the technical specifications and evaluation criteria are finalized, the second stage of tendering could consist of calling for techno commercial bids as per the usual tendering system under single bid or two bid systems, as per the requirement of each case. Final selection at this stage would depend upon the quoted financial bids and the evaluation matrix decided upon.

Commission desires that organizations formulate specific guidelines and circulate the same to all concerned before going ahead with such procurements.

(No. 01/02/11 dated 11th Feb. 2011)

7. PURCHASE PREFERENCE POLICY

(a) Preferential Preference Policy (PPP) for products and services of CPSUs

This is regarding the issue of Preferential Purchase Policies (PPP) for products and services of CPSUs.

2. As per Dept of Public Enterprise's OM No DP/13/(15)2007-Fin dt 21.11.2007, the Government has terminated the PPP with effect from 31.03.2009. However, the Government has also decided that preferential purchase policies may be independently evolved/reviewed by the Ministries/ Departments concerned, for the sectors of their concern, as per requirements.

3. In this regard, the Commission desires to hear from Ministries/Depts and CPSUs if they have independently evolved preferential policy on a sectoral basis in line with the above DPE guidelines.

(01-02-01-CTE-03 dated 24th Aug 2009)

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

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

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

(CVC Circular No.31/10/2009 issued vide letter No.009/VGL/055 dated:-9th Nov. 2009)

(c) Price/Purchase Preference (DPE/Guidelines/VI/12)

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

The undersigned is directed to refer to this Department's O.M. no. DPE.13 (12)/2003-Fin. Vol. II dated 18.7.2005 regarding extension of Purchase Preference

Policy for Products and Services of CPSEs for a further period of three years beyond 31.3.2005 with certain modifications.

2. The Supreme Court of India in its judgement in the transferred Civil Petitions of 2004 from the different High Courts in the matter of M/s Caterpillar India Pvt. Limited v/s Western Coalfields Limited and Ors. Observed that imposing a condition like purchase preference no option is left and a monopoly is being created. Any increase in the effectiveness of PSEs cannot be done on a uniform basis without examination as to whether such protection is necessary for a particular PSE. Further, it has to be examined on a case to case basis as to whether any differential treatment is called for. There may not be any competition left if 10% margin is allowed. It was also contended that the preference should be given PSE specific and the margin to be allowed should be examined rationally. Because of the substitution of the word 'may' by 'will' there is essentially a reversal of the policy. While giving its judgement, the Supreme Court also expressed its views which inter-alia includes the following:

a) Industry-wise assessment to be done by the concerned Ministries and in case of cost effectiveness is achieved by any PSEs there may not be any need for extending preference to such PSEs. Such examination should be done on the line as to whether any preference is at all called for and the extent of margin of preference to be allowed, which would also ensure level playing field for others. Further, while splitting the tenders, the minimum quantity/amount should be so fixed as to ensure that it is rational and there is no element of uncertainty. In other words, there should not be any rigid / inflexible purchase preference policy without examination as to whether such protection is necessary for a particular PSE;

(b) Present practice of allowing uniform margin of 10% over the L-1 bidder, as purchase preference to CPSEs, has to be reviewed and margin should be fixed PSE specific by the concerned Ministry on a rational basis;

c) The overall impact of such preference to be allowed on foreign direct investment has also to be assessed/considered.

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

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

4. All the administrative Ministries/Departments are requested to take note of the above mentioned decision of the Government and also bring it to the notice of the CPSEs under their administrative control for information and necessary compliance.

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

8. RECEIPT OF TENDERS

8.1 Despite Commission's guidelines emphasizing need to maintain transparency in receipt and opening of the tenders and to make suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located Tender Boxes, it is noted that tenders are not being received through Tender Boxes. This procedure is highly objectionable and against the sanctity of tendering system. The possibility of tampering and interpolation of offers cannot be ruled out in such cases. A proper arrangement for the receipt of tenders at scheduled date and time through tender box needs to be adopted.

8.2 Commission has issued the following guidelines on receipt of tenders:

(a) 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 has 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 at least 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.

(CVC OM No. 05-04-1-CTE-8 Dated 8th June 2004)

9. BACK TO BACK TIE UP / AWARD ON NOMINATION BASIS

(a) Back to Back Tie up by PSUs- instructions regarding

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 tenderers. In some cases, the works were awarded on single tender basis/limited tender basis though sufficient time was available with the Organisation to invite 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 contractor was 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 authorized by 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/updation of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.

h) It is, therefore, suggested that the procedure for award of work on back to back basis be authorized by keeping in view the above points and circulated amongst the concerned officials of your authorized for strict compliance in future works.

(No. 06-03-02-CTE-34 Dated 20th Oct 2003)

(b) Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis

The Commission had, in it's 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.

(No.005/CRD/19 Dated 9th May 2006)

(c) **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 a basic requirement 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.supremecourtofindia.nic.in)

5. The Commission advises all CVOs to formally appraise 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 website ex post-facto.

(No.005/CRD/19 Dated 5th Jul 2007)

(d) **Transparency in Works/ Purchase/Consultancy contracts awarded on Nomination basis.**

Commission vide Circular No. 15/5/06 dated 09/05/2006 had prescribed certain measures to be followed on works/purchase/consultancy contracts awarded on nomination basis by PSUs. These instructions have since been reviewed in the Commission and The Commission is of the view that the Board of the PSU is not required to scrutinize or post facto vet the actions of the operational managers and their decisions to award work on nomination basis.

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

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

Read as

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

(CVC Circular No. 19/05/10 issued vide letter No.005/CRD/19 (part) dated:- 19thMay 2010)

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10. TENDER NEGOTIATIONS

(a) Improving vigilance administration

The Central Vigilance Commission Ordinance 1998 under Section 8(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 improvements are made to prevent the possibilities of corruption and also encourage a culture of honesty. In exercise of the powers conferred on the CVC by 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 also 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 the 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 of 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 an 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 adjournments. 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).

(CVC letter No. 8(1)(h)/98(1) dated 18.11.1998)

(b) Improving Vigilance Administration : Tenders

Please refer to CVC's instructions issued under letter No 8(1)(h)/98(I) dated 18/11/98 banning post tender negotiations except with L-1 i.e., the lowest tenderer. Some of the organizations 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.

a) 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.

b) 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.

c) 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.

(CVC letter No 98/ORD/1 dated 15th Mar 1999)

(c) Applicability of CVC's instruction No.8(1)(h)/98(1) 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(1)(h)/98(1) 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 instructions 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

(CVC letter No.3(V)/99/9 dated 1.10.1999)

(d) Improving Vigilance Administration – Tenders

Please refer to CVC's instructions issued under letter No 8(1)(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 organizations have sought clarification 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 authorized. It, however, would expects the organizations to implement its instructions dated 18.11.98, in its spirit and to ensure that the decisions of administrative authorities are transparent.

(CVC letter No 98/ORD/1 dated 24th Aug 2000)

(e) Improving Vigilance Administration – Tenders

Please refer to the instructions issued by the Commission vide its communication No 8(1) (h)/98(1) dated 18 Nov 1998, banning post-tender negotiations except with L-1.

It is clarified that the CVC's instructions dated 18 Nov 98, 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 Government company, the post-tender negotiations are not be held except with H-1 (i.e., the highest tenderer), if required.

(CVC letter No 98/ORD/1 dated 03rd Aug 2001)

(f) Tendering Process – Negotiation with L-1

A workshop was organized on 27th Jul 2005 at SCOPE New Delhi, by the Central Vigilance Commission, to discuss 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.

2.2 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.

3.3 In case of L-1 backing out there should be re-tendering as per extant instructions.

(No.005/CRD/12 Dated 25th Oct 2005)

(g) 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.

(005/CRD/12 Dated the 3rd Oct 2006)

(h) 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 finalized within their validity period.

(iv) As regards the splitting of quantities, some authorized 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 authorized 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.

(No.005/CRD/012 Dated the 3rd Mar 2007)

(i) Tendering Process - Negotiations with L1

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

In the said circular it has, among other things, been stated "As post tender negotiations could often be a source of corruption, it is directed that there should be no post tender negotiations with L1, except in certain exceptional situations." It has come to Commission's notice that this has been interpreted to mean that there is a ban on post tender negotiations with L-1 only and there could be post tender negotiations with other than L1 i.e. L2, L3 etc. This is not correct.

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

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

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

(CVC Circular No.01/01/10 issued vide letter No.005/CRD/012 Dated 20th Jan 2010)

11. CONSIDERATION OF INDIAN AGENTS

(a) Consideration Of Indian Agents

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/ manufacturers may take 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.

3. It is suggested that these instructions may be circulated amongst concerned officials of your organization for guidance.

(12-02-6-CTE/SPI (I)-2 dated 07th Jan 2003)

(b) Consideration of Indian Agents

The Commission has received a complaint alleging that in Government tenders 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 represents another foreign company. There is a possibility of cartelization 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 sanctity of tendering system, it is advised that the purchases should preferably be made directly from the manufacturers. Either the 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 along with 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 of your organization for guidance.

(Office Order No. 25/04/04 dated 21st Apr 2004)

12. ADVANCE PAYMENT

(a) Grant of interest free mobilization advance

It has come to the notice of this Commission that PSUs are stipulating payment of interest free mobilization advance in their tenders. Many times mobilization advance is allowed after acceptance of tender also. The amount of mobilization 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 mobilization 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 on capital investment by way of mobilization advance is also not considered and thus the contractor gets higher rates than that may be justified. In

case there is a delay in commencement of work the contractor is likely to get undue benefit by way of retention of huge money.

2. It is, therefore, desired that adequate steps may be taken to ensure stipulation of mobilization 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 mobilization advance only when he needs to maintain his cash flow.

(CVC OM No.UU/POL/19Dated 8 Oct.,1997)

(b) 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. dated 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 provisions in the existing O.M. This may be read as addendum to the Commission's O.M. dt.8.12.1997.

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.

The advance payment may be released in stages depending upon the progress of the work and mobilization of required equipments etc.

There should be a provision in the contract for adjustment of advance progressively even as the bills are cleared for payment.

(No.4CC-1-CTE-2 Dated 08th Jun 2004)

(c) Mobilization Advance.

Commission has reviewed the existing guidelines on 'Mobilization Advance' issued vide OM No.UU/POL/18 dt 08.12.97 and OM No.4CC-1-CTE-2 dt 08.6.04. The following guidelines are issued in supercession of earlier guidelines issued by the Commission on 'Mobilization 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 it necessity in specific cases then it should be clearly stipulated in the tender document and its recovery should be time based 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, 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 mob advance should be obtained. Preferably, mob adv should be given in installments and subsequent installments should be released after getting satisfactory utilization certificate from the contractor for the earlier installment.

(No.4CC-1-CTE-2 Dated 10th Apr 2007)

(d) Corrigendum
Circular No. 5/2/08
Mobilization Advance

The commission has reviewed the existing guidelines on Mobilization advance Circular No. 10/4/07 [issued vide OM No. 4CC-1-CTE-2; dated 10-04-07]. Para 1 of the above circular may be read as under

> "Decision to stipulate free mobilization advance in the tender document should rest at the level of Board [with concurrence of Finance] in the organizations. However in case of interest bearing mobilization advance, organizations may delegate powers at appropriate levels such as the CMD or Functional Directors

(No.4CC-1-CTE-2 Dated 05th Feb 2008)

(e) **Mobilization advance**

Commission had earlier issued guidelines on granting of 'Mobilisation Advance', vide OM No. UU/POL/18 dated 08.12.1997, OM No. 4CC-1-CTE-2 dated 08.06.2004 and OM No. 4CC-1-CTE-2 dated 10.04.2007.

2. The matter has been further reviewed and it has decided by the Commission that following additional guidelines may be followed in case of grant of Mobilisation Advance.

(i) The Bank Guarantee etc. taken towards security of 'mobilisation advance' should be at least 110% of the advance so as to enable recovery of not only principal amount but also the interest portion, if so required.

(ii) The mobilisation advance should not be paid in less than two instalments except in special circumstances for the reasons to be recorded. This will keep check on contractor misutilizing the full utilisation advance when the work is delayed considerably.

(iii) A clause in the tender enquiry and the contract of cases providing for interest free mobilisation advances may be stipulated that if the contract is terminated due to default of the contractor, the 'mobilisation advance' would be deemed as interest bearing advance at an interest rate of _____%, (to be stipulated depending on the prevailing rate at the time of issue of NIT) to be compounded quarterly.

(No. 02/02/11 dated 17th Feb. 2011)

13. ACCEPTANCE OF BANK GUARANTEE

(a) Acceptance Of Bank Guarantee

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 provide that:-

"The original guarantee should be sent to the beneficiary directly under Registered Post [AD]. 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 [AD] 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 is in order. The AD 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.

(No. 02-07-01-CTE-30; dated 31st Dec 2008)

14. INTEGRITY PACT

(a) Adoption of Integrity Pact in major Government Procurement Activities

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 especially 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.gov.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.

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 process or the contract execution.

c. The Principal will exclude from the process all known prejudiced persons.

2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or it 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 persons 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 or during the execution of the contract.

b. The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s) /Contractors will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers' as annexed and marked as Annexure.

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 Annexure -"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 three 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 for 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 violation Bidder(s)/Contractor(s)/Sub-Contractor(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 entitle 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 10 months after the last payment under the contract, and for all other Bidders & months ---- 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

- This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
- Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- 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)	_____

(007/VGL/033 dated 04th Dec 2007 - Office Order No.4/12/07)

(b) Adoption of Integrity Pact in major Government Procurement Activities

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

2. The Commission vide para 4 of the aforementioned office order had directed that the organizations were required to forward a panel of names of the eminent persons of high integrity through their administrative ministries for consideration and approval by the Commission as IEMs.

3. The matter has been reconsidered by the Commission and in order to simplify the procedure and avoid delay, it has been decided that the organizations may forward the panel of names of eminent persons for appointment and consideration as IEMs directly to the Commission for approval.

4. Para 4 of the Commission's circular cited above stands amended to this extent.

(007/VGL/033 dated 28th Dec 2007)

(c) Adoption of Integrity Pact in major Government Procurement Activities

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, forwarding the names of the persons for empanelment as IEMs should sent a detailed bio-data in respect of the each of the persons proposed. The bio-data should, among other things, include the posting / superannuation of the persons proposed as IEMs, in case the names relate to persons having worked in the government sector. The bio details regarding experience older than ten years before 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.

(No. 008/VGL/001dated 19th May 2008)

(d) Adoption of Integrity Pact in major Government procurement activities

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

2. As more and more organizations begin to adopt the Integrity Pact, several queries and operational issues have been raised. The Commission has examined these issues and suggested the following guidelines:

a) Adoption of Integrity Pact in an organization is voluntary, but once adopted, it should cover all tenders/procurements above a specified threshold value, which should be set by the organization itself.

b) IP should cover all phases of the contract i.e., from the stage of Notice Inviting Tender(NIT)/pre-bid stage to the stage of last payment or a still later stage, covered through warranty, guarantee etc.

c) IEMs are vital to the implementation of IP and atleast one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be referred to the full panel of IEMs, who would examine the records, conduct the investigation and submit a report to the management, giving joint findings.

d) A maximum of three IEMs would be appointed in Navratna PSUs and upto two IEMs in other Public Sector Undertakings. The organizations may, however, forward a panel of more than three names for the Commission's approval. For the PSUs having a large territorial spread or those having several subsidiaries, the Commission may consider approving a large number of IEMs, but not more than two IEMs would be assigned to any one subsidiary.

e) Remuneration payable to the IEMs Directors in the organization.

f) In view of limited procurement activities in the Public Sector Banks, Insurance Companies and Financial Institution, they are exempted from adopting IP.

g) It needs no reiteration to realize the spirit and objective of the Integrity Pact. For further clarifications on its implementation or the role of IEMs, all concerned are advised to approach the Commission.

(No. 007/VGL/033 dated 05th Aug 2008)

(e) Adoption of Integrity Pact-Standard Operating Procedure

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

1.0 Background

1.01 The Central Vigilance Commission has been promoting Integrity, transparency, equity and competitiveness in Government/PSU transactions and as a part of vigilance administration and superintendence. Public procurement is a major

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

2.0 **Integrity Pact**

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

- ✓ Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- ✓ Principal to treat all bidders with equity and reason;
- ✓ Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- ✓ Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- ✓ Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act;
- ✓ Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- ✓ Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary.
- ✓ Bidders to disclose any transgressions with any other company that may impinge on the anti corruption principle.

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

3.0 **Implementation procedure**:

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

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

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

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

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

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

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

3.08 IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.

3.09 Periodical Vendors' meets, as a familiarization and confidence building measure, would be desirable for a wider and realistic compliance of the principles of IP.

3.10 Information relating to tenders in progress and under finalization would need to be shared with the IEMs on monthly basis.

4.0 **Role /Functions of IEMs** :

4.01 IEM would have access to all Contract documents, whenever required. Ideally, all IEMs of an organization should meet in two months to take stock of the ongoing tendering processes.

4.02. It would be desirable to have structured meeting of the IEMs with the Chief Executive of the organization on a monthly basis to discuss/review the information on tenders awarded in the previous month.

4.03 The IEMs would examine all complaints received by them and give their recommendations/views to the Chief Executive of the organization, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/administrative action.

4.04 At least one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management

4.05 The recommendations of IEMs would be in the nature of advice and would not be legally binding. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.

4.06 The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him or directed to him by the Commission.

5.0 **Appointment of IEMs**

5.01 The IEMs appointed should be eminent personalities of high integrity and reputation. The Commission would approve the names of IEMs out of the panel of names, initiated by the organization concerned, in association/consultation with the CVO.

5.02 While forwarding the panel, the organization would enclose detailed bio-data in respect of all names proposed. The details would include postings before superannuation, special achievements, experience, etc., in Government sector. It is desirable that the persons proposed possess domain experience of the PSU activities or the relevant field with which they may be required to deal.

5.03 A maximum of three IEMs would be appointed for Navratna PSUs and up to two IEMs for others.

5.04 Organizations could propose a panel of more than three names for the consideration of the Commission.

5.05 Persons appointed as IEMs in two organizations would not be considered for a third organization.

5.06 For PSUs having a large territorial spread or those having several subsidiaries, there could be more IEMs, but not more than two IEMs would be assigned to one subsidiary.

5.07 Remuneration payable to the IEMs would be equivalent to that admissible to an Independent Director in the organization. This remuneration would be paid by the organization concerned.

5.08 The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. They could be communicated individually to the IEMs concerned.

5.09 The normal term of appointment for an IEM would be 3 years, and it would be subject to renewal by the Commission thereafter.

6.0 **Review System** :

6.01 An internal assessment of the impact of IP shall be carried out periodically by the CVOs of the organizations and reported to the Commission.

6.02 Two additional reviews are envisaged for each organization in due course.

(i) Financial impact review, which could be conducted through an independent agency like auditors, and

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

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

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

(008/CRD/013 Dated 18th May 2009)

(f) Adoption of Integrity Pact-Periodical regarding

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

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

3. This may be noted for future compliance.

(CVC Circular No.22/08/09 issued vide letter No.008/CRD/013 dated 11.8.2009)

(g) **Integrity Pact – Selection and Recommendation of Independent External Monitors (IEMs)**

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

2. The Commission would consider names for appointment of Independent External Monitors of only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions. The Commission would not consider the name of an officer / executive, who is either serving or who has retired from the same organization to be an IEM in that organization, although they may have served in the top management. Eminent persons, executives of private sector of considerable eminence could also be considered for functioning as independent External Monitors and names recommended to the Commission for approval.

3. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years on a request received in the Commission from the organization appointing the Independent External Monitor. An Independent External Monitor can have a maximum tenure of 5 years in an organization with an initial term of three years and another term of two years.

(CVC Circular No.17/04/10 issued vide letter No.009/VGL/016 Dated 19th April 2010)

(h) **Adoption of Integrity Pact-Standard Operating Procedure (SOP) – reg.**

The Commission vide its circular No. 10/5/09 dated 18.05.09 issued guidelines on "Standard Operating Procedure (SOP) for implementation of Integrity Pact in Ministries / Departments/ Organizations. Section 6.02 of the SOP provides financial Impact review through independent agency and physical review through an NGO."

2. The Commission has since reviewed the provisions contained in para 6.02 of the SOP and is of the view that it would be difficult to undertake a separate assessment on the impact of implementation of integrity Pact in an organization and has therefore decide to delete Section 6.02 (i) & 6.02 (ii) of the said circular all organization implementing IP would however undertake a general review and assessment of implementation of IP and submit progress through CVO's monthly report to the Commission.

(**CVC Circular No.31/08/10 issued vide letter No.008/CRD/013 Dated 13th August 2010)**

15. POSTING DETAILS OF AWARD OF TENDERS ON WEBSITE

(a) 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 organizations within the purview of the CVC that they will publish on the notice board and in the organizations regular publications 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 organizations 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 organizations 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 organization 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

(CVC circular No. 005/VGL/4 Dated 16th Mar 2005)

(b) Details on Award of Tenders/Contracts Publishing on Websites/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.

(CVC circular No. 005/VGL/4 Dated 28th July 2005)

(c) Details On Award Of Tenders/Contracts Publishing On Websites/ Bulletins

It has been observed that despite Commission's directions vide its circulars dated 16/3/05 and 28/7/05, a number of organisations are yet to give details of the tenders finalized on the website of their organisations. Some of the organisations have

informed that this is due to the delay in receipt of information from their Regional/Subordinate Offices.

2. In this regard it is clarified that placing of such information on the website will be a continuous process. The CVOs should ensure publishing of the details of the tenders awarded immediately with available information and subsequently update it. The threshold limits as proposed by the CVOs in consultation with CEOs can be taken as the starting point, which could be revised subsequently to cover 60% of the transactions in a year and further 100% on stabilization.

(CVC circular No. 005/VGL/4 Dated 20th Sep 2005)

(d) 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 authorized to post every month a summary of all contracts/purchases made above a certain threshold value on the websites of the concerned authorized 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 Competent Authority 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 authorized. 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 authorized 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.

(005/VGL/4 Dated the 1st Sep 2006)

(e) Posting Of Details On Award Of Tenders/Contracts On Websites.

The Commission vide circulars dated 16.03.2005, 28.07.2005 and 18.04.2007 had directed all organisations to post on their web-sites a summary, every month, containing details of all the contracts/purchases made above a threshold value (to be fixed by the organisations) covering at least 60% of the value of the transactions every month to start with on a continuous basis. CVOs were required to monitor the progress and ensure that the requisite details were posted regularly on respective websites, and also to incorporate compliance status in their monthly report to the Commission.

2. On a review of the status of implementation by the organisations, it is observed that some organisations have not adhered to the instructions and

implemented the same. Further, such information being posted on the websites are not being regularly updated on a continuous basis by certain organizations and, in some cases, the information published is disjointed and not as per the prescribed format laid down by the Commission. It is also seen that a few organisations have placed such information on restricted access through passwords to registered vendors/suppliers etc. which defeats the basic purpose of increasing transparency in administration.

3. The Commission, therefore, while reiterating its aforementioned instructions would direct all organisations/departments to strictly adheres and post summary of details of contracts/purchases awarded so as to cover 75% of the value of the transactions without any further delay. Any failure on the part of the organisations on this account would be viewed seriously by the Commission.

(CVC circular No. 005/VGL/4 Dated 14th Jul 2009)

16. LEVERAGING TECHNOLOGY

(a) Improving vigilance administration by leveraging technology: Increasing transparency through effective use of websites in discharge of regulatory, enforcement and other functions of Govt. Authorized.

The Commission has been receiving a large number of complaints about inordinate delays and arbitrariness in the processing and issue of licenses, permissions, recognitions, various types of clearances, no objection certificates, etc., by various Govt. authorized Majority of these complaints pertain to delays and non-adherence to the 'first-come-first-served' principle. In a number of cases, there are complaints of ambiguities regarding the documents and information sought for the grant of such licenses, permissions, clearances, etc. There is also a tendency in some authorized to raise piece-meal/questionable queries on applications, often leading to the allegations of corruption. In order to reduce the scope for corruption, there is a need to bring about greater transparency and accountability in the discharge of regulatory, enforcement and other public dealings of the Govt. authorized

2. Improvement in vigilance administration can be possible only when systems improvements are made to prevent the possibilities of corruption. In order to achieve the desired transparency and curb the malpractices mentioned above, the Central Vigilance Commission, in exercise of the powers conferred on it under Section 8(1)(h) of the CVC Act, 2003, issues the following instructions for compliance by all Govt. departments authorized / agencies over which the Commission has jurisdiction:-

i) All Govt. authorized discharging regulatory/enforcement functions or service delivery of any kind, which cause interface with the general public/private businesses, etc., shall provide complete information on their websites regarding the laws, rules and procedures governing the issue of licenses, permissions, clearances, etc. An illustrative list is given in the annexure. Each Ministry should prepare an exhaustive list of such applications/matters and submit a copy of same to the Commission for record and web-monitoring.

ii) All application forms/proformas should be made available on the websites in a downloadable form. If the authorized concerned wishes to charge for the application form downloaded from the computer, the same may be done at the time of the submission of the application forms.

iii) All documents to be enclosed or information to be provided by the applicant should be clearly explained on the websites and should also form part of the application forms.

iv) As far as possible, arrangements should be put in place so that immediately after the receipt of the application, the applicant is informed about the deficiencies, if any, in the documents/information submitted.

v) Repeated queries in a piece-meal manner should be viewed as a misconduct having vigilance angle.

vi) All authorized concerned should give adequate publicity about these facilities in the newspapers and such advertisements must give the website addresses of the authorized concerned.

3. In the second stage, the status of individual applications/matters should be made available on the authorized website and should be updated from time-to-time so that the applicants remain duly informed about the status of their applications.

4. In addition to the manual receipt of applications, all authorized should examine the feasibility of online receipt of applications and, wherever feasible, a timeframe for introducing the facility should be worked out. As a large number of Govt. authorized are opting for e-governance, they may consider integrating the above mentioned measures into their business processes so that duplication is avoided.

5. Instructions at para-2 above shall take effect from 1st January, 2007, and instructions at para-3 shall become effective from 1st April, 2007. All Heads of Organisations/ Deptts. Are advised to get personally involved in the implementation of these important preventive vigilance measures. They should arrange close monitoring of the progress in order to ensure that the required information is placed on the website in a user-friendly manner before the expiry of the abovementioned deadlines. They should later ensure that the information is updated regularly.

Annexure

Illustrative list

1. **Land & Building Related Issues**

i) Applications for mutation; conversion from leasehold to freehold of lands & buildings; approval of building plans by municipal authorities and landowning/regulating agencies like MCD; DDA; NDMC; L&DO and similar agencies in other UTs.

(ii) Application for registration deeds by Sub-Registrars/Registrars and other applications connected with land record management.

(iii) Application for allotment of land/flats, etc., by urban development agencies like Delhi Development Authority.

2. **Contracts & Procurement**.

(i) Applications for registration of contractors/suppliers/ consultants/ vendors, etc.

(ii) Status of all bill payments to contractors/suppliers, etc.

2. **Transport Sector**

Issue of driving licenses, registration of vehicles, fitness certificates, release of impounded vehicles etc. by RTAs.

4. **Environment & Pollution Related Matters**

Issue of environment and pollution clearances for setting up industries and other projects by Min. of Environment & Forests; Pollution Control Organizations, etc.

5. **Food & Hotel Industry**

Applications connected with clearances, licenses for food industry/hotels/ restaurants, etc.

6. **Ministry of Labour/Ministry of Overseas Indian Affairs**.

(a) Applications by beneficiaries and employers in connection with EPFO; ESI etc.

(ii) Applications by recruiting/placement agencies and individuals submitted to Protectorate General of Emigrants and the concerned Ministry.

(iii) Other applications connected with regulatory/enforcement systems of Labour Ministry.

7. **CBDT & Income Tax Deptt**.

(b) Application for PAN.

(ii) Applications submitted by NGOs for exemption from Income Tax.

(iii) Applications submitted for issue of certificates/income tax clearance for immigration/ public contracts or any other purposes.

(iv) Application for appointment of legal counsels/any other professionals.

8. **Customs & Central Excise & DGFT**

Applications/cases of Duty Drawback & other export incentives.

9. **Telecom (BSNL & MTNL)**

Applications for establishing STD booths, etc.

10. **Petroleum Sector**

Applications for allotment of petrol pumps/gas stations.

11. **Ministry of External Affairs**

(i) Applications for issue of passports.
(ii) Applications for issue of visas by Indian Embassies abroad.

12. **Ministry of Home Affairs**

(i) Applications submitted to FRRO.
(ii) Applications connected with FCRA.

13. **Ministry of Health**

Applications for recognition by Medical Council of India and similar other regulatory bodies.

14. **Education**

i) Applications for accreditation handled by bodies like AICTE & others.
(ii) Applications for recognition of schools by Director of Education etc.
(iii) Grant of E.C. by Director of Education.

15. **Agriculture, Dairying & Fisheries**

(i) Various clearances/licenses, e.g. Clearance for operating fishing vessels.
(ii) Quarantine related applications.

16. **Ministry of Social Justice/Tribal Affairs**.

Applications for sanction of funds to NGOs.

(No.006/VGL/117 Dated the 22nd Nov, 2006)

(b) Improving Vigilance Administration By Leveraging Technology: Increasing Transparency Through Effective Use of Website.

Please refer to Commission's Circular no. 40/11/06 dated 22/11/2006 on the aforementioned subject & also Circular No. 13/3/05 dated 16/03/2005 & Circular No. 46/7/05 dated 28/7/2005 regarding details of award of tenders/contracts publishing on Websites/Bulletin.

2. The Commission vide circulars dated 16/3/05 & 28/7/05 had directed all organizations to post on their web-sites a summary, every month, of all the contracts/purchases made above the threshold value covering at least 60% of the transactions every month. A compliance report in this regard was to be submitted to the Commission by the CVOs through their monthly report to the Commission. However, it is seen that some of the departments have neither intimated the Commission about the threshold value decided for posting the details of tenders awarded on the web-sites, nor a compliance report is being sent through the monthly reports.

3. Further, vide circular dated 22/11/06, the Commission while emphasizing the need to leverage technology, as an effective tool in vigilance administration, in discharge of regulatory, enforcement and other functions had directed the organizations to upload on their websites, information in respect of the rules and procedures governing the issue of licenses/permissions etc. and to make available all the application forms on the websites in a downloadable form besides, making available the status of individual application on the organization's website. The Commission had directed the organizations to implement its guidelines in two phases. The first phase relating to the posting of all application forms on the website was to be implemented by 1/1/2007 and the second phase, by 1/4/2007. Although, the date for implementation of second phase has passed by, the departments are yet to intimate the Commission about the status of implementation of the two phases.

4. The Commission, therefore, while reiterating its aforementioned instructions directs the CVOs to convey to the Commission the following information latest by 30/4/07:-

a) The threshold value decided by the organization for publishing on their web-site, details of award of tenders/contracts;

b) The extent to which the details of awarded tenders are being posted on the web-site and whether the web-sites are being updated regularly or not;

c) Whether first/second phase of the Commission's circular dated 22/11/06 has been implemented or not;

d) If not, the reasons thereof: steps being taken by the organization to ensure implementation of the Commission's circular and the exact date by which both the phases as mentioned in the Commission's circular would be fully implemented;.

(CVC circular No. 006/VGL/117 Dated 18th Apr 2007)

(C) Leveraging of Technology for improving vigilance administration in the National E- Governance Plan.

The Commission observes that e-procurement software, security and implementation is a new area and needs improvement. E-procurement provides a platform for the collaborative procurement of goods, works and services using electronic methods at every stage of the procurement

process. The e-procurement platform transacts confidential procurement data and is exposed to several security threats. Department of information Technology could be best placed to address issues relating to e-procurement. In order to ensure proper security of the e-procurement system all Departments/Organizations are advised to get their system certified by Department of Information Technology.

(CVC Circular No.23/06/10 issued vide letter No.010/VGL/035 Dated 23rd June 2010)

17. DELAY IN PAYMENT TO VENDORS

(a) 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. organisations, 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 wherever 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 making 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) (h) 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 natures, and other payments which the organisations 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 organisations at such centers shall also be made through electronic clearing system (ECS) wherever such facilities exist.

As the organizations will have to collect bank account numbers from the vendor, suppliers, employees and others who have interface of this nature with the Govt. organisations, the concerned organisations 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 15t 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 of frauds by providing speed, efficiency and easier reconciliation of accounts.

(No.98/ORD/1 Dated 6th Apr 2004)

(b) Leveraging Technology – e-payment & e-receipt.

Reference is invited to the Commission's Office Order No. 20/4/04 dated 6.4.2004 regarding the above mentioned subject.

2. The Commission had directed that by July 2004, 50% of the payment transactions both in value terms as well as in lieu of number of transactions shall be made through ECS/EFT mechanism instead of payments through Cheques; and urged all Banks, PSUs and Departments to provide an enabling environment and facilities so that such an initiative is successful. It has been informed that some of the organisations are yet to initiate the process in this regard. The organisations are, therefore, requested to forward the details regarding the implementation of epayment mechanism, as per the enclosed format by November 15, 2004 positively.

FORMAT

Leveraging Technology – e-payments & e-receipts

(A) Details regarding payments of salary etc. to employees.

(1) Total No. of employees -

(2) No. of employees whose Bank A/c details including MICR have been received -

(3) % in terms of numbers of employees to whom salary & other dues are being paid through e-payments -

(B) Details regarding payments of dues to contractors/suppliers etc.

(1) Number of contractors/suppliers/agents/assessees etc. dealt with regularly during the period July 2004 – September 2004.

(2) Number of contractors/suppliers/agents/assessees etc. whose Bank A/c details including MICR have been received.

(3) Total payments made to all contractors/suppliers/assessees/CHA's during the period July 2004 – September 2004 (Amount in Rupees in lakhs). [Payments should include refunds of earnest money/income tax etc.]

(4) Total payments made through e-payments during the above period (Amount in Rupees in lakhs).

(5) % of Bills (in terms of number of payments) in which e-payment is made.

(6) % of value of payments made through e-payments.

(7) List of nodal officers who have been entrusted with the responsibility of managing charge to e-payment system.

(C) E-receipts

Separate details as per (1)-(7) above may also be provided in respect of receipts by organisations getting regular payments in terms of license fee/income tax receipts/custom duty/sales tax/property tax/freight charges/consultancy fees etc. (The organisations can give the type of payments received).

(CVC Letter No.98/ORD/1 dated 20.10.2004)

(c) Delays in Payments to Contractors & Suppliers etc. – Reducing opportunities for corruption

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 computerized 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.

3. The CVOs should also review whether payments are being made on "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 (in respect of small Organizations).

3. Bills 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 :
Amount Involved :

(c) Bills paid in 30-60 days :
No. of Bills :
Amount Involved :

(d) Bills paid from 60 days to 120 days :
No. of Bills :
Amount Involved :

(e) Bills paid over 120 days :
No. of Bills :
Amount Involved :

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 or accounting purposes which can monitor bill payment?

6A. If not, is there any plan to do so in near future? If so, please indicate the time frame.

(No.005/ORD/1 Dated 10th Mar 2005)

18. E-TENDERING / E-PROCUREMENT

(a) E-procurement/Reverse Auction.

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.

(CVC Office Order No.46/9/03 issued vide letter No.11.9.2003)

(b) Implementation Of E-Tendering Solutions

References are being received by the Commission regarding the methodology for selection of sole application service provider for the implementation of e-tendering solutions in various organizations. The Commission has examined the matter and is of the view that all organizations should invariably follow a fair, transparent and open tendering procedure to select the application service provider for implementing their e-tendering solutions. The standard guidelines on tendering procedure should hold good for the procurement of these services as well

(009/VGL/002 dated 13th Jan 2009)

(c) Implementation of e-tendering solutions.

Guidelines were prescribed in this office OM of even number, dated 13/1/09 on the above-cited subject, advising organizations to follow a fair, transparent and open tendering procedure, to select the application service provider for implementing their e-tendering solutions.

2. It is clarified that while ensuring fair play, transparency and open tendering procedure for e-tendering solutions, the organizations must take due care to see that effective security provisions are made in the system to prevent any misuse. In this regard, the guidelines on security related issues in e-tendering systems are enclosed for information. Organizations concerned may follow these guidelines while implementing e-tendering solutions to contain the security related loop holes.

(Circular No 29/9/09 dated 17th Sept 2009)

(d) Implementation of e-tendering solutions

Implementation of e-tendering solutions – check list.

Guidelines were prescribed in this office OM of even number, dated 17.09.2009, on the above – cited subject, advising organisations to take due care to see that effective security provisions are made in the system to prevent any misuse. It has been observed during security audit carried by CTEO that e-procurement solutions being used by some of the organisations lack security considerations as envisaged in the Commission's guidelines dated 17.09.2009. Some of the shortcomings / deficiencies are of repetitive nature.

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

CHECK POINTS TO ACHIEVE SECURITY CONSIDERATIONS IN E-PROCUREMENT SOLUTIONS

S.NO.	SECURITY CONSIDERATIONS	Please Tick	
1.	Whether the application is secure from making any temporary distortion in the electronic posting of tender notice, just to mislead certain vendors?	Yes	No
2.	If yes at 2 above, then whether any automatic systems alert is provided in the form of daily exception report in the application in this regard?	Yes	No
3.	Whether application ensures that the tender documents issued to /downloaded by bidders are complete in shape as per the approved tender documents including all its corrigendum?	Yes	No
4.	Is there any check available in the application to detect & alert about the missing pages to the tenderer, if any?	Yes	No
5.	Whether application ensures that all the corrigendum issued by the Competent Authority are being fully communicated in proper fashion to all bidders including those who had already purchased / downloaded the bid documents well ahead of the due date & before uploading the corrigendum?	Yes	No
6.	Whether system is safe from sending discriminatory communication to different bidders about the same	Yes	No

	e-tendering process?		
7.	Whether e-procurement solution has also been customised to process all type of tenders viz Limited / Open / Global Tenders?	Yes	No
8.	Whether online Public Tender opening events feature are available in the application?	Yes	No
9.	Whether facilities for evaluation / loading of bids, strictly in terms of criteria laid down in bid documents are available in the application?	Yes	No
10.	Whether sufficient safeguards have been provided in the application to deal with failed attempt blocking?	Yes	No
11.	Whether application is safe from submission of fake bids?	Yes	No
12.	Whether encryptions of bids are done at clients end?	Yes	No
13.	Whether safety against tampering and stealing information of submitted bid, during storage before its opening, is ensured?	Yes	No
14.	Whether application is safe from siphoning off and decrypting the clandestine copy of a bid encrypted with Public key of tender opening officer?	Yes	No
15.	Whether application is safe from mutilation / sabotage or otherwise rendering the encrypted bid in the e-tender box during storage, to make it unreadable / invalid in any form, before opening of the bids?	Yes	No
16.	Whether introduction of special characters / Executable files etc by users are restricted in the application?	Yes	No
17.	Whether validity check of DSC is being done at server end?	Yes	No
18.	Whether system supports the feature that even though if a published tender is being deleted from the application, system does not allow permanent deletion of the published tender from the Database?	Yes	No

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

(**CVC Circular No.18/04/10 Dated 26th April 2010)**

19. IT PROCUREMENT

(a) Turnkey contracts for net-working of computer systems.

The Commission has been receiving complaints that in turnkey contracts for net-working of computer systems a lot of unrelated products are being included in the contracts which are either not required or which are stand alone in nature and can be procured separately at much lower cost. Inclusion of these unrelated items creates opportunities for malpractices. The Commission is of the view that wherever possible it will be advisable to take an independent third party view about the scope of turnkey projects so that the tendency to include unrelated products as part of the turnkey project is avoided.

(CVC Office Order No. 69/11/04 issued vide letter No.004/ORD/8 dated 3.11.2004)

(b) Measures To Curb The Menace Of Counterfeit And Refurbished IT Products

With the increasing use of IT to leverage technology, a large number of Government organizations are either upgrading or in the process of procurement of new computer hardware and software. It is often difficult to know the difference between PC made of "**Genuine Parts**" and that made of "**Counterfeit Parts**". It may also be the case often that while various authorized order and pay for brand new equipment, they end up getting an inferior PC with counterfeit and second hand/refurbished parts disguised as new in new/ original cabinets to various customers designated as consignees by the ordering agencies at the headquarters of these organizations who are ignorant or have little or no technical knowledge in the matter.

In effect, this amounts to the authorized not getting what they actually ordered and paid for. The supplies of such PC in the long run would defeat the very purpose of going for a new system. COUNTERFEITING is designed to cheat naive consumers/ organizations.

This current circular is intended to help/ inform and enable due diligence as well as curbing the menace of counterfeit and refurbished IT products disguised as new. As a first step, there is a need for all buyers in the Government Departments/ PSU to insist on a signed undertaking (sample format enclosed) from some authority not lower than the Company Secretary of the system OEM that would certify that all the components/parts/assembly/software used in the Desktops and Servers like Hard disk, Monitors, Memory etc were original/new components/parts/assembly/software, and that no refurbished/duplicate/ second hand components /parts / assembly / software were being used or would be used, so that the buying organizations were not cheated and get the original equipments as ordered by them. Also one could ask for

'Factory Sealed Boxes' with System OEM seal to ensure that the contents have not been changed en route.

Following advisory checkpoints it is hoped shall help identify the fraudulent practices that have come to notice and help guard against spurious and refurbished/duplicate/second hand components/parts/ assembly / software being received by purchasers and consignees who receive such goods and may not have much technical knowledge.

1. CPU. Buyers are cautioned against buying IT Hardware with remarked CPUs that are freely / readily available in the market today. Entry Level processors get Remarked / Over clocked and sold as high end processors. These CPUs, come disguised as higher clock speed processors (e.g. a Celeron CPU can be remarked as a P4 CPU) while their real clock speed may be lower. Since Operating System is loaded from CD bundled with Motherboard, the CD contains image of configured OS. Hence information as seen in 'My Computer' – 'System Properties' shall give deceptive information. In other words, a Celeron CPU remarked as a P4 CPU, shall be seen as a P4 CPU only. Buyers should therefore, use various tool / utilities like the 'CPU-Z' Utility or the 'sSpecNo.' For ascertaining the real parameters of the CPU. Utility like CPU-Z (approximately 1.3 MB size) are available free on the web.

2. Hard Disk IT Hardware with refurbished Hard Disks that are actually 2nd hand / repaired hard disks are readily available at low cost. In hard disk drives, the factory repaired hard disk drives, which are mainly used in the warranty replacements are substituted in the new machines. Same is the case observed with floppy drive and Optical disk drives many times. Most of the competent hard disk makers use a sticker on such hard disks sold by them that clearly distinguishes such hard disks from the fresh ones. For example, manufacturer 'Seagate' marks Green Border and label of "Certified Repaired HDD" to distinguish such disk drives from New Genuine HDD. There is No border or Refurbished label on genuine new HDD. In addition to this, buyers may also use HDTUNE_210 Utility. This utility shall return Hard Disk Manufacturers' Serial no. and Date of manufacturing of the Hard Disk. These parameters can be used to cross-verify with the hard disk vendor. Various Hard Disk vendors also put a date code on the hard disk. A mismatch between this date and the one returned by HDTUNE_210 Utility can also be viewed as tampering with the actual information of the hard disk.

3. Monitors. IT Hardware with refurbished Monitors that are actually 2nd hand / repaired monitors are given a "new look" by changing the body, with internal components remaining "old / repaired". These CRT monitors are usually discarded from developed countries like US and Europe. There are also B Grade (New but Low Quality) CRT Monitors used in place of new monitors. Many times these can be distinguished by opening the cabinet body and noticing that the label on the tube does not carry various certifications and there are scratch marks on the tube. While 'Genuine' Picture Tubes have all mandatory Certifications, 'Counterfeit' Picture Tubes would not have these certifications. Certification gives an assurance of Reliability. Further many such cathode ray tubes (Picture Tubes) are found to need extra magnets to achieve focusing and earthing also is missing. Genuine Monitors rely on 'Yoke Coil' alone to focus electronic beam. Counterfeit Monitors typically require Numerous Magnetic Strips in addition to Yoke Coil to focus electronic beam. Further,

'Earthing' and 'Shielding' provide ESD (Electro Static Discharge) protection. Genuine Picture Tubes have proper "Earthing and Shielding". Earthing and Shielding is compromised in counterfeit Picture Tubes to reduce cost. In 'B' Grade LCD Monitors, panels used are B grade in which the number of spots may be higher, response time & brightness of lower specs than what is stated. Above monitors are all available at low cost. The "Signed Undertaking" as suggested shall serve as a deterrent and as a safeguard to ensure that bidders are not fleecing them by supplying such monitors.

a) Operating System. Purchasers should check the IT Hardware supplied (randomly selected IT Hardware) for Certificate of Authenticity (COA) pasted on the PC for product serial number and OEM's / Supplier's name to be printed on it. In Operating systems, pirated OS software with fake Certificates of Authenticity are used by some suppliers to cut costs. They look as good as the real ones. In PCs, counterfeiters buy legitimate software and copy the box design and packaging. Using sophisticated and expensive copiers, many copies of illegal CDs are created in a day. Purchasers should guard against buying IT Hardware with pirated copies of Operating Systems. Such Operating Systems, though, available at low prices, do not have the updated patches and security features that help safeguarding the PC and also improve its lifespan. Purchasers, therefore, may use the standard testing procedures (randomly on randomly selected IT Hardware) available on the following URL for ascertaining the in authenticity of the operating system installed on their PC:

http://www.microsoft.com/resources/howtotell/ww/windows/default.mspx.

4. Microsoft provides an inbuilt tool to diagnose the "Genuineness of its Operating System". One could go to 'My Documents', and 'Help', from where one shall get step by step instructions to find out whether the windows installed is genuine.

http://www.microsoft.com/resources/howtotell/ww/windows/default.mspx

5. Mechanical Keyboards: Fake mechanical keyboards that are partially mechanical, with only the key plunger being that of a real mechanical keyboard and rest of the keyboard features remaining the same as those of membrane keyboard are being passed on as true mechanical keyboards. While these keyboards are available at low prices, they do not offer the robustness and long key-stroke life expected of a real mechanical keyboard. Real Mechanical Keyboards are expected to have Keystroke life of 50 Million as against 10 million for Membrane and Semi-Mechanical Keyboards. In case of bulk orders, it is recommended to physically examine a few keyboards for their construct to ascertain the genuineness of their being real mechanical keyboards.

6. Low Quality Memory Module – Memory chips are remarked or downgraded wafers are plastic packed under unknown brands or remarked with names of well known brands. Such memory modules have lower performance levels. It is better to go in for proven reputed brands such as Kingston, Transcend, Corsair, Samsung and Hynix to name a few available in the market.

7. Fraudulently Marked SMPS – In power supplies, wrong marking of the wattage is done. The power supplies do not carry all required certifications. While 'Genuine' Power supplies carry all mandatory certifications, in counterfeit Power supplies these certifications shall be found missing. Further Short circuit & over voltage protection circuitry could be missing in counterfeit Power Supply to reduce cost.

8. Counterfeited Consumables – Counterfeited consumables such as printer cartridges etc are used which are refilled with ink of poor quality leading to poor performance and clogging, smudging in printers etc. It is advisable to buy such consumables from OEM authorized suppliers or distributors to ensure quality and longevity of the printer equipment.

Annexure: Model Undertaking of Authenticity form

(007/CRD/008 Dated 15th Feb 2008)

(c) IT Procurement

Minutes of the above seminar were circulated vide letter no 3/CTE (2)-VR/2007 dated 3.10.2007. It has come to the notice of the Commission that despite specific instructions / guidelines and booklets issued by the Commission from time to time, and the holding of an exclusive seminar referred to above for the benefit of the Bank's executives dealing with IT procurements along with respective CVO's, Bank officials do not appear to adhere to these instructions / guidelines as expected of them, which leaves room for various irregularities. As such Commission desires that you organize seminars/workshops and lecture classes at frequent intervals to keep the officials of the bank, particularly those dealing with procurement activities educated and updated regarding procurement procedures, CVC guidelines. Instances have also come to the notice of the Commission indicating that a number of bank officials lack basic skills in computer operations and knowledge of the banking software. There is also a tendency on the part of senior officers to disclose their password to junior officials / staff for operating the system on their behalf, citing reasons, including work pressure and ignorance which you would appreciate is not acceptable. Therefore, there is an urgent need to impart proper training to such officers and staff at various levels particularly those working in the branches so that they have up-to-date knowledge of the computer system for day to day operations and are not dependent on their colleagues. You are, accordingly, advised to arrange such programmes for training on an on going basis for the benefit of bank officials. Please note to keep the Commission apprised of the steps taken in this regard and the progress so achieved.

(008/VGL/016 Dated 18th Feb 2008)

20. MISCELLANEOUS

(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.

(008VGLl083 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 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 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-à-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 he 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 bother 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) Examination of Public Procurement (Works / Purchases / Services) Contracts by CVOs.

The Commission has been emphasizing 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 has also been issued. These are available in the Commission's website.

3. The need for CTE type examinations by the CVOs has been emphasized 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 organization'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 organization's procurement process.

5. CVOs must also familiarize 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.

Please Note :

As mentioned at para 2 above, the Booklets and the Manuals available on the Commission's website are as follows:-

I **Problem Areas of Corruption in Construction (Preventive Vigilance Publication)**.

This is a preventive vigilance publication from CTE's organization, CVC. An attempt has been made to locate areas vulnerable to corruption in the construction industry from the experience gained by the CTE organization during intensive examination of works. The problems under various areas are explained with illustrations as far as possible. The aim of this booklet is to reduce corruption in the construction industry.

The publication addresses the following:-

a) **Administrative approval**: Non-accordance of approval, Inflated provisions in the estimates, Major changes during execution of work, Funds allotted to one head incurred on another, Cost overrun due to delay in award of work, No check on the preliminary estimate prepared by consultants etc.

b) **Detailed Estimate and Technical Sanction:** Non-preparation of Estimate, Non accordance of sanction for the estimate to ensure economy and structural soundness, Ambiguous nomenclature of items, Non-adherence to schedule rate of interests, Non-scheduled items without analysis etc.

c) **Consultancy: A**ppointment being done without proper publicity, Appointment from old panel, Award of contract at Adhoc rates, Appointment when in-house facility is available, No punitive action taken even though consultants fail to perform the required services as per terms of the contract etc.

d) **Preparation of Tender Documents:** Issue of tender documents, prepared by consultants, without scrutiny and approval by the competent authority, Conflicting, vague and ambiguous provisions in the tender document, resulting in disputes, delays and financial losses, Ambiguous/stringent pre-qualifying criteria, 'Rate only' items are provided in the BoQ without giving quantity against item etc.

e) **Inviting and Opening of Tenders:** Restricting competition by not providing adequate time for publicity, Wide publicity not given in newspapers, Issue of tender documents to ineligible applicants, Non-maintenance of Sale and Opening of Tender Register etc.

f) **Tender Scrutiny and Award of Works:** Acceptance of Certificates for satisfactory completion of work executed for private

organizations without TDS certificate, Non – evaluation of conditions quoted by the tenders and accepting undue conditions during negotiations to give undue benefits to the contractor, Non- finalization of tenders within validity period, Ignorance of L-1 on non – satisfactory performance or other flimsy ground etc.

g) **Works Agreement:** Unwanted papers in the agreement, Important papers such as negotiation letters missing, Performance guarantee obtained late, Non submission of Insurance policy or submission of policy for less period by the contractors, as per conditions, Bank Guarantee not verified through issuing bank etc.

h) **Payments to Contractors:** Excessive deviations allowed without approval of competent authority, Less quantity of abnormally low rated items executed and paid, More quantity of AHR items executed and paid, Items substituted to the advantages of contractor, Inadmissible extra items paid etc.

i) **Site records:** Registers with pages numbered serially not issued by the competent authority, Non-maintenance of Hindrance register, Non-maintenance of Site order book, Compliance in site order book is not recorded by Engineer – in – change, Non-maintenance of MAS A/c registers etc.

j) **Quality in Construction:** Earth work, Concrete work, Brick work, Stone work, Wood work/Aluminum work, Steel work, Flooring, Roofing, Finishing, Horticulture works

II Common Irregularities / Lapses observed in Award and Execution of Electrical, Mechanical and other Allied Contracts and Guidelines for Improvement thereof.

This is another publication from the CTE's Organization of the CVC. Several pitfalls and lapses that were observed during intensive examination of contracts and purchases are highlighted in this publication. The objective of this publication is to help improve the systems and procedures in the organization so that the project / contract management is more objective, transparent and professional. Keeping this perspective in view, this publication highlights lapses / irregularities in the award and execution of electrical, mechanical and other allied contracts being issued. The lapses have been explained and discussed with illustrations.

This publication comprises of two parts addressing the following:-

Part-I

a) Necessity and Justification of Works.
b) Appointment of Consultants.
c) Pre-Qualification Criteria.
d) NIT / Processing of Tender / Post Tender Negotiations.

e) Reasonableness of Prices / Market Rate Justification.
f) Award of Works and Signing of Contract Agreement.
g) Advance Payment, Bank Guarantee / Performance Bank Guarantee and Insurance.
h) Completion schedule of Contracts.
i) Defect Liability Period Clause.
j) Payment Terms and applicability of Taxes & Duties.
k) Post Contract Management.

Part-II: In this part, common irregularities observed in field / site inspection of following works, with illustration are given:-

1. Electrification Works (External & Internal)
2. Air-Conditioning Works
3. Lifts / Elevators
4. Fire Detection and Fire Fighting systems.

III. **Common Irregularities / Lapses observed in Stores/Purchase Contracts and Guidelines for Improvement in Procurement System**.

Published in Jan 2002, the publication primarily deals with Common Irregularities / Lapses noticed by CTE in Stores/Purchase Contracts. Elaborate guidelines to improve procurement system of organizations have also been enumerated in the publication.

IV. **Shortcomings of General Nature Observed during Intensive Examination of Works/Contracts.**

The publication was brought out in Apr 2004, deals with irregularities observed in Projects, Consultancy, Role of Consultant, Estimates, Award of Work, Post Award activities and Award of Contract Back-to-Back basis etc.

Annexure-1

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 licence, 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 Mobilization & Equipment advance is made as per the provisions in the contract.
4. Recovery of Income 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.

(F.No.006/VGL/29 Dated 1st May 2006)

(g) 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 pleas be noted for strict compliance.

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

(h) 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)

(i) 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 sub-contractors 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 give 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)

21. REPORTS / RETURNS

(a) Intensive Examination Of Supplies Of Engineering Materials To Central Government Organisations

The Central Vigilance Commissioner had desired that this Organisation should conduct Intensive Examinations of supplies of materials and Stores of Engineering materials in Central Government Organisations. For this purpose Quarterly Returns may be sent to this Organisation in the enclosed proforma.

The return should include contracts for the supply of all Civil Engineering items for amounts Rs 15 lakhs and above and Electrical Engineering items for amounts of Rs 1 lakh and above entered during the preceding 12 months. The returns for Civil and Electrical items shall be furnished on separate sheets.

The Returns should be submitted quarterly for the quarters ending March, June, September and December by the 10th of the succeeding month.

The receipt of this circular may please be acknowledged and the Returns for December 1985 may please be sent immediately.

(CVC letter No.1K VGL 1 dated 14th Mar 1986)

(b) Examination Of Works By CTE's Organization In CVC– Role Of CVOs Vis-à-Vis CTEs

The Chief Technical Examiner's Organisation was created in 1957 in the then Ministry of Works, Housing and Supply for looking into the works being executed by the Central Vigilance Commission, the administrative control of this organization was transferred to the Commission on 1.11.1964. The jurisdiction of this organization in co-terminus with that of the Central Vigilance Commission. As such the works of all the Departments of the Government of India and all Union Territories as well as of the Central Public Sector Undertakings under their control can be examined by this organization.

2. Though the CTE's Organisation can examine original repair works of any magnitude, yet considering its own limited resources it generally examines works of a larger size only. For this purpose, all the Chief Vigilance Officers of the Departments of the Government of India, Union Territories, Central Public Sector Undertakings, other autonomous and similar bodies are required to furnish to CVC quarterly returns, as per Commission's letter No 1K VGL 1 dated 22.1.1981 in respect of civil works costing more than Rs 15 lakhs, electrical works costing more than Rs 1 lakh and horticulture works costing more than Rs 25,000 for the quarters ending March, June, September and December by the 15th day of the month following the quarter. The Chief Vigilance Officers should therefore, ensure that such returns are furnished to the CTE's by the stipulated dates. There may be occasions when the Chief Vigilance Officers might come to know, from their own sources, about the alleged serious irregularities committed by certain public servants in the works. They are; therefore, free to recommend to CTE, while submitting the reports, examination of a particular work mainly from a vigilance angle.

3. Out of the returns furnished by the Chief Vigilance Officers, the Chief Technical Examiners select certain works for intensive examination and intimate these to the CVOs concerned for arranging necessary records, such as certified true copies of the contract documents and of latest running account bills paid to the contractors etc. When the programme of actual intensive examination of works is finalized by the CTE, intimation is given by the CTE to the CVO who is expected to make available all relevant documents and such other records as may be necessary, to the CTE's team examining the works.

4. <u>Action to be Taken on CTE's Reports</u>.

4.1 After intensive examination of a work is carried out by the CTE's Organisation, an Inspection Report is sent to the Chief Vigilance Officer. The CVO should obtain comments of various officers at the site of work or in the office at appropriate level, on this inspection note. The comments should include :-

(a) A statement regarding the correctness of facts stated in the report. If some of the facts are not correct, this should be clearly brought out and at the same time the correct facts, if different from the facts mentioned in the report, should also be indicated.

(b) A detailed justification for the acts of commission or omission brought out in the report naïve his own comments on the explanations received from the concerned technical officers.

4.2 Replies to the observations and rejoinders of the CTE organization should be sent promptly as far as possible within three months from the date of dispatch of the Reports/Rejoinder.

4.3 The Chief Vigilance Officers should arrange to have similar and complete examinations done in cases where the examination done by the Chief Technical Examiner's Organisation was only a representative one. He should thereafter act upon the findings of such examination and, where necessary, consult the CTE.

4.4 Arrangements should be made to get the defects, pointed out in the CTE's Report, removed either by the Contractor or otherwise (at the risk and cost of the contractor), wherever feasible.

4.5 Minor irregularities brought out in the report should be got regularized by the competent authority after ascertaining the reasons for the same and after investigating into the bonafides in each case. Appropriate preventive measures may be taken for future and the defaulters suitably warned so that such irregularities do not recur.

4.6 The Chief Vigilance Officers should arrange to have recoveries effected in cases where overpayments are pointed out in the CTE's Report and Recovery Statements should be supported by analysis of the rates at which recoveries have been effected. Such recoveries need not be postponed till the payment of the final bill. In case, there is any difficulty in making recovery of the full amount of over-payment pointed out by the CTE's Organisation, the agreed amount of recovery should, at least, be effected from the next bill paid.

4.7 In cases where the work is treated as sub-standard in the CTE's Report, the sanction of the competent technical authority for accepting such sub-standard works may be obtained, and the rates/payments suitably reduced. Before sanctioning such Reduced Rate Statements, the structural soundness and functional adequacy of the substandard work should be established.

4.8 In respect of the paras which are specifically referred to the CVO by the CTE for investigation from a vigilance angle, the CVOs should treat such a communication as a complaint. For the purpose of Investigation, the CVO should get an independent and reliable Engineer appointed to assist him in identifying and seizing the relevant records, preparing scrutiny notes thereon, fixing responsibilities, drafting Memos, calling for explanations of the indicted officials, and preparing scrutiny notes on the explanations received. Each lapse should be dealt with separately. After investigation, the case should be referred to the Commission for advice, along with a self-contained note and other relevant documents, as per para 5.13, Chapter I of the Vigilance Manual Volume (copy enclosed). Even if the CVO comes to the conclusion that no vigilance angle is involved, the matter has to be referred to the Commission for advice as the complaint has emanated from the Commission itself.

4.9 The CTE might suggest preventive measures in certain areas as a safeguard against malpractices or corrupt practices and to plug loopholes in the procedures, rules, regulations etc. In such cases, the CVO should arrange to have suitable directions issued by the Chief Executive/Head of the Department and furnish copies of such directions to the CTE's Organisation.

4.10 In cases where the Consultants or the contractors or the suppliers have put the Organisation or the Department to a loss or have done grossly sub-standard work for which they have claimed full payment, the CTE will point out the need to take action against such an agency. The CVO should manage to take further action and keep the CTE informed about the action taken.

4.11 If a particular undertaking or the department does not have a Works Manual of its own, the CVO should take steps to have such a Manual prepared expeditiously to bring out clearly the financial powers delegated at various levels and the rules and guidelines for exercising such powers by various officers. Whenever any such Manual is brought out, a copy of the same should be furnished to the CTE's Organisation indicating the date from which the provisions of the Manual will be effective. Until such a Manual is brought out, the Organisation may consider adopting Works Manual of an established Engineering Organisation like the MES, CPWD, and NBCC etc.

4.12 The CVO may consider obtaining assistance of technical officers from the concerned discipline, on a long term or permanent basis, for conducting detailed investigations and follow-up action.

(CVC letter No 7R ORD 37 dated 19th Aug 1987)

(c) Examination Of Works By The CTEs Organization – Raising The Monetary Limit For Reporting The Works In Progress To The Chief Technical Examiners

Please refer to the Commission's O.M. No IK-VGL-1, dated 19.7.1985 requiring submission of quarterly progress reports (QPRs) to the CTE Organisation in respect of civil works costing more than Rs 15 lakhs, Electrical works costing more than Rs 1 lakh & horticulture works costing more than Rs 25,000/-.

2. In view of the rise in the cost of indices for construction of buildings and the related materials, the Commission has been considering to raise the monetary limit of the works to be reported by the Organisations to the CTEs. It has now been decided that henceforth all the Organisations may include only those works in the returns to be submitted to the CTE Organisation, whose accepted tender value exceeds Rs 40 lakhs for civil works, Rs 3 lakhs for Electrical works and Rs 50,000/- for Horticulture works. The works whose accepted/tendered value is less than these limits need not be included in the returns. However, those Organisations who are undertaking such works but the monetary value of all such works is less than the fresh limits prescribed above may report two largest works in progress in each discipline (i.e. Civil, Electrical and Horticulture).

3. While submitting the returns to the CTE Organisation, the following points may be kept in mind:-

(a) The cost of the work relates to the accepted/tendered value of the work and not the estimated cost.

(b) If the work has been entrusted by one Ministry/Deptt/Undertaking of the Central Government to another Ministry/Department/undertaking of the Central Government for execution, it may be included in the return to be submitted by the executing organization.

(c) The return should be submitted only in the prescribed form circulated vide Commission's letter No IK-VGL-1, dated 19.7.85. A copy of the prescribed form is enclosed for ready reference.

(d) The location of the work must be indicate.

(e) Use of abbreviations which are not known to a common man should be avoided.

(f) Mechanical (including air-conditioning), Electronics & Telecommunication engineering works may be treated as `Electrical works' are marine works and other engineering works may be treated as `Civil works' for the purpose of reporting to the CTE Organization.

(g) The purchase of ready-built properties, materials and stores, if not purchased on DGS&D approved rates or at the rates approved by any other Government agency, may also be treated as works for the purpose of inclusion in the Quarterly Progress Reports. However, the cases in which the supplier via a Central Government Deptt or Central Government Undertakings need not be included.

(h) The QPRs of stores being submitted separately as per Commission's letter No IK-VGL-1 dated 14.3.86 may be discontinued.

(i) Some of the Departments have set-up Civil Wings for execution of their civil works. While such Civil Wings submit QPRs with regard to the works being executed by them, the other works being executed through the contractors or any other agency are not being reported to the CTEs. Such works should also be reported to the CTE Organisation by the concerned departments.

(j) All the works undertaken by the Organisations whether in India or outside India should be included in the QPRs.

(k) QPRs should be sent to the CTE Organisation every quarter, even if the information is nil.

(l) All works in progress, contracts awarded, and the works completed during quarter should be included in the QPRs. In respect of works completed during the relevant quarter, the actual date of completion should be indicated.

(m) The QPRs in respect of civil works, Electrical Works & Horticulture works should be submitted on the separate sheet of paper so that it can be detached and given to the concerned TE.

(CVC letter No 9U –ORD-51 dated 24th Sep 1990)

(d) Examination Of Works By CTE's Organization Raising The Monetary Limit For Reporting The Works In Progress To The CTE

REF: - Commission's OM No 98-VGL-25 dated 20-10-98.

In partial modification of office memorandum of even number, dated 20.10.98, para 2 may be read as follows:-

"2. In view of the rise in the cost indices for construction of buildings and the related materials, the Commission has been considering to raise the monetary limit of the works to be reported by the Organisation to the CTEs. It has been decided that henceforth all the organizations may include only those works in the return to be submitted to the CTE's organization whose accepted/tender value exceeds Rs 1 crore for civil works, Rs 15 lakhs for Electrical works and Rs 2 lakhs for Horticulture works. The works whose accepted/tendered value is less than these limits need not be included in the returns. However, those organizations who are undertaking such works but the monetary value of all such works is less than the fresh limits prescribed above may report two largest works in progress in each discipline i.e., Civil, Electrical and Horticulture."

(CVC O.M. No 98-VGL-25 dated 18th Nov 1998)

(e) Examination Of Stores/Purchase Contracts By The CTE's Organization

It is observed by the Commission that many a time the irregularities brought out during the inspection of Chief Technical Examiners' authorized of the Commission have been lost sight of and the same irregularities recurred in the subsequent works also. While reviewing the position it was considered desirable to have a works manual prepared and updated from time to time, suiting the requirement of the individual Organisation. Accordingly, it is advised that all PSUs/Organisations may prepare a works manual, if not done so far, within a time frame of 2-3 months and re[port compliance to the commission.

In continuation of the above referred office memoranda, it has now been decided to examine the stores/purchase contracts entered into by the various Central Government Ministries/Departments, PSUs, Banks and U.Ts in addition to the works contracts being examined hitherto. It is, therefore, requested that all the organizations may forthwith send quarterly statements, with details of contracts valuing above Rs 2 crores in the enclosed proforma. The statements should be furnished by 10th of the

month of the quarter starting from January. The first statement may be sent to the CTE's Organisation by 10th April 1999. The scope of supply contracts (including imports) shall not only mean the value of materials/components but the installation and commissioning charges also, wherever applicable.

(CVC O.M. No 98-VGL-25(i) dated 12th Mar 1999)

(f) Examination of Works By CTE's Organization For Reporting The Works In Progress To The CTE's Organization

Ref: This Organisation Office Memorandum of even number dated 20 Oct 98. Amended vide Office Memorandum dated 18 Nov 98 and 98-VGL-25(I) dated 12 Mar 99.

The revised monetary limits for Civil, Electrical and Horticulture works was intimated vide Office Memorandum under reference. These revised monetary limit fixed was as under:

(a)	Civil Works	- Rs 1.00 Crore
(b)	Electrical Works (This should include Mechanical/ Electronics/Telecommunication and Other allied works).	- Rs 15.00 lakhs.
(c)	Horticulture Works	- Rs 2.00 lakhs

It was also intimated vide office memoranda under reference that there is no need to include the details of works costing less than the monetary limit except for those organization under which cost of all the works is less than the monetary limits. Such organization may furnish the details of two largest works in progress in each discipline. It is observed that certain organizations are including details of works costing less than the monetary limit. The practice shall be stopped immediately and QPR be furnished as per monetary limits mentioned above. `Nil' QPRs are also required to be submitted.

QPRs in respect of Civil and Horticulture works shall be submitted separately in future with a separate forwarding letter to CTE (A) and QPR's pertaining to Electrical/ Mechanical (including air-conditioning/Electronics and telecommunication works) and Stores purchase ;contracts above Rs 2 crores shall be separately addressed to CTE (J), CTEO/CVC for proper monitoring of QPRs.

Extract from Para 5.13 Chapter-I of Vigilance Manual Volume-I

Communications meant for the Commission should ordinarily be sent to the Secretary, CVC by designation. If the communication is of a confidential nature or is in connection with an old reference, this should be addressed to the concerned officer of the Commission by name. While referring cases to the Commission, a self-contained note should be sent to the Commission clearly mentioning the facts of the case and the specific point(s) on which Commission's advice is sought for. The self-contained note is meant to supplement and not to substitute the sending of the files

and records. All relevant documents/files of the case should be sent along with the self-contained note. The note should invariably be accompanied by information relating to the officer involved in the case in the prescribed proforma.

(CVC O.M. No 98-VGL-25 dated 20th Jul 2001)

(g) Intensive Examination Of Works – Regarding

Ref: Commission's letter No. OFF-1-CTE-2 dated 2.11.2001

Please refer to the booklet "Intensive Examination of works (Guidelines)" enclosed with the above referred letter.

As per Chapter-11 of the above booklet, the CVO is to carry out periodical inspection of works with the assistance of his technical staff in line with the CTE's inspection. However, no report in this regard has been received. Now the CVC desires the following in this regard:

a) The CVOs shall conduct inspection of works on the pattern of CTE's Organization periodically.

b) The result of such inspections should be sent to the CTEO along with the Quarterly Progress Reports, in the enclosed Proforma.

c) The works should be inspected before the close of contracts, so that defects, if any, could be got rectified and the recoveries made wherever necessary.

STATEMENT SHOWING THE PERIODICALLY INSPECTION OF WORKS

Name of work	Estimated Cost / Tender Cost	Stipulated date of start	Stipulated date of completion	Name of contractor	Progress at the time of inspection	Date of inspection	Details of serious lapses requiring detailed investigation	Any other comments by CVO
1	2	3	4	5	6	7	8	9

Please also refer:-

(a) **Guidelines on Intensive Examination of Works** .

This publication, published in Nov 2001, draws attention of officials dealing with the works and also the CVO on various finer aspects to be looked into while conducting of Intensive Examination of Works. The publication contains exclusive procedures to be followed right from the selection of the work to its completion and also guidelines to conduct Intensive Examination of the same by CVO in line with CTE's Procedure and submission of relevant reports.

b) **Manual for Intensive Examination of Works/Purchase Contracts for PSUs, Autonomous Bodies, Banks, Insurance Companies and Financial Institutions.**

This publication, published in Jun 2004, facilitates conduct of CTE Type of Inspection by CVOs on CTE pattern is elaborated in the Manual with relevant appendices.

(No.OFF-1-CTE-2 Dated 22nd Oct 2002)

(h) Intensive Examination of works by CTE's Organization- Submission of Quarterly Progress Report

Please refer to the Commission's OM No. 98/VGL/25 dated 20.10.98, 98/VGL/25 dated 20.07.01 and OFF-I-CTE-I(Pt) dated 23.12.03 regarding submission of quarterly progress reports(QPR's) to the CTE's Organization in the prescribed format in respect of Civil Works costing more than Rs. 1.00 crores, Electrical/Mechanical and other Allied works costing more than Rs. 30.00 Lacs , Stores/Purchase contracts costing more than Rs 2.00 crores and Horticulture works costing more than Rs 2.00 Lacs .

2. It is clarified that the consultancy contracts, all service contracts such as hiring/leasing of cycle stands etc., transportation contracts, catering, equipment & supplies of medicines to hospitals etc are also to be reported in the respective QPR.

3. As per above-mentioned office memorandums, all the works above the prescribed limit have to be reflected in the quarterly progress reports. In case of organizations, which are undertaking such works in the areas mentioned above, where the monetary value of all such works is less than the limits prescribed above, they may report two largest works in progress in each discipline. Instances have come to the notice of the Commission, where all the works in progress, were not reflected in the quarterly progress report submitted by the organization. It is enjoined upon all the Chief Vigilance Officers to certify on the QPR that "All the works/purchases/Consultancy and other contracts in progress, as per the prescribed monetary limit, have been reported in this QPR."

4. The above instructions are for strict compliance.

(CVC OM No. 98/VGL/25 dated 16.5.2005)

(i) Intensive Examination Of Works By CTE's Organization Submission Of Quarterly Progress Report

Please refer to Commission's OM No.98-VGL-25 dated 16.5.2005 wherein it was clarified that the consultancy contracts, all service contracts equipment & supplies of medicines to hospitals etc. are to be included in the QPRs being furnished to the CTE's Organisation.

2. It was also enjoined upon all the CVOs to certify on the QPRs that all the works/purchase/consultancy and other contracts in progress as per the prescribed monetary limit have been included in the QPR.

3. It has been observed that many of the QPRs do not contain the consultancy contracts, service contracts and equipment & medicine purchase contracts and also the requisite certificates from the CVOs.

4. It is once again enjoined upon all the CVOs that the QPRs should contain all the ongoing contracts above prescribed financial limit, separately, for the below mentioned categories:-

Civil	Rs.1.00 Crore and above
Elect/Mech. Works	Rs.30 Lakhs & above
Store Purchase	Rs.2 Crore and above
Horticulture	Rs.2 lakhs and above
Medical equipment	Rs.1 Crore & above
Consultancy	2 largest value contracts.
Service contracts	2 largest value contracts
Supplies of medicines	4 largest value contract

5. In case authorized, which are undertaking such works in the areas mentioned above where the monetary value of all such works is less than the limits prescribed above, they may report 2 largest works in progress in each discipline. If the authorized is not undertaking any work under any particular discipline, a 'Nil' report should be furnished.

6. The above instructions are for strict compliance with immediate effect.

(98-VGL-25 Dated 10th Nov 2005)

(j) Deficiencies in QPRs.

From a perusal of the QPRs being received from various organizations, following deficiencies have been observed:

i) QPRs are not being submitted in the prescribed format.
ii) The required certificate from the CVOs that all the qualifying works have been reported is not being given in the QPRs.
iii) Estimated cost/Tendered Value of work is not being indicated in lacs uniformly. For some works in the same QPR, Estimated Cost/Tendered Value is being indicated in Rupees, Lacs and Crores which creates confusion.
iv) QPRs received from various units of the organization are forwarded to CTEO as it is, without scrutiny and compilation by CVOs, in the formats as used by units.
v) In case the work in progress is less than the prescribed value, only two highest value works are to be reported, whereas a number of works below the prescribed value are being reported unnecessarily.
vi) Clear name of works including locations is not being provided in a number of cases.

vii) Full designation and location of the Engineer in charge is not being indicated in the QPRs.

viii) Date of start and date of completion are not being indicated in dd-mm-yy format, rather unwanted information such as number of days allowed to the agency to start the work after issue of LOI etc. are being given.

ix) Against the requirement of indicating the physical progress of the work in % terms, the quantities of various items of work are being given, which are not required.

x) In the column 'Tender Amount', only 'Item Rate' is being mentioned which does not serve the purpose.

Therefore, all CVOs are advised to furnish QPRs with due care keeping in view the deficiencies noted above.

(CVC OM No.98/VGL-25 dated 29 May 2009)

(k) Intensive Examination of CTE – Steps for early finalization of pending vigilance references with CVOs

The Chief Technical Examiner's Organization of the Commission conducts independent technical examination of various types of works/contracts/procurements awarded by the organizations, falling within the jurisdiction of the Commission. After intensive examination of the work is carried out by the CTE's organization, an inspection report is sent to the CVO. The CVO is required to obtain comments of various officers of the organization at appropriate levels and furnish the same to the CTE along with CVOs comments thereon. In cases, wherein the organization is required to investigate and submit a report/reference to the Commission.

2. On a review of the pending CTE paras referred for vigilance investigation to the various CVOs, the Commission observes that a large number of references are pending for submission of reports with the CVOs inordinately. Another factor which contributes to the delay is absence of clarity and also incomplete/inconclusive reports/references made by CVOs. In order to sort out the long pending paras referred for vigilance investigation with the organizations and to appreciate the perceived vigilance angle in such references of CTE, the CVOs of the organizations may consider arranging interactive discussions with the CTE either at Delhi or during the visit of CTE at various stations for guidance in the matter of preparing vigilance investigation reports.

(Circular No 13/6/09 dated 11th Aug 2009)

(l) Guidelines issued by the Central Vigilance Commission for Vigilance Administration - regarding.

The Commission regularly issues guidelines/instructions regarding important policy decisions etc. These guidelines are mainly meant for the Chief Vigilance Officers. However, a number of guidelines relate to tender matters/operational aspects, these should be circulated to all concerned by the CVO. Further, some of the C&MDs/CEOs desire to have all the guidelines/instructions issued by the Commission irrespective of whether they are meant for CVOs only. The Commission

has considered the issue and has decided that all the important communications/Circulars issued by the Commission to the Chief Vigilance Officers should be brought into the notice of C&MDs/CEOs by the Chief Vigilance Officers.

(CVC Office Order No.20/4/05 issued vide letter No.004/VGL/96 dated 4.4.2005)

(m) Issue of internal guidelines/circulars by organizations for vigilance administration.

It has been noted that CVOs of some organizations, based on the discussion held with the Commission or its officers, issue internal guidelines/circulars without waiting for the Commission's written confirmation/minutes of the discussion held during such meetings. Such internal guidelines leave a scope for misquoting the Commission or misinterpreting the advice extended to the CVOs during such discussions and which is most undesirable.

2. All CVOs are, therefore, directed that in future, the internal guidelines regarding vigilance administration, to be issued by the CVOs arising out of any discussion/meeting with the Commission, should be based only on the minutes of such meetings circulated/approved by the Commission or the circulars/guidelines issued by the Commission from time to time.

3. This should be noted for strict compliance in future.

(CVC Office Order No.16/4/08 issued vide letter No.008/VGL/035 dated 28.4.2008)

(n) Design Mix Concrete

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

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

5. The concrete is being declared meeting the acceptance criteria which is not in conformity of codal provisions.

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

(**CVC Circular No.34/10/10 isuued vide letter No 010/VGL/066 Dated 07th Oct. 2010)**