VIGILANCE PERSPECTIVE

NOVEMBER 2011

CORRUPTION LEADS To MISERY

Prosperous Country

- Theft
- Corruption
- Extortion
- Smuggling
- Drug trading
- Theft of property

As one sows so one reaps

By Kalyani Sutar
8th Day of Sr. Sridhara School Khadia
<table>
<thead>
<tr>
<th>Sl.no.</th>
<th>Contents</th>
<th>Page no.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Prologue</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>Stay steadfast in the path of Dharma</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>Ethics &amp; Governance – A Perspective - Mrs.Ranjana Kumar, ex-Vigilance Commissioner</td>
<td>5-7</td>
</tr>
<tr>
<td>4</td>
<td>Corruption and Development</td>
<td>8-17</td>
</tr>
<tr>
<td>5</td>
<td>Vigilance Management and Public Sector Units</td>
<td>18-26</td>
</tr>
<tr>
<td>6</td>
<td>What is Integrity Pact?</td>
<td>27-28</td>
</tr>
<tr>
<td>7</td>
<td>Integrity Pact – Governance in Public procurement &amp; contracting</td>
<td>29-60</td>
</tr>
<tr>
<td>8</td>
<td>Case studies based on excerpts of “Preventive Vigilance in Public Procurement : Study based on power sector” published by CVC</td>
<td>61-100</td>
</tr>
<tr>
<td>9</td>
<td>Report on Vigilance Awareness Week - 2010</td>
<td>101-102</td>
</tr>
<tr>
<td>10</td>
<td>Prize winning slogans</td>
<td>103-105</td>
</tr>
<tr>
<td>11</td>
<td>Pamphlets distributed in villages around NCL</td>
<td>106</td>
</tr>
<tr>
<td>12</td>
<td>“Glimpses of Corruption”–an exhibition of painting by children</td>
<td>107</td>
</tr>
<tr>
<td>13</td>
<td>Preventive Circulars</td>
<td>108-110</td>
</tr>
</tbody>
</table>
Prologue

It gives me immense pleasure to state that in an attempt to inculcate a spirit of Vigilance Awareness amongst the employees of NCL, an effort has been made by the Vigilance Deptt. of NCL to publish a magazine named “Vigilance Perspective” for creating awareness.

The contents of this issue have been selected with the perceived need to promote vigilance awareness/consciousness amongst the employees of NCL.

Handling of contracts and public procurement of goods and services are generally perceived to be corruption prone areas. Considering the requirement of making public procurement efficient, transparent & equitable, CVC’s study based on power sector have been made a part of this publication.

The activities of the Vigilance Awareness Week 2010 has also been included in the magazine for letting NCL officials to know about the programmes that had been done for creating awareness.

The theme of Vigilance Awareness Week 2011 is “Participative Vigilance” as directed by CVC. Accordingly topics have been covered in the magazine.

(A K Sharma)
Chief Vigilance Officer/NCL
Once there was a king. He was a strong spiritualist, a dharmik. Whatever he said he did and whatever he did he said. One day the king declared that he would buy anything that remained unsold in the village market. People flocked to the market.

A sculptor brought an idol of the goddess Alaksmi, which negates wealth. Who would want to keep an idol Alaksmi in their house? Nobody bought it. In the evening the sculptor came to the king and said: "Please take this idol and be true to your words." The king bought it.

Alaksmi entered the palace. At midnight the king heard a woman weeping. He approached her, asking, "Mother, why are you weeping? What is the matter"? "I am the goddess of wealth, Rajyalaksmi", she replied. "Now that Alaksmi has entered the palace, how can I live here?" The king said, "Very well, for the protection of dharma I have to keep Alaksmi here. If you do not want to live here, you may go". So the goddess of wealth left.

After some time the Raja heard the sound of footsteps. He saw a man and asked, "Who are you?" The reply was: "I am Narayana." The king asked: "Where are you going?" Narayana replied: "Laksmi has left the palace, so I shall not live here." The king said, "To protect dharma, I have to keep Alaksmi, and so if you want to leave the palace, you may go; what can I do?" Narayana left. After that all the gods and goddesses left the palace. The king said, "If you all so desire you may go". In the end a glorious personality appeared. "Who are you?" asked the king. The reply was "I am dharma raja, the king of dharma. As all the other gods and goddesses have left the palace, I am also leaving." The king replied, "It cannot be. To protect dharma I kept Alaksmi. Oh Dharmaraj, how can you leave me?" Dharma Raja said, "You are right. I will not leave."

Since Dharma remained there, Narayana slowly entered through the back door. The king said to him, "If you wish you may come." Laksmi followed him, covering her face, because she did not dare to show her face to the king. Then all the gods and goddesses started entering. They said "Where there is dharma, where there is Narayana and Laksmi, we shall also go and remain."

Dharmabal is the biggest force. For those who have such a force, the worldly force is meaningless. You were with Dharma, you are with Dharma and you will be with Dharma. Don’t fear anybody. We should move on the path of Dharma even if Lakshmi leaves. Those who oppose Dharma will be destroyed.  

"Cause and effect, means and ends, seed and fruit cannot be severed, for the effect already blooms in the cause, the end pre-exists in the means, the fruit in the seed."- John Powell
Ethics & Governance – A Perspective

It is a well known fact that management plays a vital role in shaping the future of any organization as the optimum utilization of all resources hinges upon the efficacy of the management. The core of a successful management lies in its Clarity of Vision, Plan of Action and more importantly Execution of the Plan of Action – the real gamut of operations as it were, and it is here that the importance of Corporate Governance and Ethics comes into being. Our Hon’ble Prime Minister, Dr. Manmohan Singh has said that whereas our policies and systems are good but the implementation needs much to be desired. Organizations are managed by Policies, Guidelines and Systems. These are dynamic instruments, and therefore need to be reviewed from time to time to gauge their efficacy to the said organization. This review is all the more necessary when a lapse or an untoward incident takes place. It could happen that the review undertaken reveals that the said policy is very much sound and in place, however over a period of time wrong practices have come into being, and which are the reasons for the problems that have occurred, therefore corrective steps need to be taken forthwith.

A review could also reveal that the problems have occurred in spite of the policy in place, and which means that the policies would need to be modified or amended as the case may be in the best interest of the organization. Normally, decisions are being taken within the framework of the policies and guidelines in place. Now, there could be critical situations wherein the policy in question would need to be slightly deviated from, in order to take the right decision, in the best interests of the organization. In such situations, a very clear and precise note should be brought out giving the reasons which necessitated the said deviation from the policy. The said note should also contain the implications to the organization if the decision was not taken. This would serve as a very Transparent and an Objective analysis, bringing out the need for deviation from the policy on this “case specific” issue, whereas the said policy in principle would continue on an asis where is basis.

Experience has taught us that it is the Economic Downturn, as we witness world wide today, rather than Up Swing, which raises sharp focus on issues relating to Ethics & Corporate Governance.

The two Major Reasons for Corporate failures have been “Greed” and “Excess Leverage”. The moot point is whether these two need to be completely done away with? If so, what is the Incentive for Aggressive growth and competition? If not, how are these to be kept within controllable limits and yet higher growth achieved? It is here that Business Ethics & Corporate Governance need to be focused on.

Whether it was abroad in the U.S. earlier, or more recent, and nearer home, it is seen that a “slip” in Corporate Governance is always initiated by the Promoters themselves.

Independent Directors are expected to be “Watch Dogs”. They can at best be accused either of ‘Lack of application of mind’ or of, consciously or otherwise overlooking the “slip” that has taken place. But not necessarily initiating the actual wrong doing, conspiracy, collusion or fraud as such. It has to be understood that they, the Independent Directors, cannot work as investigators as they are very much part of the decision making process in the Company.

The first sign of corruption in a society that is still alive is that the end justifies the means - Georges Bernanos
Having said this, Each Member of the Board has a Key Role to play and an Important/Sacred Responsibility to deliver, and therefore they need not get unduly overawed or paranoid by size of the Company or any extraneous situation that they are faced with. They need to bring their Special Expertise and Experience on Corporate issues to the Board, and always, to keep ”Broad Stakeholder Interest” in mind.

They need to Set & Follow Policies pertaining to ”Conflict of Interest“. All Directors must therefore be “above Board”.

They would be required to diligently & keenly watch the changes in Assets & Liabilities in the Balance Sheet, to ensure quick corrective action if needed.

The Board Agenda should be circulated well in time. Though this may appear to be an elementary and fundamental requirement, it is very significant, the Directors of the Board must have “sufficient time” to go through the papers and to apply their mind, and come duly prepared to the Board Meeting. The various issues deliberated upon, queries raised, clarifications given must be precisely minuted in a chronological manner.

Table Agenda to be only taken up on emergent issues and not be made into a routine affair. There must be adequate time for discussion of the Table Agenda to ensure an indepth deliberation. So also for an agenda put up for Ratification to the Board. This also needs proper understanding and also as to why the decision needed to be taken by the company. Questions to be raised when in Doubt by the Independent Directors.

It is extremely important to ensure Auditor Independence. The Audit firm assigned to the company should fulfill its mission in a Competent & Independent manner. Further, Effectiveness of Audit Committee of the Board is of Paramount Importance. It should exhibit the same in its functioning and should properly guide the Board.

It is vital that the Independent Directors understand the Impact and Consequences of the proposals they are clearing in the Board Meetings. They should not forget that they would be held responsible were things to go wrong and they should also remember that they have a right under the Company Law to put up a note of dissent (of course for valid reasons) as per their own judgment. This does not mean that a ‘Confrontation’ is created between the Promoters and the Directors. Infact, both should clearly put forth their point of view backed by facts and supportive data. They need to deal with adequate Patience. After all, the Promoters have got the Independent Directors on Board to ‘add value’ and to contribute with their distinct individual expertise and experience.

The goals of the Promoters and Directors being the ”Long Term Sustainable Well Being” of the Company, why should there be friction of any kind? Of late, since January 2009, we have been hearing that some Independent Directors have chosen to resign. This is certainly not a healthy trend and should be discouraged.

I either want less corruption, or more chance to participate in it. - Ashleigh Brilliant
Finally, Board Members must embrace Corporate Ethics by creating a climate of Integrity and Responsibility within the company, expressed in both the written code and by living example i.e. both Directors & Promoters need to come together to Build a strong Ethical Culture for the Company, that would ensure Correct Behaviour/ the Right Behaviour, when policies are either unwritten, unclear or are unenforced.

“Ethics & Corporate Governance” are not just Moral or Compliance Issues. In the long term they are Essential Behavioural Traits for the Organisation, that strengthen the Organisation’s “Brand Equity” and help ensure Stable Sustainable Growth.

Finally, the world over people have been talking about “Self Regulation” being an Integral part of Corporate Governance stating that it has to come from within. But of late, experience has shown that this has not really worked, so people are now talking of Rule Based Regulations i.e. need to be more specific, where Dos & Don’ts are specified. Which of the two should we follow? Well it is for the individual company to decide.

SD/-
(RANJANA KUMAR)
Ex- VIGILANCE COMMISSIONER

-----------------------------------------------------------------------------------------------

Among a people generally corrupt liberty cannot long exist. - Edmund Burke
CORRUPTION AND DEVELOPMENT

Effects of Corruption on Development

There is a dichotomous view about the desirability of corruption. Some are of the considered view that when a government takes an erroneous decision, corruption opens up a better option and is more desirable than an anomalous situation/decision. As Nathaniel H. Leff (1964, P.11) has observed, “If the government has erred in its decision, the course made possible by corruption may well be the better one.” Noted development theorist Samuel P. Huntington (1968, P. 386) has opined that a rigid, over-centralized, honest bureaucracy is worse than a society with a rigid, over-centralized, dishonest bureaucracy. As Samuel P. Huntington (1968, P. 386) states it bluntly: “In terms of economic growth, the only thing worse than a society with a rigid, over-centralized, dishonest bureaucracy is one with a rigid, over-centralized, honest bureaucracy”. Believers in this school of thought argue that in the when there is a bargain between a bureaucrat who vends property rights to a public resource in the form of issuing permits and licences

As per Coasean bargaining process a bureaucrat (who is in the illicit business of selling property rights to a public resource in the form of issuing permits and licences) and the private agent (the prospective buyer) may negotiate their way to an efficient outcome.

As for speed money, Gunnar Myrdal (1968), citing the 1964 Santhanam committee on the Prevention of Corruption appointed by the Government of India, has argued that corrupt officials may, instead of speeding up, actually cause administrative delays in order to attract more bribes. In Russian, mzdoinstvo implies taking a remuneration to do what you are supposed to do anyway, and Likhoimstvo, taking a remuneration for what you are not supposed to do.

In his heydays it was said that General Noriega of Panama could not bought, he could only be rented. Of course, the bribee may have to worry about his reputation in the long run about keeping promises but many corrupt politicians have too short a time horizon, or sometimes the briber can hire hoodlums to discipline the bribee (but the transaction costs for such ways of enforcement can be high).

It is usually suggested that the regulatory state is at the root of the inefficiency due to corruption spawned by the regulations. A weak central government wit its inability to stop the setting up of independent corruption rackets (a kind of economic warlordism) makes the problem of inefficiency quite acute.

In Indonesia, corruption is more centralized and somewhat more predictable, Whereas in India it is a more fragmented, often anarchic, system of bribery.

Centralisation of the political machine also makes it possible to have a system approximating “Lump-sum” corruption without distorting too many decisions at the margin. In counties like Korea corruption is in form of large lump sum contributions by major business houses in the form of “slush funds”, without taxing economic activities at the margin.

‘Behind every fortune there is a crime’- Honore de Balzac
This ability to credibly commit is a feature of “strong” states that very few developing countries have.

The idea of the differential efficiency effects of centralized versus decentralized corruption is akin to Olson’s (1993) idea of smaller distortionary effects of tax impositions of the states as a “stationary bandit” as opposed to that of a “roving bandit.”

“One may however, point out that even centralized corruption is more distortionary than taxation (not to speak of the extra burden of taxes that public revenue losses from corruption may necessitate).

Efforts to avoid detection and punishment cause corruption to be more distortionary than taxation. Because secret payment by foreign companies, also tend to be accumulated and spent not inside the country but abroad.

**Bribes relative to rent**

What is the relationship between the bribe given and the rent sought/procured by the rent seeker/briber? Despite the dynamic moves and counter moves by the contending rent seekers as well as costs and risks the rent seekers have to face, astonishingly there is the incredibly trifling amount / small size of the bribe as compared to the rent collected which goes by the name of “Tullock paradox.”

Only when wealth-maximizing legislators can enforce agreements with one another, solving a “Prisoner’s dilemma” problem, will they come close to collecting the full benefits of the statutes they pass. According to Rasmusen and Ramsayer, a democratic government may sell a private-interest statute at below cost when the autocratic government would not.

**The Growth Process:**

Corruption has its adverse effects not just on static efficiency but also on investment and growth.

In the taxation system of many countries, negative profits (losses) can be deducted from taxable investment income, but there is no corresponding loss offset in the case of bribes, so that the later are particularly harmful for risk-taking in the context of innovation.

Similarly, when public resources meant for building productivity-enhancing infrastructure are diverted for politicians’ private consumption (cements for public roads or dams used for luxury homes), growth rates obviously will be affected adversely.

Higher bribes imply declining profitability on productive investments relative to rent seeking investments, thus tending to crowd out the former.

Paolo Mauro (1995) finds a significant negative association between the corruption index and the investment rate or the rate of growth (even after

Power does not corrupt men; fools, however, if they get into a position of power, corrupt power--George Bernard Shaw
controlling for some other determinants of the latter, and correcting for a possible endogeneity bias in the data). A one standard deviation improvement in the corruption index is estimated to be associated with an increase in the investment rate by about 3 percent of GDP.

Without denying the positive role that corruption may have played in history in some situations, in many developing countries today, however, corruption is perceived to be so pervasive and endemic that it is unlikely to have good net effects, on grounds that we have discussed earlier in this section and because corruption tends to feed on itself (as we shall discuss in the next section) and it is impossible to confine corruption to areas, if any, of relative beneficial effects.

What about the effects of the growth process on the extent of corruption?

Although the requisite time series evidence in terms of hard data is absent, circumstantial evidence suggests that over the last 100 years or so corruption has generally declined with economic growth in most rich countries (and in some developing countries, like Singapore, it is reported to have declined quite fast in recent decades).

As the economy expands and becomes more complex, public officials see more opportunities for making money from their decisions, which now go beyond simple functions like maintaining law and order and collecting land revenue.

Monopoly rights and franchises. In the process of transition from controlled to market economy in Eastern Europe, China and Vietnam it has often been observed that there are some special factors increasing corruption even as income grows. For a considerable period of time the transition economy is on a dual track system: a part of output is still under obligatory delivery at controlled prices, while the rest is allowed to be sold at market prices. This is what Fred Riggs in his treatise on “Prismatic Society” calls the “bazaar-canteen” model, where concurrently, there is co-existence of market economics as well as public subsidy dispensed by the government. The dual track system i.e obligatory delivery at controlled prices as well as free interplay of demand and supply in the market place create all kind of new opportunities for corruption.

The process of privatization of state-owned enterprises in many countries has also given rise to opportunities for public officials to get kickbacks from “crony capitalist” buyers of those enterprises and contractors.

Yet, it is probably correct to say that the process of economic growth ultimately generates enough forces to reduce corruption. Rewards to entrepreneurship and productive investment relative to rent-seeking investment rise when there is sustained growth. A prospering economy can also afford to pay its civil servants well, reducing their motivation for corruption. And to the extent prosperity in the long run brings more demand, at least on the part of the middle classes, for democratic reforms, the latter may install institutions that check corruption.

There is no odor so bad as that which arises from goodness tainted- Henry David Thoreau
Democratic institutions build mechanisms of accountability and transparency at different levels which make it difficult for the networks of corruption to be sustained for long.

Thus while rich democracies have been quite successful in better enforcement of laws, they have been in some cases less successful in reducing the influence of money on the process of enactment of those laws.

Factors Behind Differential Incidence and Persistence of Corruption

It is the regulatory state with its elaborate system of permits and licences that spawns corruption, and different countries with different degrees of insertion of the regulatory state in the economy give rise to varying amounts of corruption.

Popular among sociologists, is that social norms are very different in different countries. What is regarded in one culture as corrupt may be considered a part of routine transaction in another.

It is widely recognized that in developing countries gift-exchange is a major social norm in business transactions and allegiance to kinship-based or clan based loyalties often takes precedence over public duties even for salaried public officials. Under such circumstances use of public resources to cater to particularistic loyalties become quite common and routinely expected. At the same time, it will be wrong to suggest that concern about public corruption is peculiarly Western. In most of the same developing countries, public opinion polls indicate that corruption is usually at the top of the list of problems cited by respondents.

Edward C Banfield (1958) comments on the prevalence of what he calls "amoral familism" in the Mezzogiorno in Italy, but Robert Putnam (1993) observes in his study of comparative civicness in the regions of Italy that the amoral individuals in the less civic regions clamor most for sterner law enforcement.

A country has more corruption because its norms are more favourable to corruption.

The basic idea is that corruption represents an example of what are called "frequency-dependent equilibria" and our expected gain from corruption depends crucially on the number of other people we expect to be corrupt.

Prepare the graph linking frequency of honest officials and the incidence of corruption.

The curves M and N represent the marginal benefit for a corrupt and an honest official respectively for all different allocations of the remaining officials in the two categories. The way the curve N is drawn, the benefit of an honest official is higher than that of a corrupt official when very few officials are corrupt, but it declines as the proportion of corrupt officials increases and ultimately becomes even negative when almost all others are corrupt. The M curve goes up at the beginning when more and more officials are corrupt (for the marginal corrupt).

The sun shineth upon the dunghill, and is not corrupted- John Lyly
officials lower reputation loss when detected, lower chance of detection, lower search cost in finding a briber, etc.), but ultimately declines (when the size of bribe is bid down by too many competing bribers for example), even though at the end-point the pay-off for a corrupt official remains positive.

At point A all are honest and it does not pay to be corrupt. At C all are corrupt, and it does not pay to be honest. At B, any given official is indifferent (between being corrupt and honest) but if only one more official is corrupt it pays to become corrupt; on the other hand, if one fewer is corrupt, the marginal official will choose to be honest. So initial conditions are important: if the economy starts with (or gets jolted into) a high average level of corruption it will move toward the high corruption stable equilibrium C; if the initial average corruption is low, the economy gravitates toward the honest equilibrium A. The diagram illustrates in an elementary way how two otherwise similar countries (both in socio-economic structures and in moral attitudes) may end up with two very different equilibrium levels of corruption; also, how small changes may have a large impact on corruption if one starts out at points close to B.

This implies that if the frequency of honest officials increases, there will be an inevitable tendency amongst others in the company, to gravitate towards honesty. As a corollary, it can be said that if there is high frequency of top-level officials of a company being corrupt, there will be a high tolerance of corruption leading thereby to increase in the number of corrupt people in the organisation.

Olivier Cadot (1987) has a model of “corruption as a gamble”, where every time an official asks for a bribe in a bilateral situation, there is a risk of being reported to and sacked by a superior officer. The optimal Nash strategy of a corrupt official is derived under alternative assumptions about the information structure. The comparative-static results show that a higher time discount rate, a lower degree of risk-aversion, and a lower wage rate will induce him, under certain conditions, to be more corrupt. Then Cadot goes on to introduce corruption also at the level of the superior officer who can be bribed (beyond a certain threshold) to cover up lower level corruption. The interaction of corruption at different hierarchical levels of administration leads to “multiple equilibria” (one with only “petty corruption” and the other with more “pervasive corruption”), as the probability of being sacked diminishes with the general level of corruption in the civil service, and corruption at each level feeds on the other.

There are extra social costs when there is a hierarchical structure such that a lowly customs official is obliged to pay a part of his take of bribes to a superior.

Andvig and Karl. O. Moene (1990) in their model assume, as in Cadot (1987), that the expected punishment for corruption when detected declines as more officials become corrupt, because it is cheaper to be discovered by a corrupt rather than a non-corrupt superior. There is a “bell-shaped frequency distribution of officials” with respect to their costs of supplying corrupt services. On the demand

That which is won ill, will never wear well, for there is a curse attends it which will waste it. The same corrupt dispositions which incline men to sinful ways of getting, will incline them to the like sinful ways of spending—M. Henry
side the potential bribers’ demand for corrupt services decreases as the bribe size increases and as the fraction of officials who are corrupt decreases (raising the search cost for a potential bribe). This model generates two stable stationary equilibria of the Nash type and highlights how the profitability of corruption is positively related to its frequency and how temporary shifts may lead to permanent changes in corruption.

The bureaucrats and citizens both start off with a subjective probability distribution which tells them how likely it is that the agent they will meet in a transaction is corrupt. Corrupt (noncorrupt) agents would prefer meeting agents on the other side of the transaction who are similarly corrupt (noncorrupt). For each corrupt agent they meet, they will revise upwards their subjective probability estimates of meeting corrupt people, and are more likely to initiate a corrupt act in the next period. This is how beliefs about the nature of an economic environment one faces formed on the basis of one’s past experience of dealing with that environment feeds into the perpetuation of a culture of corruption.

Sah’s model admits the possibility that sometimes there may be discrepancies between beliefs about corruption frequency and its actual incidence.

Oldenbug makes a valid point that the middlemen in general have a vested interest in spreading (dis) information that “nothing gets done without bribing the Officials”, and when everybody believes that, it may even have the effect of inducing an official to indulge in corruption as he is assumed to be corrupt anyway. This is a familiar “self-fulfilling equilibrium of corruption”.

The middleman’s role in corruption is akin to what Dieogo Gambetta 91988,p.173) observes in the study of Italian Mafia: “The Mafioso himself has an interest in regulated injections of distrust into the market to increase the demand for the product he sells – that is, protection”.

The persistence of corruption in a society may be explained partly by the bad collective reputation of previous generations; younger generations may inherit the reputation of their elders with the consequence that they may have no incentive to be honest themselves. This means, if for some temporary reasons say due to a war or some other disruption in the economic system corruption in an economy increases, it has lasting effects: collective reputation once shattered is difficult to rebuild. Similarly a one–shot reduction in corruption (through, say, an anti corruption campaign) may have no lasting effect: it may take a minimum number of periods without corruption to return to a path leading to the low-corruption steady state.

Corruption has to do with frequency-dependent equilibria or intertemporal externalities.

There are many cases where corruption is mutually beneficial between the official and his client, so neither the briber nor the bribee has an incentive to report or protest, for example, when a customs officer lets contraband through, or a tax auditor purposely overlooks a case of tax evasion, and so on.

Every clique is a refuge for incompetence. It fosters CORRUPTION and disloyalty, it begets cowardice, and consequently is a burden upon and a drawback to the progress of the country. Its instincts and actions are those of the pack- Madame Chiang Kai-Shek
Shleifer and Vishny (1993) call it “corruption with theft” (a better name may be “collusive corruption”), to distinguish it from case where the official does not hide the transaction in which the client pays the requisite price, fee, or fine to the government, but only charges something extra for himself, what Shleifer and Vishny call corruption without theft. The former type is more insidious, difficult to detect and therefore more persistent. One should add that this type also includes many cases of official relaxation of quality control standards, in inspection of safety in construction of buildings and bridges or in supplies of food and drugs, in pollution control etc.

Policy Issues:
The “moralists” emphasize that without fundamental changes in values and norms of honesty in public life a kind of ethic cleansing through active moral reform campaigns – no big dent in the corrosive effects of corruption is likely to be achieved. The “fatalists” are more cynical, that we have reached a point of no return in many developing countries, the corruption is so pervasive and well entrenched that for all practical purposes nothing much can be done about it.

Without minimizing the importance of moral exhortations in anti-corruption campaigns, our focus here will be on incentive structures that may induce even opportunities to forego corrupt practices and the general problems and prospects of implementing them.

Regulations and bureaucratic allocation of scarce public resources breed corruption, and so the immediate task is to get rid of them. In some sense the simplest and the most radical way of eliminating corruption is to legalize the activity that was formerly prohibited or controlled.

Sometimes, however, turning over a government agency’s functions to the market implies essentially a shift from a public monopoly to a private monopoly, with a corresponding transfer of the rent, but without much of an improvement in allocation efficiency (except that due to a removal of the distortion caused by secrecy discussed in Section-II.

In general the literature on corruption often overlooks the distributional implications of corruption (apart from noting that the poor do not have the resources or the “connections” to be able to bribe their way through).

One way of reducing bureaucratic corruption is to reduce the monopoly power of the bureaucrat when a client faces her in trying to get a license or some subsidy or transfer. Rose – Ackerman (1978) has suggested that, instead of giving each official a clearly defined sphere of influence over which she has monopoly control, officials should be given competing jurisdictions so that a client who is not well – served by one official can go to another. When collusion among several officials is difficult, competition will tend to drive the level of bribes to zero.

Also, in cases of what Shleifer and Vishny (1993) call corruption with theft, competitive pressure might increase theft from the government (including relaxation of minimum quality standards) at the same time as it reduces bribes. So in such cases, competition in the provision of government services has to be accompanied by more intensive monitoring and auditing to prevent theft. Rose-Ackerman (1994) has suggested that multiple officials with overlapping jurisdictions

Absolute faith corrupts as absolutely as absolute power- Eric Hoffer
may also help in such cases because the potential briber has to face the prospect of persuading all the officials involved, which raised costs and uncertainty for the corrupt project. (It has been reported that in the United States the overlapping involvement of local, state, and federal agencies in controlling illegal drugs has reduced police corruption.)

In case of legitimate business projects, however, this raised the multiple veto power problem discussed in Section II. On the bribe-givers’ side it should be noted that when competition among the foreign contractors is intense, very few governments of industrially advanced countries discourage the bribing of officials in the purchasing countries (in fact tax – deductibility of bribes by the companies often makes the tax – payers complicit in the payment of such bribes). Even the exceptional case of the US where there is 1977 Foreign Corrupt Practices Act forbidding American companies from making payments to foreign officials, what are described as “grease payments” to speed up transactions are not ruled out. (In fact, the 1988 amendments to the Act expand the range of such payments allowed).

Many countries launch periodic “spring – cleaning” through anticorruption campaigns. As suggested by the frequency-dependent equilibrium models, a critical mass of opportunist individuals have to be convinced over a long enough period that corruption is not cost effective. But as has happened many times in the recent history of Africa or China, anticorruption campaigns are usually ad hoc, and targeted at political enemies or at best at small fry, exempting the big fish, or the important cronies and accomplices of the political rulers.

As we have discussed in connection with Tirole’s (1996) intertemporal collective reputation model, trust takes several periods to reestablish itself. What is important is to institutionalise various kinds of accountability mechanisms like:

- Independent office of public auditing,
- an election commission to limit and enforce rules on campaign contributions in democratic elections,
- independent investigating agencies
- an office of local ombudsman with some control over the bureaucracy,
- citizens’ watchdog committees providing information and monitoring services and pursuing public-interest litigation. For the watchdog committees it is important not merely to unearth and publicize egregious cases of public corruption, but also to highlight credible cases where the automatic and cynical presumption of the local people that the officials are corrupt turns out to be gross exaggerations, thus cutting down the feedback effects of rumors and designs of middlemen.
- a vigorous and independent, even muckraking, press,
- less stringent libel laws or laws protecting official secrecy, etc.
- Cutting down on the proliferating functions of government departments.
• Well established procedures of encouraging “whistle – blowers” and guaranteeing their anonymity;

• authorization of periodic probing of ostensible but “unexplainable assets” of officials;

• Well – defined career paths in civil service that are not dependent on the incumbent politicians’ favors;

• Periodic job rotation so that a bureaucrat does not become too cosy with a customer over a long period. The practice of frequent job rotation may provide an incentive to officials for maximum loot in the shortest possible time, discouragement.

• a more elaborate codification of civil service rules reducing THE OFFICIAL’S discretion in granting favors and so on. Too many rules rather than discretion may have the perverse effect of providing opportunities for corruption simply to circumvent mindless inflexibilities.

Incentive Payments for Civil Servants

Incentive pay structure Yang-lien yin (money to nourish honesty)

Klitgaard(1988, p.81) cites a quote from the historian Macaulay’s account of Robert Clive’s attempt to reduce the corruption rampant in 1765: “Clive saw clearly that it was absurd to give men power, and to require them to live in penury. He justly concluded that no reform could be effectual which should not be coupled with a plan for liberally remunerating the civil servants of the Company”.

Current reforms in tax enforcement in many countries, which include a onus to the tax officer based on the amount of taxes he or she collects, have often been associated with significant improvements in tax compliance (see, for example, Dilip Mookerjee 1995). In some cases (like in Singapore) a wage premium above private sectors salaries has been found useful, consistent with the efficiency wage theory. The potential cost of job loss (including the wage premium and seniority benefits) on detection may stifle official resistance to temptation for corruption.

While deregulation reduces opportunities for corruption, another part of the same policy package aimed at drastic reductions of public spending may result in lower real wages for civil servants increasing their motivation for corruption. One should also keep in mind that when today’s rich countries had beaten the worst of corruption in their history, the average salary of an official was many times that of what obtains in most poor countries.

We shall now discuss the compensation policy for corruptible enforcers of a regulation when the latter has a valued social purpose. Let us take, for example, the case of public inspectors charged with monitoring pollution from factory. We shall follow the theoretical Model of Mookherjee and I.P.L. Png (1995) to understand the nature of the tradeoff among corruption, pollution, and enforcement effort and

Absolute faith corrupts as absolutely as absolute power- Eric Hoffer
consider the consequences of strategic interaction between the polluting factory and the corruptible inspector.

Mookherjee and Png show that it takes a sufficiently large, discrete, increase in the reward or the penalty to eliminate corruption (when the inspectors demand for bribe rises beyond the factory’s willingness to pay). One way to reduce the bribe, however, is to raise $q$, the penalty on the bribe-giver (making bribing more costly for him), while reducing the penalty $P$ for the bribe taker (so that he later does not demand a larger bribe): this contrasts with the typical practice of punishing bribe-givers less severely than bribe-takers.

The analysis also suggests that the reward system should be more geared to the incidence of the primary harm. We have noted in Section III that political competition can reduce corruption (unless the transaction costs in the political market, in the form say, of campaign finances, are too large) but what is particularly important in deciding the economic consequences of corruption is the extent of centralization in the rent-collection machinery. Weak and fragmented governments (even under authoritarian rulers) with rampant economic warlords can let loose a regime of decentralized looting that is particularly harmful for static and dynamic efficiency.

Some African states in recent history became predatory in their rent extraction not because they were strong, but because they were weak; the state could not enforce the laws and property rights that provide the minimum underpinnings of a market economy and thus lost respect; disrespect quickly led to disloyalty and thievery among public officials. The strong states of East Asia with their centralized rent-collection machinery and their dense “encompassing” network with business interests stand in sharp contrast, even though by some measures corruption has been quiet substantial.

The ability to pre-commit credibly may have been an important feature of the “strength” of such states. This is not to deny that getting rid of many of the dysfunctional regulations remains a major first step in anti-corruption policy, whatever the nature of the state. It is imperative to institutionalize the various kind of accountability mechanisms at different levels of the government

***

It is impossible to calculate the moral mischief, if I may so express it, that mental lying has produced in society. When a man has so far corrupted and prostituted the chastity of his mind as to subscribe his professional belief to things he does not believe he has prepared himself for the commission of every other crime. ~Thomas Paine, The Age of Reason
VIGILANCE MANAGEMENT AND PUBLIC SECTOR UNITS

Naveen Rai, Sr.Manager(Mining), Vigilance Department, NCL

Abstract

This paper mainly aims to highlight the evolution of administration of Prevention of Corruption in India and of Central Vigilance Commission. This paper also tries to bring out why Vigilance administration is needed in Public Sector Units, what are the objectives of Vigilance. This paper also attempts to show common irregularities/malpractices/points and places of corruption. Lastly paper tries to highlight the importance of Preventive Vigilance in Vigilance administration along with do’s and don’ts.

A. A historical note on evolution of Vigilance - In 1962, the Central Government appointed the “Santhanam Committee” on prevention of corruption in administration to go deeply into the subject and submit its recommendations. It was due to this committee recommendations that the law relating to corruption was tightened, resulting in the enactment of the Prevention of Corruption Act 1988. The Central Vigilance Commission, which is the apex agency to deal with cases of corruption amongst Central Government employees and employees of Central organizations, such as PSU’s, banks and autonomous bodies with central funding, was set up on the recommendations of Santhanam Committee, by the Ministry of Home affairs resolution no.27/4/64 – AVD dated 11/02/1964. The vigilance functioning under the Central Government have been greatly streamlined after constitution of the CVC.

The existing organization responsible for implementation of anti corruption measures in the central government and maintenance of integrity in the services are:

- Administrative Vigilance Division in the Ministry of Personnel, Public Grievances, Training and administrative Reforms.
- Vigilances units in the Administrative Ministries/departments and their attached/subordinate offices, public sector undertakings, nationalized banks, insurance companies and other autonomous bodies.
- Central Bureau of Investigation
- Central Vigilance Commission

After CVC came into existence, most of the functions of Administrative Vigilance Division are now exercised by CVC. The Vigilance Manual compiled by the CVC is considered to be the key reference document on vigilance matters. This being the basic guide to the CVO’s, containing Government decisions/instructions on matters concerning vigilance administration, important provisions thereof are mentioned hereunder.

It takes two to lie. One to lie and one to listen. ~"Homer Simpson," from the television show The Simpsons
Under the terms of the Ministry of Home Affairs Resolution, the Commission has jurisdiction and powers in respect of matters to which the executive power of the Union extends. It can undertake or have an inquiry made into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner or into any complaint that a public servant had exercised or refrained from exercising his powers with an improper or corrupt motive or into complaint of misconduct or lack of integrity or of any malpractice or misdemeanor on the part of a public servant. In any case, where it appears after a preliminary inquiry, that a public servant had acted or refrained from acting, for an improper or corrupt purpose, the Commission advises the appropriate disciplinary authority regarding suitable action to be taken against the public concerned.

As per CVC Act, 2003, the Commission can inquire or cause an inquiry against only certain categories of public servants posted in the organizations specified. At present, the Commission’s jurisdiction over the employees of Ministries/Departments/PSUs/PSBs/Insurance Sector is as: Central Govt.Ministries/Deptts – Group ‘A’ officers and above, Public Sector Undertakings – Two level below the Board level and above, Public Sector Banks – Officers of Scale V and above, Insurance Sector – Assistant Manager and equivalent, Autonomous Bodies – Officers drawing basic pay of Rs.8700/- and above and Port Trusts/Dock Labour Board – Officers who are in pay of Rs.10.750/- and above (Rs.3,750/- and above pre-revised).

The functions of the Central Vigilance Commission are advisory but they are advisory in the same sense as those of the Union Public Service Commission. By para 4 of the Ministry of Home affairs Resolution of 11th February 1964, the commission has been given, in the exercise of its powers and functions, the same measure of independence and autonomy as the Union Public Service Commission. This helps to ensure that the complaints of corruption or lack of integrity on the parts of public servants are given prompt and due attention.

There is an organization called Chief Technical Examiners Organisation (CTE), which functions directly under the CVC. The CTE’s organization is entrusted at the direction of the Commission, investigation of complaints relating to technical packages. To enable the CTE’s organization to select and examine the work from the point of view of vigilance, a list of all major works as undertaken is maintained by the CTE’s organization, based on the quarterly information furnished in a prescribed proforma. The CVO’s are authorized to recommend to CTE, while submitting reports, examination of a particular work mainly from vigilance angle. The CTE’s organization carries out intensive examination of works for detecting cases where work was executed using sub-standard materials, avoidable and /or ostentatious expenditure, and undue favours shown or overpayment allowed to contractors etc. At present, information in respect of civil works in progress with tender value exceeding Rs. One crore, electrical/mechanical/electronic works exceeding Rs. thirty lakh, horticulture

“The shepherd always tries to persuade the sheep that their interests and his own are the same.” Marie Beyle
works more than Rs. Two lakhs and store purchase contracts valuing more than Rs.two crores are required to be sent to CTE.

“Whistle-Blowers” Resolution – CVC is the Designated Agency to receive written complaints or disclosure of any allegation of corruption or of mis-use of office by any employee of Central Government or of any corporation established under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government. The designated agency will ascertain the identity of the complainant will not be revealed unless the complainant himself has made either the details of the complaint public or disclosed his identity to any other office or authority. If any person is aggrieved by any action on the ground that he is being victimized due to the fact that he had filed a complaint or disclosure, he may file an application before the commission seeking redress in the matter, wherein the commission may give suitable directions to the concerned person or the authority. If the Commission is of the opinion that either the complainant or the witness needs protection, it shall issue appropriate directions to the concerned government authorities. In case the commission finds the complaint to be motivated, it shall be at liberty to take appropriate steps.

B. Vigilance and Public Sector Units – Concept of organized vigilance existed from time immemorial and is nothing new. But now vigilance has come to assume specific roles in Government departments and PSU’s. PSU’s deal in tax payers money with full accountability to parliament and play a key role in economic life of the country and therefore a positive approach to check the unhealthiness of an organization and so vigilance has a specific role in today’s modern management concepts mainly relating to departmental misconduct and corruption in public services.

An important fact should be appreciated that entire organization should be vigilant and it should not be a monopoly of handful of vigilance officers only. A good Manager should normally have knowledge, confidence, responsibility and integrity as essential qualities. Integrity assumes highest importance in public services as clean management can give best performance and increase in productivity thus profitability. Honesty and integrity in work are essential to bring out the best in a person apart from his other contributions and that’s what vigilance of any organization propagates which acts as an important management tool to improve efficiency and the productivity.

Vigilance can be defined as “Management of Human conduct”. No organization can grow without well motivated and honest employees. Therefore a strong and well meaning vigilance department within a PSU can regulate the conduct of its officials.

PSU’s being a social entity, it is of paramount importance, hence it should built a

“There’s one way to find out if a man is honest - ask him. If he says, "Yes," you know he is a crook. ~Groucho Marx
proper image in and out of the organization and here vigilance assumes an important role and becomes a part of total management function.

The objective of vigilance is to root out corruption from every sphere of the organization. It should also

- identify black spot and make fair, objective and prompt investigation
- suggest ways and means to plug deliberate leakage of funds
- suggest ways and means to qualitative improvement in the systems and procedures to curb scope of malpractices and corruption
- develop intelligence network or system to detect cases of corruption, bribery, etc.
- conduct surprise checks, inspection
- conduct meetings, workshops, seminars to make Managers conscious about vigilance management pointing out minor faults and procedural deviations
- help management in increasing production, productivity and profitability.

C. Common irregularities/malpractices/points and places of corruption –

In the personal claims by the employees the following has been observed:
- false medical reimbursement bills/TA bills/LTC claims/hotel bills/ false transportation charges/bills for transportation of household items in two trucks though only one was used
- false journey claims
- false declaration of dependents for availing medical/LTC benefits

In Personnel and Administration:
- deliberately mismanaging record of application received
- accept applications even without minimum qualifications and experience in matter of appointment
- acceptance of late applications by pre dating them
- replace answer scripts of written tests
- appoint examiners influenced by interested parties
- appoint members of interview board to select particular candidates
- recruit general candidates against Reserved vacancy
- doubtful caste certificate are not verified
- post letters to incomplete/wrong addresses
- do not offer employment as per the order of merit/select list
- do not fill vacancies and let the validity of select list expire
- include extra names in select list after approval of competent authority

Finance and Accounts:
- delay in passing bills on flimsy grounds
- giving preference in passing bills to any particular contractor/supplier

One of the most striking differences between a cat and a lie is that a cat has only nine lives. ~Mark Twain
passing bills without laid-down checks
- not recovering advance regularly and correctly
- non refund or delayed refund of EMD/security deposit to unsuccessful bidders
- non recovery of rent/electricity charges/water charges leased out to contractors/private organization
- non observance of instructions regarding payment to contract labour in presence of witness
- non observance of checks while passing bills
- non observance of instructions about prescribed checks of vouchers
- acceptance of unauthorized Bank Guarantee(BG) from contractors/bidders
- Non verification of doubtful BGs
- Non asking of fresh BG after expiry of existing BG
- Tendered rates not verified for reasonableness
- Passing bills for extra items as permissible deviations from contracts as proposed by Engineer I/C
- Passing claims even beyond permissible deviations
- Put surplus funds in fixed deposits in selected bank by taking gifts/commission
- Keeping provisions of DoP vague to allow mis-interpretation as per convenience, whim, fancies and caprice
- Do not issue receipts for bills presented and then misplace them – ask for fresh bills – make room for speed money
- Raise objections on all petty claims, but pass big claims freely

Medical:
- procurement of medicines with short expiry date
- excess procurement
- issue of medicines to private patients
- treatment of outsiders in hospital without realizing fixed charges
- reference of non serious patients with escort to outside hospitals
- private practice by doctors who continue to draw non-practicing allowance
- prescribe costly medicine to patients who buy from referred chemist
- make local purchase at exorbitant rates on grounds of emergency
- misuse of hospital ambulance, linen, detergents, food items,etc.

Tenders, quotations and contracts:
- tendering of work/supply without indicating complete scope
- preparing estimates without assessing quantities of the items to be executed
- playing with technical aspects for rejecting inconvenient bids
- schedule of quantities in maintenance works copied from old schedules and not in accordance with actual requirement
- withholding report of past non performance/offences by Contractors and suppliers

Always tell the truth. If you can't always tell the truth, don't lie. ~Author

Unknown
- splitting of work to bring it within financial powers of lower authorities
- incorrect evaluation of bids
- manipulation in constitution of tender committee
- defective evaluation report placed before TC concealing vital information on parties/scope of offer
- collusion amongst TC members
- reasonableness of rates not based on current market rate/ not worked out
- issue limited tender by manipulating specifications/previous experience so as to eliminate competition by new parties
- tender enquiries sent to a few parties, though on record shown dispatched to all parties
- acceptance of Bank Guarantee without verification
- cutting/erasing/over writing in bids not signed by tender opening committee
- sudden extension of submission and opening dates of tenders
- calling tenders for non existent works; as works already executed on verbal orders just to regularize works given to favourite party
- keeping the scope of the works vague providing room for future deviations
- undue favour to agencies by making wrong/inflated measurements in MBs
- acceptance of sub standard works
- allowing agencies to do extra items of work under false pretext of permissible deviations
- making payment of mobilization advance for machineries/equipments without verifying whether listed equipment already procured and dispatched/ or whether brought to site
- allowing use of IIInd class bricks but paying for Ist class
- allow use of inferior cement concrete mixture and paying for specified mixture
- in road carpeting contracts, pay for specified thickness though actual thickness much below specifications
- in piling works pay for more piles, but allow lower nos. of piles to be fixed
- in earth work contracts, allowing excavation of earth work from departmental land while making payment to contractor as brought from outside
- allow contractors to demolish existing buildings and structures without fixing any Reserve Price – contractor takes away all serviceable material and reuse at site

Stores and miscellaneous:
- non verification of physical stores at the time of handing over and taking over charge by Stores I/C
- modifying description of items to make them non stock items, leading to local purchases
- fixing reserve price of scraps far below market rates
- quantity of scrap sold less than received at stores – theft of scrap

I am different from Washington; I have a higher, grander standard of principle. Washington could not lie. I can lie, but I won’t. ~Mark Twain
- acceptance of less quantity of FO, HSD oil, POL by conducting mock check only
- allowing annual maintenance contracts to continue beyond expiry and not taking any advance action to invite fresh bids
- allowing less deployment of manpower, both skilled and unskilled in contracts including security contracts and pay for full deployment
- manipulation of muster rolls in departmental maintenance/housekeeping works employing casual labour
- extortion of entry fees from trucks of contractors/suppliers by Security Staff at gate
- valuable items let out of project premises by Security Staff, without any gate pass

D. Preventive Vigilance: Any form of vigilance is generally not welcomed in any organization. It is generally misperceived that vigilance is there to harass the employees including such persons as happen to commit mistake unknowingly. It is true that the approach based merely on punishment is negative and vigilance activities should not mainly be aimed at punishment of the guilty. It is always disliked by the employees and to some extent by the management also for wrong reasons. Many hold a wrong notion that it does not contribute tangibly to the organizational growth and profitability. But preventive vigilance if adopted in larger picture will certainly go a long way to improve systems, procedures and put a check on any irregularity or malafide actions before it is committed. Preventive vigilance is therefore more acceptable and will create less hostile attitude within the organization. The overall impact of all the vigilance activities oriented towards preventive aspects will be quite greater than the punishment oriented vigilance action.

Small steps towards preventive vigilance:
- simplification of rules and procedures, removal of ambiguities and improvement of systems
- specific role, duties and responsibilities of each employees
- reducing areas of discretions
- reducing number of occasions for the public to visits offices to get their works done
- identification of corruption prone areas
- rotation of officials on sensitive posts
- restriction of outside interference
- random inspection by senior officers
- effective monitoring for disposal of cases to check delays. Delays are a major source of corruption
- premature retirement of officers of doubtful integrity having completed 25 years of service or 50 years of age

"The brands that will be big in the future will be those that tap into the social changes that are taking place." - Sir Michael Perry, Chairman of Centrica PLC
Some Do’s and Don’ts:

DO’s:
- integrity is the best asset – don’t dissipate it for wrongful gains
- each one of us as a public is expected to act honestly and faithfully
- always be impartial and fair in disposing cases
- be courteous and considerate in public dealing
- avoid seeking and receiving cash donations and advertisement from contractors/suppliers even for good cause
- attend grievances promptly
- always sign with date and designation
- always put all the reasons on notesheet for any decision, it saves from any subsequent problems
- pay personal and particular attention to compliance of rules and procedures
- keep on assessing the strength of the internal control
- publicise the rules and procedure as widely and in simple words
- corruption starts in a small way, it should checked in the initial stage only
- always follow all the laid down rules
- prepare a small checklist of all essential procedures and before giving sanctions ensure that all procedures have been followed by referring to the checklist

Don’ts:
- do not yield to temptation or run after petty gain
- do not live beyond your means
- do not flout or circumvent rules or regulations
- do not short circuit the prescribed procedures
- do not take obligation in any form from anyone
- do not lean too heavily on your subordinates
- do not exceed powers – financial as well as administrative
- do not misuse companies property
- do not forget to furnish property returns
- do not forget to obtain prior approval for acquisition and disposal of immovable property
- do not forget to report transactions in movable property exceeding prescribed value

Conclusion

Vigilance is Management function. The head of the department/organization, who sets for the organization the standards of efficiency, honesty, integrity and morality, determines the moral standards of any organization. Such standards can neither be dictated nor imposed by any extraneous vigilance organization or any other statutory bodies. Departmental vigilance should be more intensive, more effective and more result oriented by way of intensive and effective

“It takes 20 years to build a reputation and five minutes to ruin it.” – Warren Buffet.
inspections and supervision. Departmental vigilance can not only contain and curb malpractice but also render the vigilance department redundant.

References

1. Vigilance manuals and guidelines issued from time to time by CVC
2. Journals, training programmes and seminars organized by various Institutes/organisations

"Ethics is the new competitive environment" - Peter Robinson, CEO Mountain Equipment Co-op
What is Integrity Pact?

Integrity Pact (IP) is a tool developed during the 1990s by Transparency International (TI) to help governments, businesses and civil society, which are prepared to fight corruption in the field of public contracting and procurement. It consists of a process of signing an agreement between a government or government department and all bidders for a public sector contract. It contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract, or while carrying it out. Also that, bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and that sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government. IP also introduces a monitoring system that provides for independent oversight and accountability.

Why should a company sign IP?

- IP is a model for transparency in public procurement and contracts.
- It helps enhance public trust in government contracting and hence contributes to improving the credibility of contracting procedures and administration in general.
- It enables companies to abstain from bribing by providing assurances to them that
  (a) their competitors will also refrain from bribing.
  (b) Government bidding system and procurement will be absolutely transparent.
  (c) Government will not only prevent corruption but also extortion, by their officials and follow transparent procedures.
- IP helps Government and companies to reduce high cost and maintain quality control.

IP adoption creates confidence and trust in decision making process, a more hospitable investment climate and public support in the country.

Experiences

IP ensures Greater transparency & integrity between buyer and seller. Elimination of External interventions in matters of contracts and tenders. Improved sense of ethics in companies and among the Bidders. Reduction in representations/complaints referred to IEMs from any bidder or contractor for review. Improves the bottom line.

Why needed in India?

India is perceived to be one of the more corrupt nations and ranks 72nd among 180 countries in Transparency Internationals Corruption Perception Index (CPI) 2007. Existing anti-corruption organizations have had limited success in fighting corruption in India. Most people believe that corruption is rising in India at an alarming rate and Government is not doing anything to check it. Frequent scandals

“A clean conscience is a soft pillow.” Unknown
and delays plague Government contracts and other procurement. Such delays increases costs of procurement, works and public projects and drains public exchequer.

Corruption hurt the poorest most.

IP program is a way to supplement existing methods and is found to be a more effective tool for ensuring transparency and fighting corruption in public contracting.

Role of CVC

CVC Issued a circular on December 4, 2007 recommending the adoption of Integrity Pact in all major procurements. Approval of IP drafts Approval of independent External Monitors (IEMs) Periodical monitoring of IP.

Features of Integrity Pact.

A Pact (contract) is entered into by the Principal (a government office inviting public tenders for a supply, consultancy, construction, and/or any other service) and the Counter-party (bidders contractors or the suppliers).

The Principal and the Counter-party commit and are obliged to follow that they will not demand or accept any bribe or gift. The Principal commits that its officials will not do so with appropriate disciplinary or criminal sanction in case of violation. Similarly, the bidder commits and it obliged to follows that it has not paid, and will not pay, any bribe, in order to obtain and retain this contract.

Appointment of Independent External Monitor (IEM) a person/persons of impeccable integrity who has knowledge of tendering/contracting processes, to be appointed by the Principal and Transparency International India (TII), to oversee implementation and effectiveness. The panel of IEMs would be approved by Central Vigilance Commission (CVC).

Use of arbitration as conflict resolution mechanism.

A pre-announced set of sanctions for any violation by a bidder of its commitments or undertakings, including (some or all) denial or loss of contract forfeiture of the bid security and performance bond liability for damages to the Principal and the competing bidders, and debarment of the violator by the principal for an appropriate period of time.

****************

“An egg thief becomes a camel thief”. Persian Proverb
Integrity Pact - Governance in Public Procurement & Contracting

Introduction

It is in public procurement that most of the "grand corruption" occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition. "Islands of integrity" is a process in which voluntary agreements are made, involving bidders and the government, to restrict opportunities for corruption in a particular project. Keeping this in mind, the Integrity Pact (IP) was designed and launched by Transparency International in the 1990s to safeguard public procurement from corruption. It can be used by any procurement body in its procurement and contracting.

Purpose

The goal of the Integrity Pact is to reduce any (and almost ensure no) chances of corrupt practices during procurement through a binding agreement between the agency and bidders for specific contracts. It is intended to accomplish two primary objectives:

1. To enable companies to abstain from bribing by providing assurances to them that (i) their competitors will also refrain from bribing, and (ii) the government procurement, privatisation or licensing agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures.

2. To enable governments to reduce the high cost and the distortionary impact of corruption on public procurement, privatisation or licensing.

Thus, the Integrity Pact is a specific tool used to build transparency in public procurement, bidding or licensing process by both public institutions and private agencies. The establishment of such a fair and transparent basis for awarding contracts not only ensures efficiency but also helps in building public trust in the government and the private sector.

Pre-requisite for the principal interested in entering into MoU for signing Integrity Pact (IP) with Transparency International India (TII)

1. Clear understanding of IP implementation process.
2. Share the Code of conduct policy with TII.
3. Commitment to implement IP should be reflected in the words & deed of the Principal.
4. Principal should take steps to inform /communicate internal staff about various aspects of IP.
5. A Nodal officer to deal with TII on issues related to IP be appointed by the PSU.
6. In case of changes /modifications in the draft MoU & IP program, TII should be consulted and final draft MoU and IP Program should be shared with TII.
7. All IEMs should be approved by CVC before entering into MoU with TII.
8. Principal, Vendors, IEMs should be present at the time of signing IP.
The Key Elements

- A pact (contract) among a government office inviting public tenders for a supply, construction, consultancy or other services, or for the sale of assets, or for a license or concession (the Authority, i.e., the "principal") and those companies submitting a tender for this specific activity (the "bidders");

- An undertaking by the principal that its officials will not demand or accept any bribes, gifts, etc., with appropriate disciplinary or criminal sanctions in case of violation;

- A statement by each bidder that it has not paid, and will not pay, any bribes;

- An undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of tender submission or upon demand of the principal, especially when suspicion of a violation by that bidder emerges;

- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning bidder until the contract has been fully executed;

- Undertakings on behalf of a bidding company will be made "in the name of and on behalf of the company's Chief Executive Officer";

- A pre-announced set of sanctions for any violation by a bidder of its commitments or undertakings, including (some or all):

  - Denial or loss of contract;
  - Forfeiture of the bid security and performance bond;
  - Liability for damages to the principal and the competing bidders, and
  - Debarment of the violator by the principal for an appropriate period of time.

Bidders are also advised to have a company Code of Conduct (clearly rejecting the use of bribes and other unethical behaviour) and a Compliance Program for the implementation of the Code of Conduct throughout the company.

Penalties for failure to implement IP

Officials are subject to penal action and bidders have to face cancellation of contract, forfeiture of bond, liquidated damages and blacklisting. Action will, however, not require criminal conviction but be based on "no-contest" after the evidence is made available or there can be no material doubts. Disputes in Integrity Pact
implementation are resolved by arbitration. Independent External Monitoring is a key aspect of Integrity Pact implementation. Public access to all relevant information is a necessity. It calls for a forum in which representatives of civil society can discuss the contract itself. This concept of IEMs includes the existence of private sector inspector, which will be delegated with the rights of civil society to monitor the contract. Suggested bodies are government office with non-involvement, TI India or a credible NGO. The monitoring and supervising procedures are specified and a certificate of corruption-free is issued at the conclusion of the contract.

The Model Draft of the Integrity Pact

1. In the Bidding Stage –

• Upon the announcement of a bid offer, the Integrity Pact is explained to Bidders in a "Letter of Special Note for Bidding."

• Registration of bid submission:

• Only Bidders that submit the "Bidders' Oath to Fulfill the Integrity Pact", which contains no-bribery commitment, are qualified to register their bid submission.

• The concerned government official submits the "Principal's Oath to Fulfill the Integrity Pact."

• Bidders are encouraged to institute a "Company Code of Conduct", and incentive on qualification evaluation is provided.

• Information on the bidding is publicized.

2. The Contract Concluding and Execution Stage

• When signing a contract, both parties also sign the Integrity Pact as a "special condition for contract," containing the same contents as the pre-signed Oath,"

• Bidders shall not offer bribe, gifts or entertainment to any related government official to influence a bid.

• The Principal, including the concerned official, shall not take bribes.

• In case of violation of the Integrity Pact, bidders shall be subject to disqualification from submitting bids, or termination of the contract.
• No punitive actions shall be taken against anyone who reports inside corruption.

• Bidders are encouraged to institute a "Company Code of Conduct" and a Compliance Program for the implementation of the Code of Conduct.

• Bidders cooperate with the Integrity Pact’s Independent External Monitor(s) in monitoring activities.

• Operation of Integrity Pact Ombudsmen System

• Public hearings in stages

• Protection and rewarding of anyone reporting inside corruption

• Organization of the Integrity Pact Operational Committee

3. The Operation of the Integrity Pact and its Intended Targets

Procedures of the Integrity Pact Implementation

• The Company and NGOs shall jointly implement the Integrity Pact and the Independent External Monitor will monitor the process. Since trust between the companies and the government is important for the successful implementation of the Integrity Pact, important issues regarding the Integrity Pact are decided by the Integrity Pact Operational Committee

• Major Tasks of the Integrity Pact Operational Committee:

  • Choice of projects for monitoring the Integrity Pact;

  • Reporting, hearing, and inspecting the Integrity Pact projects;

  • Education and public relations on the Integrity Pact; and

  • Other tasks necessary for the implementation of Integrity Pact.

4. Detailed Programs about the Integrity Pact

1. Bidder's Submission of the Oath to Fulfill the Integrity Pact

- When there is an official notice about a bid for construction, technical services, or procurement, bidders are informed about the Integrity Pact.
- When submitting a bid, the representatives of the bidders sign the "Oath to Fulfill the Integrity Pact", as a condition for qualifying to bid.

2. At the time of the contract signing, the winning bidder and Principal sign the Integrity Pact containing the same terms in the aforesaid Oath as a "Special Condition of the Contract."

Major contents of the Oath to Fulfill the Integrity Pact (Company)

Executives and employees of Bidders (including sub-contractors and consortium partners)
- shall not engage in bid rigging, illegal price-fixing or any other fraudulent behaviors by bestowing favors on any particular persons;
- shall not offer any bribe, gifts or entertainment in the processes of bidding, concluding and executing the contract to any of the concerned government official.
- shall, in the case of any findings of violation of the Integrity Pact, accept the restrictions to the qualification for bidding, termination of contract or other punitive measures.
- shall cooperate with the Integrity Pact Ombudsman in monitoring activities
- shall prohibit any forms of bribery and bid rigging, and endeavor to institute a Company Code of Conduct that mandates the termination of any violator of the Integrity Pact and a company regulation that anyone reporting inside corruption shall not be subject to any retaliatory acts.

Encouragement of Company Code of Conduct and Provision of Incentive on Qualification Evaluation

When submitting a bid, bidders are encouraged to institute the Company Code of Conduct and a company regulation to protect anyone reporting inside corruption. Among the bidders that submit the Company Code of Conduct, the company with outstanding Compliance Programs for the Code of Conduct will be given positive points to be considered in the evaluation of its qualifications.

Company's Code of Conduct - The Company shall adopt a Code of Conduct on banning bribery and implementing compliance Programs to put the Code into practice. The Code of Conduct should include, inter alia, the following:

- Clear definitions and prohibition of all forms of bribery and bid rigging;
- Rules on offering of gifts, entertainment, travel fees, and money contributions;
- Education on the Code of Conduct throughout the company; Internal and external audits and inspections, and sanctions against violators (including dismissal);
- Provisions against any retaliatory acts upon anyone reporting inside corruption
• To provide an incentive for bidders to submit the Company Code of Conduct, it is suggested that the Government should adopt an amendment to the standards for qualification evaluation.

Principal’s Oath to Fulfill the Integrity Pact
When a Bidder submits the Oath to Fulfill the Integrity Pact, the chief of Principal reciprocates by tendering to the Bidder the "Oath to Fulfill the Integrity Pact" signed by both himself or herself and a concerned government official.

Major Contents of the Principal's Oath to Fulfill the Integrity Pact

The official in charge of the concerned bidding, concluding or execution of contract and his/her senior :

• shall not demand or accept bribe, gifts, entertainment or other amenities from Bidders;

• shall cooperate with the Integrity Pact Independent External Monitor in monitoring activities;

• shall not engage in any retaliatory acts upon anyone reporting inside corruption; and,

• in case any violation of the Integrity Pact is disclosed, shall accept punitive sanctions.

Limitation to the qualification to Bid for violations of the Integrity Pact. The contract may also contain a "Special Condition of Contract" that requires those Bidders that have rigged a bid, or bribed a concerned government official in the process of bidding, concluding or executing a contract, to be deprived of their qualification to submit bids placed by the company for up to a specified period.

General Standards on the Limitation of Qualification to Bid: Major Contents of the Principal's Oath to fulfill the Integrity Pact
The official in charge of the concerned bidding, concluding or execution of contract and his/her senior :

• Disqualification from bidding for a specified period - Bidders that have been favoured in a bid, won a bid, or had faulty construction approved by bribery.

• Disqualification from bidding for a specified period - Bidders that have offered bribes for the purpose of winning favor in the bidding, or of faulty execution of the contract.

• Disqualification from bidding for a specified period - Bidders that have offered money to public officials in relation to a bid, or concluding or execution of a contract, even though there is no evidence of winning favour in the bidding or faulty execution of the contract.

"If people are good only because they fear punishment, and hope for a reward, then we are a sorry lot indeed." Einstein
Termination of Contract for Violation of the Integrity Pact

If it has been established that Bidders have bribed a government official in relation to a bid, or concluding or execution of a contract, part or all of the contract shall be canceled or terminated,

- with the provision that, if construction is under way at the time of disclosure, the Principal shall make the decision in due consideration of the scope, period, and progress of the concerned construction.

Three-stage Public Hearing on the Contract Process –

• I Stage - the project plan,

• II Stage - procedures of selecting a contractor, and

• III Stage - inspection results on the execution of the contract.

The public hearings are organized by the Integrity Pact Ombudsmen

The Integrity Pact Independent External Monitor draft specific plans for, and manage, the public hearing.

Principal and bidders should willingly cooperate in explaining the procedures and publicizing information regarding the public hearing.

Publicizing Detailed Information on the Bidding Procedure in the OPEN (Online Procedures Enhancement for Civil Applications) System on the Internet. To make searches for major projects easier, measures are to be taken to group the projects in various categories.

Operation of Independent External Monitor to monitor the process of the Integrity Pact implementation

Tasks and Authority - Ombudsmen review, inspect and monitor all documents related with the project proposal, bidding, contract, construction inspection and through the completion of construction;

Organize public hearings by stages on the plan, bid, and execution of contracts for
“Truth is the most valuable thing we have.” Mark Twain

Demand corrective measures or audits on issues affected by unjust practices; Participate in the Integrity Pact Operational Committee

Composition and Qualification - A team of persons, with one as Chief Independent External Monitor, with respectability, integrity and expertise in the relevant discipline, and are recommended by NGOs like TII India.

Position and Term of Office: Serving in the capacity of a private citizen to act independently. However, the Independent External Monitor should not hold any concurrent job. He/she may make public announcements under consultation with Integrity Pact Operational Committee on their activities, but should not publicize or disclose on their own accord, any information or documents obtained during their work as Integrity Pact Ombudsmen for personal purpose or gain.

Regulations for Independent External Monitor Operation shall be adopted to assert the authority of Ombudsmen and the obligation of all government and other concerned officials to cooperate with them.

Protection and Rewarding of those reporting Inside Corruption - To uproot and prevent the occurrence of corrupt practices, it is important to encourage disclosing such practices. Any officials who make such disclosures should be protected from retaliatory acts, such as harassment or disadvantage in promotion considerations. To encourage such citizens to report such practices, there should be a "Regulation on Rewards for the Reporting of Corrupt Practices.

TI India's Efforts

TI India is pursuing the adoption of Integrity Pact in various contracts and deals by various Government Departments and PSUs. As a consequence to TII's various presentations on Integrity Pact, Second Administrative Reforms Commission has recommended its adoption in its Fourth Report on 'Ethics in Governance'. Similarly, the Central Vigilance Commission issued an office order No. 41/12/07 on 4th December, 2007 to all the Secretaries of the Government of India, and CMDs of PSUs and PSBs recommending the adoption and implementation of Integrity Pact in respect of all major procurements. Far. 19 PSUs have adopted the pact. Meanwhile, during the review of the implementation of Integrity Pact in ONGC, which was the first PSU to adopt it, it was observed that there is now -

(i) greater transparency & integrity between buyer and seller
(ii) improved sense of ethics in ONGC and its Bidders
(iii) reduction in external interventions in matters of contracts and tenders. These had been practically eliminated.

“Truth exists, only falsehood needs to be invented.” George Braque

(iv) reduction in number of representations/complaints

Earlier, the Ministry of Defence made a provision in its Defence Procurement Procedure (Procurement Manual) 2006 for signing of a Pre-contract "Integrity Pact" in all defence contracts and procurements of more than Rs. 100 crores.

<table>
<thead>
<tr>
<th><strong>Integrity Pact</strong></th>
<th>in</th>
<th><strong>Pakistan</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The &quot;Integrity Pact&quot; was implemented in Pakistan in 2001-2002 at the Karachi Water &amp; Sewerage Board, on 100MGD, K-III Water Supply Project. In the Design &amp; Supervision Consultancy Contract, the IP achieved a net saving of US $ 3 million out of an approved fee of US $ 4 million. This performance enabled TI Pakistan to convince the Government of Pakistan to make new Public Procurement Rules. In 2002, while preparing Pakistan National Anticorruption Strategy, TI Pakistan was able to introduce the Integrity Pact in all its Public Tenders of value Rs 10 million, and over, and prepared Transparent Public Procurement Rules, most of them including Integrity Pact provisions. The Integrity Pact was thus reduced to a single page. After a National Anticorruption Strategy was declared in October 2002, TI Pakistan worked with NAB and Ministry of Finance for government notification of Public Procurement Rules 2004 for all Public Procurement in Federal Government by Public Procurement Authority (PPRA) the issuance. The Rules are available on <a href="http://www.ppra.org.pk">www.ppra.org.pk</a>, <a href="http://www.transparency.org.pk">www.transparency.org.pk</a>, After the issuance of Public Procurement Rules 2004 notification, TI Pakistan signed MoU with many government agencies, and Pakistan Steel was one of them. TI Pakistan then prepared &quot; Procurement Manual&quot; for Pakistan Steel, which comprises Standard Bidding Documents, made by Pakistan Engineering Council and World Bank, and were in use since last 25-10 years, but the relevant provisions of the Procedures were amended to comply with mandatory rules of PPRA. The Procurement Manual is available on the websites of TI Pakistan, and also on the Pakistan Steel. TI Pakistan has since been working for adoption of Public Procurement Rules 2004 by the four Provinces also. Sindh Province has adopted the Rules in Nov. 2006, and Balochistan Province is in the process of adoption.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

“Honest actions build a good reputation.” Donna B. forest
Integrity Pact: Frequently Asked Questions & Answers

1. What is corruption?
   Transparency International defines corruption as “the abuse of entrusted power for private gain”.

2. Why does Integrity Pact needed in India?
   India is perceived to be one of the most corrupt nations scoring only 2-4 out of ten and ranks 84th. among 180 countries in Transparency International’s Corruption Perception India (CPI) 2009. Existing anti corruption organisations have had limited success in fighting corruption in India. Corruption hurts the poorest most.

Most people believe that corruption in India is rising at an alarming rate and the Government is doing little to check it. IP progress is a way to supplement existing methods. It enables companies to obtain from bribing by providing assurances to them that (a) their competitors will also refrain from bribing, and (b) government bidding system and procurement will be absolutely transparent. Hence, IP is found to be a more effective for ensuring transparency and fighting corruption in public contracting. It helps enhance public trust in government’s contracting and improving the credibility of its contracting procedures and administration in general.

3. What is an Integrity Pact (IP)?
   The Integrity Pact (IP) is an anti corruption tool to help governments, businesses and civil society intent on fighting corruption in the field of public contracting and procurement. It consists of an agreement between a government or a government department (hereafter referred to as the Principal) and all bidders for a contract. The IP sets out their rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, and/or collude with competitors to obtain the contract, or while carrying it out.

Only those vendors/bidders, who comment 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.

"Characters do not change—Opinions alter, but characters are only developed"—Benjamin Disraeli

4. What are the essential ingredients of IP?
   - Promise on the part of principal not to work or accept any illegal benefit;
   - Principal to treat all bidders with equity and reason;
   - Promise on the part of bidders not to offer any illegal benefit to the Principal’s employees;
   - 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 ade by them to agents/bidders or any other intermediaries and/or any transgressions with any other company that may impinge on the anti corruption principal.

5. Who are the players of IP?
   a. The Company i.e. Principal
   b. The Vendors i.e. Counter-party
   c. The Independent External Monitor (IEM)

6. What is Procurement?
   Procurement is the acquisition of goods and/or services at the lowest possible cost in the right quality and quantity, at the right time, in the right place and from the right source for the direct benefit or use of corporation or individuals, generally via a contract.

7. About CVC
   The Central Vigilance Commission (CVC) set up by the Government of India in February, 1964, as an apex vigilance institution to advise and guide Central Government agencies in the field of vigilance. It is free of control from any executive authority, monitoring all vigilance activities and advising the Central Government’s various authorities in planning, executing, reviewing and reforming their vigilance work.

“The shortest and surest way to live with honor in the world, is to be in reality what we would appear to be; all human virtues increase and strengthen themselves by the practice and experience of them.” Socrates

Realising the importance of IP as a vigilance tool in controlling corruption in public contracting and procurement, CVC has, through the office Orders no.41/12/07 dated 4.12.07 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, recommended adoption of Integrity Pact to all the Secretaries to the GoI, all CMDs of PSUs and PSB, and all CVOs, and provided basic guidelines for its implementation in respect of major procurements in the Government organizations. On May 18, 2009, it issued Standard Operating Procedure spelling out all the details.

8. What is a PSU?
   PSU is a Public Sector Undertaking. These are both – the Central and the State owned enterprise. Oil & Natural Gas CORPORATION OF India (ONGC), Steel Authority of India Ltd. (SAIL), Indian Oil Corporation Ltd. (IOCL) and Coal India Limited (CIL) are some of the giants PSUs of the Government of India.

9. Why should a Company sign IP?
   IP helps Government and companies to reduce high cost and maintain quality control. IP adoption creates public confidence and trust in decision-making process, and also a more hospitable investment climate and public support in the country.

10. Is it mandatory to adopt IP for a PSU?
    Adoption of IP is voluntary, but once adopted, it should cover all tenders/procurements above a specified threshold value and follow the Integrity Pact in letter and spirit.
11. What is the duration of the IP between Principal & Bidders?
The IP begins when both the parties have legally signed it. It expires after 10 months of the last payment made under the contract. In a contract between Principal and Bidder, the Principal's IP is to be followed.

12. Whose threshold limit is to be followed?
In case IP is being implemented by the Principal and the counterparty, it is the threshold limit of the Principal to be followed.

“The fastest way to lose what we call our good character is to lose our honesty”. Aesop

13. Whose IP is to be followed?
In a contract between Principal and Bidder, the Principal’s IP is to be followed.

14. Is it ok to conclude tenders from nomination basis from the ambit of IP?
There should be no exemption, even if it is needed (in certain cases), it should be examined on a case-to-case basis by the concerned PSU Management.

15. Is there any specific threshold limit for the PSU?
The threshold value for the contracts to be covered under IP should be decided after conducting proper ABC analysis. It should be fixed so as to cover 90-95% of the total procurements of the organization in monetary terms. Apart from all high value contracts, any contract involving complicated or serious issues could be brought within the ambit of IP by the management.

16. Who will be the focal point for the implementation of IP?
The Purchase/procurement wing of the organization would be the focal point for the implementation of IP. The vigilance department will be responsible for review, enforcement and reporting on all related vigilance issues. It has to be assured, 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.

17. What is an IEM?
Independent External Monitor (IEM) is the watchdog for smooth functioning of the IP program. IEM is responsible to ensure the credibility of the program.

18. What is the role of IEM?
An IEM can review independently and objectively whether and to what extent parties have complied with their obligations under the pact. Accordingly, IEM would have access to all relevant documents, whenever required. Ideally, all IEMs of an organization should meet in two months to take stock of the ongoing tendering processes.

19. Requirements to become IEM
IEM should be an eminent personality of impeccable integrity and reputation. 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.

20. What is the status of an IEM?
The position of IEM is similar to an Independent Director of a PSU.
21. Process of appointing IEM
   The CVC would approve the name of IEM out of the panel of names recommended
   by the PSU concerned. While forwarding the Panel, the PSU would enclose their
detailed Bio-data including postings at least 10 years prior to superannuation,
special achievements, experience etc. in government sector. For PSUs having a
large territorial spread or those having several subsidiaries, there could be more
IEMs but not more than two IEMs could be assigned to one subsidiary.

22. Duration of an IEM and the process of his or her removal.
   The normal term of an IEM is three years. It could be renewed for another term
with CVC’s consultation. CVC is authorized to remove an IEM if it finds some fault
in IEMs working..

23. Can one person be appointed IEM for more than one PSU?
   A person can be appointed as an IEM at the most for two PSUs.

24. Are the IEMs entitled for any remuneration?
   IEMs are entitled for remunerations equivalent to that admissible to one
independent Director in the organization concerned. This remuneration would be
paid by the organization concerned.

25. Is there any legal obligation to follow the advise of the IEMs?
   The recommendations of the IEM would be in the nature of advise and hence,
would not be legally binding. Finally, it is the management’s decision whether to
accept the IEMs recommendation.

26. Is the IEM a replacement of CVO?
   The role of CVO shall remain unaffected by the presence of IEM. A matter being
examined by the IEM can be separately investigated by the CVO in terms of the
CVC act or Vigilance Manual if a complaint received by him or directed to him by
the Commission.

“Every lie you tell litters your life with land mines that could explode at any time.”
Michael Josephson

27. Why is it important to sign a MoU with TI India?
   Integrity pact is a tool developed by Transparency International. As such, TI India
wants to sign a MoU to monitor IP’s implementation regularly to ensure that it is
implemented in letter and spirit.

28. What is the pre-requisite for a MoU to implement IP?
   i. Clear understanding about IP implementation process
   ii. Share the Code of Conduct policy.
   iii. Commitment to implement IP should be made by the Board and be
       reflected in the words & deeds of their Principal.
   iv. Principal should take steps to inform/communicate internal staff about IP’s
       various aspects.
   v. Appointment of a Nodal Officer to deal with TI India on IP related issues.
   vi. TI India should be consulted in case of changes/modifications proposed in
       the draft MoU & IP program.
   vii. Approval of IEMs by CVC prior to MoU with TI India.
viii. Presence of Principal, Vendor and IEMs at the time of signing of MoU.

29. What is the drafting process of an Integrity Pact?

Drafts of MoU and the Integrity Pact are to be prepared by the Principal as per CVC guidelines and approved by CVC and TI India. Thereafter, a MoU is to be signed between the Principal and TI India for obtaining a commitment from all senior officials of the Principal to implement the IP. In case there are subsidiaries of the Principal, they are also advised to follow their Principal’s IP.

30. Is there a role for civil society?
Civil society is the respective country to play a key role in overseeing and monitoring the correct and full implementation of the IP. The legitimate confidentiality of proprietary information to which civil society representatives would gain access, can be protected adequately through an appropriate contractual stipulation. TI India has included the term IEM to ensure the civil society’s participation in IP’s implementation.

31. What are the benefits of IP?

PSUs
- Enhanced competition in bidding process – most efficient, best bidder wins bid
- Enhanced reputation and credibility
- Avoid time consuming lawsuits/blocking points after decision on supplier company
- Focus of business relationships on quality and reliability of goods and services

Government
- Incentive to be transparent
- Strengthened role of law, increase credibility and political stability
- Higher investment levels from domestic and foreign investors
- Improve country’s perception
- Better score in Corruption Perception Index (CPI)
- Effective governance mechanisms and more effective procurement.

Bidding Companies
- Better chance of fair selection as a supplier and enhanced access to markets
- Protection from legal penalties
- Saving of costs, formerly paid as bribes and time in case of disputes
- Enhanced reputation
- Employees and competitors behave ethically and responsibly

Civil Society / Non governmental Organisations
- Improved access to essential resources, such as health care, education and better social development if money is properly invested in the desired projects.
- Social development
- Higher quality products and services, less risk of ‘faulty’ products and accidents
- Increased trust and confidence in business
- Consistent and fair enforcement of regulations
Greater traction for their objective of more transparent environment and attention to corrupt practices

32. Why there is an IP, if there are existing anti-corruption laws in place? Despite the existence of anti-corruption laws, the persistence of corruption related problems in public contracting shows the need to develop alternate mechanisms that increase effective compliance of law and make it harder to corrupt. In this sense, the IP does not replace the law, but enables the compliance by leveling the playing field, and ensuring the contenders that all will behave under the same conditions. Besides, TII is setting up a group of Resource Persons who can provide the necessary expertise in response to calls for help from the organizations promoting the IP.

33. Who started this anti-corruption tool? The Integrity Pact (IP) was designed and launched by Transparency International in the 1990s.

34. Which are the other countries implementing IP? Many countries around the world implementing Integrity Pact, India, Pakistan, Nepal and Bangladesh are among the South Asian countries.

35. When did TI India start to work on IP? TI India Chairman Admiral (Retd.) R.H. Tahiliani, along with Mr. Michael Wiehen from TISEctt. Made a presentation for the first time in August 2001 to the Minister of State for Defence Shri Arun Singh. However, the ONGC was the first to adopt IP in 2005.

36. What is sanction? Sanction is a process of taking action if anybody breaks the law. If any bidder breaks the commitment which he/she made at the time of submitting bidding documents, the concerned Principal can take action like black listing, forfeiture of deposit etc. against that bidder.

37. Is it mandatory for the bidders to sign the disclaimer before submitted bidding documents? Yes, it is a must for a bidder to sign the disclaimer at the time of submitting bidding documents.

"Once you tell a lie, you need to create a whole body guard of lies to protect it." Winston Churchill

38. Who can give a complaint to IEM? Anybody can complaint related to the procurement/bidding process to IEM.

39. If any complaint goes to CVO, IEM and Court at the same time who will deal it? Court’s jurisdiction would be followed, unless it directs to IEM or CVO.

40. Can a bidder complaint to IEM directly if he finds any irregularity? Yes, any bidder can complaint to the IEM directly.
41. In case of receipt of complaints, is it necessary to keep on hold the processing of tenders? Advice of the IEMs should be followed at that time.

42. What role IEMs play on tenders/contracts on which no complaints are received? IEMs roles start when any complaint is received.

43. What is the review system of IP? According to CVC Circular, an internal assessment of the impact of IP shall be carried out periodically by the CVOs of the organisations and reported to the CVC. Two additional reviews are envisaged for each organization in due course-

   i. financial impact review which could be conducted through an independent agencies like Auditors.
   ii. physical review which could be done through either an NGO or any specialised institution of tested credibility in the concerned field.

44. Is IP applicable to private sector? Yes, IP can be adopted by the private sector. TI India is currently working on its effective application.

"Being honest means practicing the habit of telling the truth." Mohammed
Circular No. 10/5/09

Subject:- Adoption of Integrity Pact-Standard Operating Procedure-reg.

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

Sd/-
(Shalini Darbari)

Director
All Chief Vigilance Officers

“How many times do you get to lie before you are a liar? Michael Josephson
Subject:- Adoption of Integrity Pact –Standard Operating Procedure-reg.

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

2.01 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.

“Honesty is the first chapter in the book of wisdom.” Thomas Jefferson
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.

"Integrity requires us to do the right thing even when it costs more than we want to pay.” Michael Josephson
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.

“Ethics’ without Virtue means no ethics at all.” Unknown
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.

6.04 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.

Enclosures: All earlier guidelines, issued by the Central Vigilance Commission, on the subject.

*****

“This above all, to thine own self be true, and it must follow, as the night the day, thou canst not then be false to any man.” Shakespeare
Subject: Adoption of Integrity Pact in major Government Procurement Activities- regarding.

1. Ensuring transparency, equity and competitiveness in public procurement has been a major concern of the Central Vigilance Commission and various steps have been taken by it to bring this about. Leveraging technology specially wider use of the web-sites for disseminating information on tenders, tightly defining the pre-qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission in order to bring about greater transparency and competition in the procurement/award of tender.

2. In this context, Integrity Pact, a vigilance tool first promoted by the Transparency International, has been found to be useful. The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any corrupt influence on any aspect of the contract. Only those vendors/bidders who have entered into such an Integrity Pact with the buyer would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification. The Integrity Pact in respect of a particular contract would be effective from the stage of invitation of bids till the complete execution of the contract.

3. The Integrity Pact envisages a panel of Independent External Monitors (IEMs) approved for the organization. The IEM is to review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. He has right of access to all project documentation. The Monitor may examine any complaint received by him and submit a report to the Chief Executive of the organization, at the earliest. He may also submit a report directly to the CVO and the Commission, in case of suspicion of serious irregularities attracting the provisions of the PC Act. However, even though a contract may be covered by an Integrity Pact, the Central Vigilance Commission may, at its discretion, have any complaint received by it relating to such a contract, investigated.

4. The Commission would recommend the Integrity Pact concept and encourage its adoption and implementation in respect of all major procurements of the Govt.

“If honesty is the root of many of our psychological problems, than honesty is the source of mental health” Dr. Hal Urban
organizations. As it is necessary that the Monitors appointed should be of high integrity and reputation, it has been decided that the Commission would approve the names of the persons to be included in the panel. The Government Organizations are, therefore, required to submit a panel of names of eminent persons of high integrity and repute and experience in the relevant field, through their administrative Ministry, for consideration and approval by the Commission as Independent External Monitors. The terms and conditions including the remuneration payable to the Monitors need not be a part of the Integrity Pact and the same could be separately communicated. It has also to be ensured by an appropriate provision in the contract, that the Integrity Pact is deemed as part of the contract in order to ensure that the parties are bound by the recommendation of the IEMs, in case any complaint relating to the contract, is found substantiated.

5. A copy of the Integrity Pact, which the SAIL got vetted by the Addl. Solicitor General is available on the Commission’s web-site i.e www.cvc.nic.in as an attachment to this Office Order in downloadable form, which may be used in original or may be suitably modified in order to meet the individual organization’s requirements.

Sd/-
(Vineet Mathur)
Deputy Secretary

All Secretaries to the Govt. of India
All CMDs of PSUs
All CMDs of PSBs
All CVOs

“When you are truthful on the outside, you’ll be peaceful on the inside.” Donna B. Forrest
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 Annex-“B”.

Section 4: Compensation for Damages

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.

2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminated 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 Gurantee.

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)/Subcontractor(s).

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal
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 his agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(6) The Monitor will submit a written report to the Chairman, SAIL within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

(7) Monitor shall be entitled to compensation on the same terms as being extended to / provided to Independent Directors on the SAIL Board.

(8) If the Monitor has reported to the Chairman SAIL, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman SAIL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information.
directly to the Central Vigilance Commissioner.

(9) The word ‘Monitor’ would include both singular and plural.

Section 9 – Pact Duration

This pact begins when both parties have legally signed it. It expires for the Contractor 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) __________________
_____________________________
_____________________________

“Truth is the only thing that works and the only foundation on which lasting relations can build.” Ramsey Clark
Office Order No.43/12/07

Subject: Adoption of Integrity Pact in major Government Procurement Activities- regarding.

1. 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.

Sd/-
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance officers

Similarly, gender-equality, supremacy of law, political participation, civil society, and transparency are among the indispensable elements that are the imperatives of democratization.
Recep Tayyip Erdogan
Circular No.18/05/08

Sub:- Adoption of Integrity Pact in major Government Procurement Activities regarding.

1. The Commission vide its office order no. 41/12/07 dated 4/12/07 had circulated a letter no. 007/vgl/033 emphasizing the need to adopt Integrity Pact (IP) by government organizations in respect of their major procurement activities. The Commission had also directed that in order to ensure compliance with the obligations under the pact by the parties concerned, Independent External Monitors (IEMs) are to be appointed after obtaining approval of the Commission for the names to be included in the panel.

2. As the role of IEMs is very important in ensuring implementation of the IP, it is necessary that the persons recommended for appointment have adequate experience in the relevant fields and are of high integrity and reputation.

3. The Commission would, therefore, direct that the organizations, while forwarding the names of the persons for empanelment as IEMs should send a detailed bio-data in respect of the each of the persons proposed. The bio-data should, among other things, include the postings during the last ten years before the superannuation of the persons proposed as IEMs, in case the names relate to persons having worked in the government sector. The bio-data should also include details regarding experience older than ten years before superannuation of the persons proposed as IEMs, if they have relevant domain experience in the activities of PSUs where they are considered as IEMs.

   This may be noted for future compliance.

Sd/-
(Rajiv Verma)
Under Secretary

All Chief Vigilance Officers

"Only a life of goodness and honesty leaves us feeling human.” Harold Kushner
Circular No.24/8/08

Subject:- Adoption of Integrity Pact in major Government procurement activities.

1. 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 Organisation.

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:

   i) 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.

   ii) 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.

   iii) 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.

   iv) 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.

v) Remuneration payable to the IEMs may be similar to the Independent Directors in the organization.

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

3. It needs no reiteration that all organizations must make sustained efforts 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.

Sd/-
(Rajiv Verma)
Under Secretary

All CVOs

There is no persuasiveness more effectual than the transparency of a single heart, of a sincere life. Joseph Barber Lightfoot
CHAPTER-1 INTRODUCTION

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.

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.

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.

Definition and Principles of Public Procurement.

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.

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. 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.

"Honesty is something you can't wear out." Waylon Jennings
In brief, the watchwords in this context are

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

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.

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. CTEO has also published various booklets enumerating various irregularities observed during various intensive technical examinations. All these circulars and publications are available on the CVC Web Site (www.cvc.nic.in)

1.0 The process of Public Procurement can be categorized in three distinct Stages-
   1. Pre-tender Stage(Project formulation, Appointment of Consultants, Preparation of Detailed Project report/ Detailed Estimate)
   2. Tender Stage(Preparation of tender documents, inviting & opening of tenders, prequalification, tender evaluation & award of work)
   3. Execution Stage (Compliance of agreement conditions, making payments, ensuring quality & timely completion)

   Pre-tender stage is further bifurcated into following stages-

   - Estimation of requirements and financial sanction.
   - Appointment of Consultant
   - Detailed Project Report

   Tender Stage is further bifurcated into following stages
   - Preparation of tender documents
   - Inviting and opening of tenders
   - Prequalification
   - Tender evaluation and award of work.

B The important items in the execution stage are as follows:

   - Issue of Letter of Intent, Work Order/Supply Order and Signing of the agreement.

"Be Silly. Be honest. Be kind." Ralph Waldo Emerson
• Various Advance Payments like Mobilization Advance, T&P Advance Secured Advance etc.

• Implementation of various contract provisions such as obtaining labour licenses, insurance policies (CAR Policy, Workmen Compensation policy etc.), employing technical staff etc.

• Watching time and cost overrun.

• Payments for the work done/supply made/services provided by the Contractor/Vendor etc.

• Checking quality of work, ensuring mandatory testing, and visual inspection.

The CTE’s organization conducted examination of various power projects recently. The deficiencies observed during various stages of public procurement, relevant instructions issued by the Commission on the subject, check-points to avoid such deficiencies and preventive measures to be taken by the CVO are discussed in subsequent chapters.

CHAPTER-2 Pre-Tender Stage

Pre-tender stage can further be sub divided into two stages-
i) Appointment of consultant
ii) Preparation of Detailed Project Report (DPR)/Detailed Estimate

Appointment of Consultants

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 organisations are felt inadequate to deal with the growing demand. Therefore, outsourcing various project activities such as Architectural services, preparation of DPR, Project Management Consultancy, and Quality Assurance etc. has become necessary. The Commission has issued instructions regarding appointment of Consultants vide circular No.3L PRC 1 DT. 12.11.1982, the same were reiterated vide circular No. OFF1-CTE-1 DT. 25.11.2002. Gist of the above circulars is given below-

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

There is another circular No. 98/DSP/3 dt. 24.12.2004, wherein, it has been made clear that a consultant is disqualified for providing goods or works or services related to the initial assignment for the same project and vice-versa.

During examination of various power projects, some deficiencies in the appointment of consultants as well as in operating the consultancy contracts has come to notice such as-

"No legacy is so rich as honesty." William Shakespeare
Arbitrary appointment without publicity & competition

Restrictive criteria adopted in pre-qualification

Pre-qualification carried out not as per notified criteria

Credentials not verified

Offer of L1 ignored on flimsy grounds

Decision making left to the consultant

A few examples highlighting above deficiencies are discussed below-

Case-1 (04-NH-73)

One consultancy firm which was engaged for small value consultancy work in an organization was appointed as consultant for a housing work costing Rs.60 crores without inviting tenders.

The organization should have invited open tenders from capable consultants having experience of handling such large value housing projects.

Case-2 (06-ET-11)

Limited tenders were invited from known consultants for a Hydro Power Project costing Rs.130 crores. The organization should have gone in for open tendering.

Case – 3 (06-ET-11)

Initial payment of Rs.3 crores was paid to the consultant for mobilizing his resources for consultancy for a power project costing Rs.130 crores. The consultant neither deployed the required man-power as per agreement nor supplied the design and drawing in time defeating the very purpose of granting mobilization advance.

The department should have insisted on timely services from the consultant and deployment of sufficient staff.

Case – 4 (05-SH-38)

In one of the projects, the estimate was prepared by an outside consultant, which was to be checked by the department. On scrutiny of estimate, it was noticed that even the basic rates of various items such as cement and steel had been taken on a higher side. Some other coefficients for labour and machinery were also taken on the higher side. Thus, effective control was not exercised on the consultant’s job, which in this case resulted in preparation of inflated estimates.

Case (VR1)

A Power Sector PSU appointed 4 Consultants in a Project and that too on nomination basis. One Consultant was appointed initially for the preparation of the feasibility report for the different sites. Another Consultant was appointed on nomination basis.

---

“A half truth is a whole lie.” - Yiddish Proverb
for verifying the estimated cost of the project. Thereafter, a Central PSU was appointed for the consultancy services up to the commercial operation date with a provision to escalate rate on account of wage revision of the employees of the Consultant PSU. Besides, above Consultants, in the same project, the PSU further awarded another work of consultancy for the supply and installation of infrastructure project management software and hardware to another Central PSU. Surprisingly, the consultancy charges were 46% higher than the estimated cost of supply of hardware and software. Such high rates are not justified by any standard practice. Moreover, it is apprehended that the PSU might have off-loaded this consultancy job to another private party as the charges are on abnormally higher side.

Instead of appointing different Consultants by splitting a job, at best two consultants for the complete job should have been appointed duly adopting a proper tender system as the total cost involved in this consultancy was substantially high.

Preparation of DPR/Estimate

Successful contract performance depends on the quality of detailed project report. If the detailed project report is prepared on ad-hoc basis based on some old project and not as per the present site requirements, then there shall be delays, deviations resulting in time and cost overrun. It has also been observed that the detailed project report is prepared in a hurried manner without checking the conformity/consistency among various schedule of items, drawings, specifications, and contract conditions etc. This further adds to time and cost overrun of the project. The poor DPR leaves opportunity for the contractor to exploit and gain profits out of ambiguity in the contract.

While examining the contracts of power sector, it was observed that many estimates are prepared only on the basis of last accepted rates. While last accepted rates do help in preparation of the estimates, the estimates should not solely rely on last accepted rates only. The quoted rate needs to be reasonable and justified and compared with the estimated rates. If the last accepted rates are high for any reason, it results in award of the contract at higher rates since no analysis of circumstances under which the last contract was ordered is gone into. And also this new awarded rate becomes the basis for estimation of rates for the next tender. Thus this problem has a cascading effect. This does not appear to be a proper system of preparation of estimates. In fact to avoid such problems, the organisations must preferably adopt a software based analytical method to prepare estimates based on various parameters that affect the rate including the prevailing market rates. It was also observed that organisations do not prepare estimates based on actual site conditions. Rather the estimates are prepared based on the borrowed quantities from some previous similar project, without incorporating the modifications required in foundation etc. for the current project. This has resulted in large-scale deviation, especially in foundation items. In one case, the quantum of pile work was reduced from Rs. 6.0 crores to Rs. 2.0 crores only.

A few examples of deficiency in detailed estimates are as under-

Case-I (05-SH-54)

In case of an ‘earth filling package’ of one thermal power project, an estimate

If you tell the truth you don't have to remember anything. ~Mark Twain
amounting to Rs. 73 crores was prepared taking into account the local site conditions such as lead involved in the transportation of earth, cost of the earth etc. Open tenders were invited and L1 bidder quoted Rs.129 crores. Since, the L1 bid was very much on the higher side in comparison to the estimated rates, the Tender Evaluation Committee decided to look into the reasonableness of the estimated cost and after adding up certain non standard stipulations such as certain local area taxes and particular circumstances prevailing at site, concluded that an amount of Rs. 100 crores could at best be justified. Since still the gap between the revised estimated cost and the lowest quoted bid was on higher side, the tenders were discharged.

Thereafter, the total revision of estimate was carried out and in place of initially proposed borrow area involving 4-5 kms. lead, a fresh borrow area involving 14 km lead was stipulated and an estimated cost of Rs.103 crores was worked out. This time in the open tender, lowest bid was for Rs.192 crores. Since again the lowest bid was much higher than the estimated cost, another option of assigning the work to some other PSUs engaged in construction work was explored. M/s Bridge and Roof Co. Ltd., NPCC, NBCC, HSCL and IRCON were considered, however, on one or the other flimsy grounds most of the PSUs were excluded and finally the work was assigned to NBCC at a cost of Rs. 118 crores. Since, the estimate of Rs.103 crores was worked out considering all the relevant factors and current rates, assigning the work to M/s NBCC at a cost of Rs. 118 crores thereafter, doesnot appear to be justified.

Moreover, it was learnt that the work was being executed by way of borrowing earth from the area involving a lead of 4-5 kms only, whereas the estimate amounting to Rs.103 crores was prepared involving a lead of 14 kms. Thus, if the work was to be executed from a borrow area involving a lead of 4-5 kms only, then there appears to be no justification for preparing an estimate and justifying the cost of award of work considering a borrow area involving a lead of 14 kms.

Case-II (06-ET-05)

Detailed estimate for a power project ‘X’ was prepared based on the rates borrowed from another previously executed power project ‘Y’. Project ‘X’ was an expansion project, where the electricity & water supply was supplied to the contractor free of cost. In project ‘Y’ contractors were to arrange electricity & water supply. Obviously, the estimated cost of project ‘X’ should have been less than for the project ‘Y’.

In the same estimate, quantity of ‘extraction of rock’ in the coal handling area deviated from 5000 cum to 56000 cum, which indicates that estimate was not prepared on the basis of actual site conditions.

The organization should have prepared realistic estimates considering the local conditions.

Case(VR1)

In one PSU, the revised cost estimate for a work was prepared as Rs.5733 lakhs, which was based on the earlier awarded rates. The organization had arrived at the estimated rates simply by multiplying by a capacity factor, i.e. through extra-polation. However, on opening the price bids, it was seen that the L1 rates were
Rs.3564 lakhs only, thus establishing the fact that the estimates that were prepared were not realistic.

CASE (VR2)

In another PSU, the estimate for a work was prepared for Rs.5570 lakhs and for the basis of estimation, it was mentioned that estimated cost of plants, equipments & auxiliaries have been derived from the L2 bid received for some similar ongoing work. The quoted rates of L1 bidder however were found to be Rs.3630 lakhs, which were approximately 35% low, giving an impression that the estimates were deliberately kept on the higher side.

CASE (VR3)

In yet another case of thermal power package, the estimates were taken from the award value of an exactly similar package of another work which was awarded at Rs.1860.33 crore in April’04. The estimates for the new package prepared in Nov.’04 were however, taken as Rs.2250.38 crores, i.e. almost 21% higher than the last award rates within a time span of 5 months only without any justifiable reasons on record.

CASE (VR4)

In a Power Project, initially the estimated cost was indicated as Rs.11 crores only. However, after opening of the price bids, the estimates were revised to Rs.13.25 crores, ostensibly, to justify the quoted L-1 rates. This practice of revising the estimates after opening of the price bids to justify the received L-1 rates is extremely objectionable and is against the ethics of the tendering system.

CASE (VR5)

In one Power Project, the rates of last awarded works were simply escalated by 10% to arrive at the estimate for the new work. Escalating the last rates by a fixed percentage may not always be the correct way of working out the estimates. Needless to say the quoted rates were nowhere near the estimated rates.

CASE (VR6)

In one PSU, the work was awarded on nomination basis to another Central PSU without arriving at a realistic estimated cost. As the initial cost was not properly worked out before award, an amount of Rs.30.50 crores was allowed in addition to the initial cost without any justification and after issuing the LOA, an amendment letter to this effect was issued later on. Even the sanction of the cost estimate was issued after approximately 15 months of issue of LOA. It is relevant to mention here that many a times the work awarded on nomination basis to the PSUs are getting executed through private agencies by a back to back arrangement. Keeping the estimates loose in the beginning results in award of work at higher rates to private parties in a non-transparent manner.
The estimated rate is a vital element in establishing the reasonableness of the prices being offered and, therefore, it is very important that the same is worked out in a realistic and objective manner on the basis of purchases made by other organizations, prevailing market rates, the market trend and assessment based on intrinsic value etc.

**A few check points are suggested to prevent above deficiencies**

**Appointment of consultants**

- Instructions of the commission issued vide circular No. OFF1-CTE-1 DT. 25.11 to be followed.

- Appoint consultant in a fair and transparent way.

- Decision-making should rest with the executives. The consultant’s role should be only advisory.

- Fix upper ceiling for fees.

- Provide safeguards against consultant’s failure such as performance guarantee, professional liability insurance etc.

**Preparation of detailed project report**

- Prepare DPR as per actual site requirement in consultation with the field staff; otherwise it may lead to deviations & delays.

- Prepare Estimates on the basis of detailed analysis of rates considering rates prevailing at the project site to arrive at realistic cost.

- Ensure conformity among nomenclature of the item, drawings and specifications to avoid ambiguities at a later stage.

**Pre-tender stage**

Pre-tender stage can further be sub divided into two stages-

i) Appointment of consultant

ii) Preparation of Detailed Project Report (DPR)/Detailed Estimate

**Appointment of Consultants**

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 organisations are felt inadequate to deal with the growing demand. Therefore, outsourcing various project activities such as Architectural services, preparation of DPR, Project Management Consultancy, and Quality Assurance etc. has become necessary. The Commission has issued instructions regarding appointment of Consultants vide circular No.3L PRC 1 DT. 12.11.1982, the same

*Nearly all men can stand adversity, but if you want to test a man's character, give him power* - **Abraham Lincoln**
were reiterated vide circular No. OFF1-CTE-1 DT. 25.11.2002. Gist of the above circulars is given below-

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

There is another circular No. 98/DSP/3 dt. 24.12.2004, wherein, it has been made clear that a consultant is disqualified for providing goods or works or services related to the initial assignment for the same project and vice-versa.

During examination of various power projects, some deficiencies in the appointment of consultants as well as in operating the consultancy contracts has come to notice such as-

• Arbitrary appointment without publicity & competition
• Restrictive criteria adopted in pre-qualification
• Pre-qualification carried out not as per notified criteria
• Credentials not verified
• Offer of L1 ignored on flimsy grounds
• Decision making left to the consultant

**A few examples highlighting above deficiencies are discussed below**-

Case-1 (04-NH-73)

One consultancy firm which was engaged for small value consultancy work in an organization was appointed as consultant for a housing work costing Rs.60 crores without inviting tenders.

The organization should have invited open tenders from capable consultants having experience of handling such large value housing projects.

Case-2 (06- ET-11)

Limited tenders were invited from known consultants for a Hydro Power Project costing Rs.130 crores. The organization should have gone in for open tendering.

Case – 3 (06-ET-11)

Initial payment of Rs.3 crores was paid to the consultant for mobilizing his resources for consultancy for a power project costing Rs.130 crores. The consultant neither deployed the required man-power as per agreement nor supplied the design and drawing in time defeating the very purpose of granting mobilization advance.

The department should have insisted on timely services from the consultant and deployment of sufficient staff.

------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------- A half truth is a whole lie. - Yiddish Proverb
In one of the projects, the estimate was prepared by an outside consultant, which was to be checked by the department. On scrutiny of estimate, it was noticed that even the basic rates of various items such as cement and steel had been taken on a higher side. Some other coefficients for labour and machinery were also taken on the higher side. Thus, effective control was not exercised on the consultant’s job, which in this case resulted in preparation of inflated estimates.

Case (VR1)

A Power Sector PSU appointed 4 Consultants in a Project and that too on nomination basis. One Consultant was appointed initially for the preparation of the feasibility report for the different sites. Another Consultant was appointed on nomination basis for verifying the estimated cost of the project. Thereafter, a Central PSU was appointed for the consultancy services upto the commercial operation date with a provision to escalate rate on account of wage revision of the employees of the Consultant PSU. Besides, above Consultants, in the same project, the PSU further awarded another work of consultancy for the supply and installation of infrastructure project management software and hardware to another Central PSU. Surprisingly, the consultancy charges were 46% higher than the estimated cost of supply of hardware and software. Such high rates are not justified by any standard practice. Moreover, it is apprehended that the PSU might have off-loaded this consultancy job to another private party as the charges are on abnormally higher side.

Instead of appointing different Consultants by splitting a job, at best two consultants for the complete job should have been appointed duly adopting a proper tender system as the total cost involved in this consultancy was substantially high.

Preparation of DPR/Estimate

Successful contract performance depends on the quality of detailed project report. If the detailed project report is prepared on ad-hoc basis based on some old project and not as per the present site requirements, then there shall be delays, deviations resulting in time and cost overrun. It has also been observed that the detailed project report is prepared in a hurried manner without checking the conformity/consistency among various schedule of items, drawings, specifications, and contract conditions etc. This further adds to time and cost overrun of the project. The poor DPR leaves opportunity for the contractor to exploit and gain profits out of ambiguity in the contract.

While examining the contracts of power sector, it was observed that many estimates are prepared only on the basis of last accepted rates. While last accepted rates do help in preparation of the estimates, the estimates should not solely rely on last accepted rates only. The quoted rate needs to be reasonable and justified and compared with the estimated rates. If the last accepted rates are high for any reason, it results in award of the contract at higher rates since no analysis of

The probability that we may fail in the struggle ought not to deter us from the support of a cause we believe to be just-

Abraham Lincoln
circumstances under which the last contract was ordered is gone into. And also this -new awarded rate becomes the basis for estimation of rates for the next tender. Thus this problem has a cascading effect. This does not appear to be a proper system of preparation of estimates. In fact to avoid such problems, the organisations must preferably adopt a software based analytical method to prepare estimates based on various parameters that affect the rate including the prevailing market rates.

It was also observed that organisations do not prepare estimates based on actual site conditions. Rather the estimates are prepared based on the borrowed quantities from some previous similar project, without incorporating the modifications required in foundation etc. for the current project. This has resulted in large-scale deviation, especially in foundation items. In one case, the quantum of pile work was reduced from Rs. 6.0 crores to Rs. 2.0 crores only.

**A few examples of deficiency in detailed estimates are as under**-

Case-I (05-SH-54)

In case of an ‘earth filling package’ of one thermal power project, an estimate amounting to Rs. 73 crores was prepared taking into account the local site conditions such as lead involved in the transportation of earth, cost of the earth etc. Open tenders were invited and L1 bidder quoted Rs.129 crores. Since, the L1 bid was very much on the higher side in comparison to the estimated rates, the Tender Evaluation Committee decided to look into the reasonableness of the estimated cost and after adding up certain non standard stipulations such as certain local area taxes and particular circumstances prevailing at site, concluded that an amount of Rs. 100 crores could at best be justified. Since still the gap between the revised estimated cost and the lowest quoted bid was on higher side, the tenders were discharged.

Thereafter, the total revision of estimate was carried out and in place of initially proposed borrow area involving 4-5 kms. lead, a fresh borrow area involving 14 km lead was stipulated and an estimated cost of Rs.103 crores was worked out. This time in the open tender, lowest bid was for Rs.192 crores. Since again the lowest bid was much higher than the estimated cost, another option of assigning the work to some other PSUs engaged in construction work was explored. M/s Bridge and Roof Co. Ltd., NPCC, NBCC, HSCL and IRCON were considered, however, on one or the other flimsy grounds most of the PSUs were excluded and finally the work was assigned to NBCC at a cost of Rs. 118 crores. Since, the estimate of Rs.103 crores was worked out considering all the relevant factors and current rates, assigning the work to M/s NBCC at a cost of Rs. 118 crores thereafter, does not appear to be justified.

Moreover, it was learnt that the work was being executed by way of borrowing earth from the area involving a lead of 4-5 kms only, whereas the estimate amounting to Rs.103 crores was prepared involving a lead of 14 kms. Thus, if the work was to be executed from a borrow area involving a lead of 4-5 kms only, then there appears to be no justification for preparing an estimate and justifying the cost of award of work considering a borrow area involving a lead of 14 kms.

You can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time—Abraham Lincoln
Case-II (06-ET-05)

Detailed estimate for a power project ‘X’ was prepared based on the rates borrowed from another previously executed power project ‘Y’. Project ‘X’ was an expansion project, where the electricity & water supply was supplied to the contractor free of cost. In project ‘Y’ contractors were to arrange electricity & water supply. Obviously, the estimated cost of project ‘X’ should have been less than for the project ‘Y’.

In the same estimate, quantity of ‘extraction of rock’ in the coal handling area deviated from 5000 cum to 56000 cum, which indicates that estimate was not prepared on the basis of actual site conditions.

The organization should have prepared realistic estimates considering the local conditions.

Case(VR1)

In one PSU, the revised cost estimate for a work was prepared as Rs.5733 lakhs, which was based on the earlier awarded rates. The organization had arrived at the estimated rates simply by multiplying by a capacity factor, i.e. through extra-polation. However, on opening the price bids, it was seen that the L1 rates were Rs.3564 lakhs only, thus establishing the fact that the estimates that were prepared were not realistic.

CASE (VR2)

In another PSU, the estimate for a work was prepared for Rs.5570 lakhs and for the basis of estimation, it was mentioned that estimated cost of plants, equipments & auxiliaries have been derived from the L2 bid received for some similar ongoing work. The quoted rates of L1 bidder however were found to be Rs.3630 lakhs, which were approximately 35% low, giving an impression that the estimates were deliberately kept on the higher side.

CASE(VR3)

In yet another case of thermal power package, the estimates were taken from the award value of an exactly similar package of another work which was awarded at Rs.1860.33 crore in April’04. The estimates for the new package prepared in Nov.’04 were however, taken as Rs.2250.38 crores, i.e. almost 21% higher than the last award rates within a time span of 5 months only without any justifiable reasons on record.

CASE (VR4)

In a Power Project, initially the estimated cost was indicated as Rs.11 crores only. However, after opening of the price bids, the estimates were revised to Rs.13.25 crores, ostensibly, to justify the quoted L-1 rates. This practice of revising the estimates after opening of the price bids to justify the received L-1 rates is extremely objectionable and is against the ethics of the tendering system.

You cannot escape the responsibility of tomorrow by evading it today.  
Abraham Lincoln
CASE (VR5)

In one Power Project, the rates of last awarded works were simply escalated by 10% to arrive at the estimate for the new work. Escalating the last rates by a fixed percentage may not always be the correct way of working out the estimates. Needless to say the quoted rates were nowhere near the estimated rates.

CASE (VR6)

In one PSU, the work was awarded on nomination basis to another Central PSU without arriving at a realistic estimated cost. As the initial cost was not properly worked out before award, an amount of Rs.30.50 crores was allowed in addition to the initial cost without any justification and after issuing the LOA, an amendment letter to this effect was issued later on. Even the sanction of the cost estimate was issued after approximately 15 months of issue of LOA. It is relevant to mention here that many a times the work awarded on nomination basis to the PSUs are getting executed through private agencies by a back to back arrangement. Keeping the estimates loose in the beginning results in award of work at higher rates to private parties in a non-transparent manner.

The estimated rate is a vital element in establishing the reasonableness of the prices being offered and, therefore, it is very important that the same is worked out in a realistic and objective manner on the basis of purchases made by other organizations, prevailing market rates, the market trend and assessment based on intrinsic value etc.

A few check points are suggested to prevent above deficiencies-

Appointment of consultants-

• Instructions of the commission issued vide circular No. OFF1-CTE-1 DT. 25.11 to be followed.
• Appoint consultant in a fair and transparent way.
• Decision-making should rest with the executives. The consultant’s role should be only advisory.
• Fix upper ceiling for fees.
• Provide safeguards against consultant’s failure such as performance guarantee, professional liability insurance etc.

Preparation of detailed project report-

• Prepare DPR as per actual site requirement in consultation with the field staff; otherwise it may lead to deviations & delays.
• Prepare Estimates on the basis of detailed analysis of rates considering rates prevailing at the project site to arrive at realistic cost.
• Ensure conformity among nomenclature of the item, drawings and specifications to avoid ambiguities at a later stage.

A man who was completely innocent, offered himself as a sacrifice for the good of others, including his enemies, and became the ransom of the world. It was a perfect act. Mahatma
CHAPTER-3 Tender Stage

Tender stage in public procurement can be sub-divided under four headings
i) Preparation of tender document
ii) Inviting and opening of tenders
iii) Pre-qualification
iv) Evaluation of bids and award of work

Preparation of tender documents

The tender after acceptance and signing becomes 'the contract' – a legal document. An ambiguous agreement leads to poor contract performance and litigations. It also gives an opportunity to a contractor to make profit out of ambiguous conditions. It has been observed that the tender documents are prepared in a hurried manner without checking the conformity among the schedule of items, drawings, specifications, and contract conditions etc. This generally happens due to the reason that different parts of the tender document such as schedule of quantities, specifications, drawings, and general conditions prepared by different people are compiled without correlating them. Sometimes they are copied from old tenders without giving a thought to the applicability of the conditions to the present work.

A few examples highlighting some deficiencies in the preparation of tender documents are discussed below-

Case 1 (VR1)
For a Power Package, the scope included design, engineering, supply, installation etc. as per the general requirement of a Power Sector PSU. As per the tender requirements, bidders were required to furnish their detailed design and engineering proposal to suit the requirements of the PSU. The PSU while being aware of the above fact, still invited offers in a single bid format, i.e. only techno-financial bids were invited in a single envelope. When the scope of work includes design, engineering etc., it is always desirable and advisable to invite offers in a two-bid format or two envelopes, i.e. technical and financial so as to properly evaluate the various options and design philosophy proposed by the various bidders and the price bids of only such bidders whose design and other technical proposals are as per tender requirements should be opened.

Case 2 (VR2)
In one case, the tender notice envisaged design, manufacture, supply, erection, testing and commission (DMSETC) of the proposed package. This clearly indicates that the prospective bidders were expected to have the experience in DMSETC. But, one of the foreign bidders, a trading company, purchased the PQ documents and after finding that DMSETC is an essential requirement to participate in the PQ bid, represented to the organisation to waive this requirement so as to allow participation of trading firms also. Based on this representation, the organisation modified the PQ requirements and allowed participation by the trading firms with due authorization from such firms who were represented by these trading firms and who had experience in design and manufacturing of such E&M equipments. However it was noticed that the organization, i.e. the PSU had intimated this amendment only to those limited set of firms who had bought the tender documents against the initial advertisement. The amended PQ criteria were not published in the newspapers/web-site. This resulted in inadequate publicity.

A small body of determined spirits fired by an unquenchable faith in their mission can alter the course of history- Mahatma Gandhi
Case 3 (VR3)
Evaluation Criteria: In a case of a Power Sector PSU, a broad marking scheme was made available to the firms for evaluation of their bids for short-listing as well as for techno-commercial evaluation before price bid opening. The detailed marking scheme for individual aspects/parameters, i.e. financial capability, technical capability and experience etc., on which bid was evaluated, was treated as a confidential document and was not made available/known to the participating firms. Such a practice is not a transparent way of indicating evaluation criteria. By knowing the exact marking scheme, the bidders would have been more accurate and careful in projecting each aspect while furnishing the supporting documents in their bids.

Case 4 (VR4)
In another case, as per tender conditions, there was a provision of penalty in case of failing to meet the guaranteed power consumption. The penalty was with a ceiling of 10% of the contract value. However, there was no mention about the threshold or minimum guaranteed power consumption that was acceptable to the organization. Therefore, there were all chances that the bidders could deliberately keep the minimum guaranteed consumption on the lower side so as to take benefit during evaluation and in case of not meeting with the minimum guaranteed parameter at the time of execution, get away with a limited penalty of 10% only. Therefore, the evaluation in such bids is not done in an objective manner. There is all likelihood that the work gets awarded to a firm who furnished wrong minimum guaranteed parameters willfully. In such cases, it is always advisable to mention a minimum threshold for parameters beyond which the offers shall stand rejected.

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

This is also required by the Article 14 of the Constitution of India.
Normally three modes of tendering are adopted. Namely -
• Open Tenders
• Limited Tenders
• Single Tender/Nomination Basis

In an open tender, bids are invited giving wide and adequate publicity. This is the most preferred mode of tendering. In the case of small value works, urgent works and in case only a few bidders are available in the market, limited tenders from such bidders who have been empanelled are invited. In case of Limited Tenders the empanelment should be done in a transparent way and updated periodically. Award of contracts on nomination basis, which is also called a single tender is to be resorted to only under exceptional circumstances such as natural calamities and emergencies or there were no bids to repeated tenders or where only one supplier has been licensed (proprietary item) in respect of goods sought to be procured. In one of the recent judgments of the Hon’ble Supreme Court in case of Nagar Nigam, Meerut Vs Al Faheem Meat Exports Pvt. Ltd. it has been emphasized that all the public tenders should be in an open and transparent manner with adequate publicity. In this

“Truth alone will endure; all the rest will be swept away before the tide of time.” Mahatma Gandhi
judgment, Hon’ble Supreme Court has stressed that award of contract on nomination basis should be resorted to in rare and exceptional cases only.

The Commission vide its Circular No. 06-03-02-CTE-34 dt. 20.10.2003 and Circular No. 15/5/06 issued vide letter no. 005/CRD/19 dt. 9th May 2006 has emphasized upon open tendering as the most preferred mode of tendering and insisted on transparency in the preparation of panel in case of limited tenders. During intensive examination of various contracts awarded by many organizations, it is observed that they do not have a clear-cut policy for inviting tenders through various modes as discussed above. Publicity Widest possible publicity through well-circulated national and local newspapers is essential for greater transparency in open tenders. In addition to the existing rules and practices regarding publicity through newspapers, trade journals, the Commission vide their circular no. 98/ORD/1 dt.18.12.2003 has instructed for uploading the Notice Inviting Tender and also tender documents in a downloadable form on the web site. The web site publicity is to be given even in the case of limited tenders.

Receipt of tenders
In the various booklets issued by the CTE Organization of the Commission, the need to maintain transparency in receipt and opening of 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 needs to be ensured. The Commission vide their Circular No. 05-04-1-CTE-8 dt. 8.6.2004 has further instructed that in case of bulky tender documents the provision for submission of bids to designated officials by hand should be made in the tender document itself.

Opening of Tenders
To maintain transparency in the opening of tenders, the Commission in its circular dated 8.6.04 has instructed to open the bids in the presence of bidders.
Despite the reiteration from the Commission regarding maintaining transparency in inviting & opening of the tenders, a number of cases indicating lack of transparency, openness and fairness have come to light. A few examples highlighting the deficiencies in the tender stage are given below-

Case-1(04-WT-72)
One construction PSU was awarded an offsite area work of a power plant costing Rs. 31 crores. While going in for a pretender tie up, they invited offers from two arbitrarily chosen firms, M/s A and M/s B. M/s B became the lowest. The PSU then re-invited the bids from these two firms after deleting two items i.e. structural steel and sheeting. This time the inter-se seniority changed and M/s A became the L-1. Again a revised bid for the third time was invited only from M/s A after adding 1 item of sheeting. M/s A in their revised bid not only quoted higher rates for sheeting, but also increased their rates for other items also. Thus the total pre-tender tie up was entered into in a non transparent, unfair manner resulting in undue benefit to only one contractor.

Case-2 ( 05-WT-48/77)
One construction PSU ‘E’ was awarded the SG area work of power project costing Rs.64 crores. The PSU invited bids from arbitrarily empanelled subcontractors

Truth is hard as adamant and tender as a blossom. *Mahatma Gandhi*
without specifying the qualification criteria. M/s ‘A’ offered highest margin and became H-1. However, they were rejected by the client power sector PSU ‘N’ on grounds that M/s ‘A’ were not meeting the requirements. It is to mention here that the PSU ‘N’ had not stipulated any particular qualification criteria for the sub-contractors. The PSU ‘E’ suggested some other agency ‘B’ arbitrarily. M/s ‘B’ also was rejected by the PSU’N’. Ultimately, the PSU ‘N’ suggested three names arbitrarily, out of which only agency M/s ‘C’ showed interest, but back tracked later. Thus the whole process of sub-contracting was non-transparent and was left to the mercy of the client PSU. In this case, a clear cut qualifying criteria for sub-contractors should have been stipulated by the PSU ‘N’ in the tender document itself, instead of arbitrary rejection of proposed sub-contractors. In fact the PSU ‘N’ should have kept itself away from suggesting the names of the sub-contractors. Similarly, the PSU ‘E’ should have prepared a panel of sub-contractors for various trades in a transparent way.

Case-3 ( 06-WT-15)
One power sector PSU ‘N’, awarded the work of main plant and off site civil work of a power project to another construction PSU ‘H’. The PSU ‘H’ had an ad-hoc panel of four firms for piling work. The PSU ‘H’ invited bids from three firms and the 4th firm was left out. Two out of these three were not interested, so only one firm was left in the fray. Since there was no broad based panel of contractors that was prepared in a transparent way, there was lack of competition. The PSU ‘H’ got very low margin percentage. Even when, one other interested party contacted this PSU ‘H’, it even did not bother to consider their offer. In the same work, the PSU ‘H’ made out a panel for pre-tender tie up by taking the six firms who had approached them and adding three more working contractors. The panel was prepared in a totally arbitrary manner.

Case-4 (06-ET-05)
At the time of formulating one power project costing Rs. 1700 crores, International Competitive Bidding was considered as the preferred mode of tendering. However the entire work was awarded to another PSU ‘B’ on nomination basis. Further some of the sub-contractors short-listed by the executing PSU ‘B’ were rejected by the client PSU ‘A’ without assigning any reasons.
In the same project, in one of the packages awarded to a PSU ‘B’ on nomination basis by a PSU, the PSU, which was awarded the work on nomination basis awarded the work to another PSU, which in turn awarded the work to a private contractor. Thus, ultimately work was executed by the 4th stage contractor.

Case-5 (06-ET-05)
The work of cooling tower (costing Rs. 62 crores ) for a power project was awarded on nomination basis to a private firm even though there are a number of agencies in the market executing similar work . The concerned PSU should have invited competitive tenders from competent and experienced agencies.

Case-6 (VR1)
In one case, while inviting tenders, the publicity made for short-listing of bidders was stated to have been given in various newspapers and also through the website. But during CTE’s inspection, a copy of only one newspaper cutting was made available. Organization was not sure if the same had appeared in all the newspapers envisaged. Also in the tender notice, no details of eligibility criteria, probable cost of

The quest for truth is the summum bouum of life. Mahatma Gandhi
work, etc. had been mentioned. Nowhere in the bid was evaluation document for short-listing, was the date of publicity in various newspapers mentioned/ certified by the Evaluation Committee. On examining the entire case, it was found that the extent of publicity given to this case as stated was not established.

Case-7 (VR2)
In another case, the first call of tenders was cancelled and fresh NIT was issued thereafter. In the second round, the total time given to submit the tenders was only 15 days which is much less than the stipulated period of minimum 45 days.

Case-8 (VR3)
In one of the tenders a condition authorizing the buyer organization to award contract to the next lowest evaluated bidder in the event of the failure of the L1 bidder to sign the contract and furnish performance security, was incorporated. This is violates Commission’s guidelines on the subject which prescribes that if L1 bidder backs out due to any reason, there should be a re-tender in a fair and transparent manner.

Case-9 (VR4)
In one case, the Tender Receipt Register was not found maintained. From the documents it was not possible to establish as to how many bids were received within the stipulated period. Further, the organization did not have proper arrangements for receiving the tenders through tender boxes. A proper arrangement for the receipt of tenders at the scheduled date and time through a tender box needs to be adopted. In cases where the tenders are required to be submitted by hand due to the bulky size of the tender documents, it is to be ensured that the names and designations of at least two officers are mentioned in the bid documents who shall receive the tenders by hand. The information about these officers should also be displayed at the entrance/reception of the premises where the tenders are to be deposited so as to ensure a convenient approach for the bidders.

Case 10 (VR5)
In one case, the price bid opening process was found to be not as per the prescribed procedure. In this case and in a few other cases also, the amount quoted by the vendors was not being entered by the tender opening committee in the tender opening register, though as per the purchase manual, on the spot summary was to be prepared by the tender opening committee. In the instant case neither the quoted amount was entered in the tender opening register nor the spot summary was prepared by the tender opening committee.

Case 11 (VR6)
In one case, the original price bid of L1 bidder was checked and it was found that a stamp was put on each page of the price bid, which contained date of opening & signatures of the members of the tender opening committee. However the column for the number of corrections was kept blank and the number of corrections was not mentioned, thereby giving a chance for manipulation in the price bid at a later stage.

Case 12 (VR7)
In the same case, the corrected quoted amount was Rs. 40.79 crores, which was just Rs. 5 lac less than the L-2 quote of Rs. 40.84 crores. In the price bid, a discount of -------------------------------

Corruption ought not to be an inevitable product of democracy. *Mahatma Gandhi*
11% on total price is seen to have been mentioned below the stamp and signature of the tender opening committee. Incidentally, this insertion also was not attested by the tender opening committee leaving a doubt as to when the discount amount was added i.e. whether after the opening of the price bid? Such manipulations were possible in this case as the column reflecting number of corrections was blank and was prone to be misused by any interested party.

Case 13 (VR8)
In yet another project of a Power Sector PSU, the covering letter of the price bid of one of the bidders to whom the work was finally awarded was having a list of all the documents enclosed in the bid. However, in the same bid, a letter indicating a discount was also enclosed but this letter was not having any mention on the first page of the price bid which was containing the list of all the enclosures. Incidentally, this bidder could become L1 only after considering the discount as per this letter, which leaves enough room for suspicion that the discount letter might have been added at a later stage.

Case 14 (VR9)
In a case of award of a project of Rs.3400 crores by a Power Sector PSU to another Central PSU on negotiation basis, the justification was given that one State Government has also given the work to the same Power Sector PSU on negotiation basis. By doing so, the PSU skipped the normal tendering procedure to award the work to the Central PSU. This procedure of awarding a work on nomination basis is not correct due to the following reasons:

- a) The procedures followed by the State Government may not be taken as precedence to obviate procedures adopted in a Central Govt. Organization.
- b) Considering the amount involved and the long gestation period of the project, it is not found prudent to skip the tender process just to save some time.
- c) As per the Govt.'s sanction, this project was to be executed in the 10th Plan period and, therefore, there was sufficient time available for the organization to go in for a regular tender process.

Case 15 (VR10)
While awarding various packages to private companies, a Central PSU after having obtained the main power project on nomination basis from another Central PSU chose to give limited publicity by giving a tender notice only in one newspaper, i.e. Financial Express (English) and that too in Kolkata Edition only. This particular newspaper is probably having the least circulation in the category of national newspapers, like, TOI, HT & the ET etc. Because of this limited publicity, in most of the packages, the offers received were only from 2 to 4 bidders and that too most of the bidders were from a particular place only.

Opening of tenders in the presence of trade representatives should be scrupulously followed. While opening the tenders by the tender opening officer / committee, each tender should be numbered serially, initialed and dated on the first page. Each page of the tender should also be initialed with date and particularly the prices, important terms and conditions etc. should be encircled and initialed by the tender opening officer / committee. Alterations in tenders if any, made by the firms, should be initialed legibly to make it perfectly clear that such alteration, erasing or cutting was present on the tender at the time of tender opening and this fact be also recorded by the tender opening officer / committee.

Even If I am a minority of one, truth is still the truth. Mahatma Gandhi
Pre-qualification
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).

The pre-requisites of pre-qualification process are:
- Transparency
- Fairness
- Maintenance of competition

The Commission has issued guidelines vide circular No12-02-1-CTE-6 dated: 12.12.2002 and 07.05.2004 advising the organizations to frame the pre-qualification criteria in such a way that it is neither too stringent nor too lax to achieve the purpose of fair competition.

During intensive examinations of the works of the organizations dealing with the power projects, following deficiencies were observed:
- Stringent PQ Criteria resulting in poor competition.
- Unduly restrictive criteria, creating entry barrier for potential bidders.
- Evaluation criteria not notified to the bidders, making the PQ process non-transparent.
- PQ Criteria relaxed during evaluation, thus creating entry barrier to the other potential bidders fulfilling the relaxed criteria.
- Credentials of the bidders not matched with the notified criteria.
- Credentials of the bidders not verified.

A few examples on the above deficiencies are as follows:

Case-1 (04-NH-74)
As per the notified qualification criteria for a housing project costing Rs. 13 crores, bidders were required to have experience in housing project. Four bidders were qualified. Two bidders M/s A and M/s B were qualified on the basis of their experience in the construction of hospital building and office building respectively. Remaining two bidders M/s C & D were qualified on the basis of their experience in the construction for private firms. Without verifying the credentials, M/s D was awarded the work.

The organization should have re-invited the bids with relaxed criteria so that contractors having experience in other type of multi-storied buildings could have also participated. Further the organization as a matter of policy should verify the credentials and obtain the TDS certificate from the clients for non govt. works.

Case-1 (05-NH-36)
One organization called tenders for prequalification for civil works of a Hydro power projects (costing Rs 600 crores) from eleven firms. Even though, sufficient was available for call of open tenders. Calling prequalification tenders from arbitrarily selected 11 firms for such a huge project is a serious lapse. One of the pre-qualification criteria for the above project was “the firm should have achieved concreting of volume 2500cum per month more than once in one project. One firm A was insisting on lowering the said limit from 2500 cum per month to 2000 Cum per month. Later on the same firm submitted experience certificate of having achieved 2500 cum of concreting per month more than once in one project. The organization

First they ignore you, then they laugh at you, then they fight you, then you win.  \textit{Mahatma Gandhi}

80
did not verify the authenticity of the certificate. Since there was a request from the contractor ‘A’ to lower the limit of concreting, it is obvious that the contractor A did not have the certificate. In such a situation, the organization should have taken special care to verify the genuineness of the certificate. Subsequently the firm became L1 and work was awarded to them. It is quite possible that the work had been awarded to an in-eligible contractor.

Case-2 (05-WT-44)
One PSU for their transmission line project costing 65 crores stipulated that the contractor will demonstrate the available manufacturing capacity in respect of steel towers considering their manufacturing capacity as well as known commitments (Manufacturing capacity- Commitments = Available manufacturing capacity). It was observed during intensive examination that the manufacturing capacity and the commitment in respect of M/s K to whom the work was awarded was 54000MT and 29000MT only respectively. Thus the available manufacturing capacity was only 5000MT against the requirement of 48000 MT of steel towers. Thus the contractor did not meet requirement.

Case-3 (05-WT-44)
In a transmission line project, pre-qualification criteria was made ambiguous. As per pre-qualification criteria the bidder should have successfully completed at least two project of similar nature and route length of 200 KM. An obvious interpretation is that the firm should have executed two projects each of minimum length of 200 KM. The PSU qualified the contractors by taking the cumulative length in number of project in stead of 200 KM length in each project. The PSU should have made the pre-qualification criteria exhaustive yet specific.

Case-4 (05-SH-38)
Qualifying requirements in a dam project, were made stringent in the first instance. The suggestions made by one of the official for stipulating lesser length of a tunnels and also the suggestion of the consultant for stipulating any type of tunnel instead of water way tunnel were ignored before finalizing QR. This stringent criteria resulted in exclusion of some capable contractors. Even though the suggestion of relaxing above 2QRs were ignored, the committee relaxed some other criteria to includes other firms.

Case-5 (06-SH-13)
Pre-qualification criteria for a power project costing Rs.220 crores was not made exhaustive. Minimum value of work completed by the bidder in support of their past experience was not stipulated. Five reputed and large firms having experience in power projects, were excluded from participation on flimsy ground of executing small value works. Since no minimum value of work was mentioned, this ground of exclusion of these firms was totally unfair. Out of the two firms qualified, one firm PSU ‘B’ was having experience of the work costing only Rs. 31.00crores. If the same yard stick was applied uniformly, other excluded firms also would have qualified. The second firm ‘S’ which ultimately became L-1 was qualified on the basis of work in progress against the requirement of completed work. Thus on one hand eligible firms were disqualified an ineligible firm was qualified on other hand. There appeared to be hardly any competition. The quoted rates of PSU ‘B’ was unreasonably high (Rs.320Crores) as against the L-1’s rates(Rs. 220 crores) clearly indicating its role as a supporting firm only.

Hope is eternal — Its worship never goes in vain. Mahatma Gandhi
Case-6 (06-ET-05)
As per notified PQ criteria for the work of coal handling plant for power project, the contractors were to be selected on the basis of their experience in 2 similar completed works of certain value. In the last five years. However, it was observed that L1 contractor was pre qualified on the basis of ongoing works. Thus, evaluation was not done as per notified criteria. Pre-qualifying contractors on the basis of their experience in ongoing work, rather than on the basis of completed works was observed in number of cases.

Case-8 (06-ET-61)
As per NIT condition of ‘Tail Race Diversion’ work of a hydro power project, bidders were required to have experience of having successfully completed certain number of similar works of certain value during last 7 years ending May 04. On scrutiny of credentials of M/s X, who was awarded the work, it was observed that the work on the basis of which, M/s X was qualified was in progress on 31st May 2004. Thus the work was awarded to ineligible contractors.

Case-9 (05-ET-33)
While pre-qualifying contractors for a transmission line project, two contractors were qualified on the basis of experience of the same work. One contractor was awarded the work. Even after lapse of two years, the department could not explain the anomaly, obviously they had not verified the credentials. The same lapse was observed in a hydro power project also.

Case-10 (06-ET-45)
As per standard pre qualification criteria for power transmission line, the bidder were required to have certain experience as a prime contractor/member of a joint venture. In one of the package, this standard pre qualification criteria was relaxed to the extent that even bidders having experience as a sub contractor were allowed. It appears that the experience in the capacity of a sub contractor was added only in the standard document to suit one particular bidder. Even this relaxed pre qualification criteria in this particular tender paper were not fulfilled by the L1 contractor. The L1 contractor had experience in the capacity of sub contractor in erection of transmission line and not a complete work.

Case-11 (05-ET-46)
In number of cases pertaining to one organization, it was observed that prequalification criteria was relaxed after issue of NIT and fresh relaxed criteria was publicized. Thus, pre-qualification process was not transparent.

Case-12 (05-SH-38)
In one of the power projects, the qualifying requirements was initially framed stringent and was relaxed later on to include more number of firms. The criteria considered was number of firms applied for the PQ documents rather than the requirement of work.

Case-13 (05-SH-06)
Pre-qualification through open press advertisement was not done for one of the major power projects. Offers were invited from the selected firms on the basis of pre-qualification done for some earlier project. Initially, one firm was excluded but at

Live as if you were to die tomorrow. Learn as if you were to live forever. Mahatma Gandhi
later stage, again this firm was considered as prequalified. The process of pre-qualification lacks clarity and transparency because no clear-cut policy was adopted for adding/deleting names of the particular firm

Case-14 (07-SH-13)
For a power project costing Rs.260 crores fresh pre-qualification offers were not invited rather arbitrarily one firm was drawn from an earlier executed project. It will be pertinent to mention that this arbitrarily chosen firm was not pre-qualified in the earlier project for the work similar to the instant one. In fact by way of misrepresenting the competence, this firm was considered qualified despite having no experience in the similar field.

Case15 (VR1)
In the case of a Power Project, the Qualification Requirement (QR) envisaged a cut off time for considering the experience as from the date of tender opening, i.e. the works executed within a certain time period were to be considered for qualification purpose. However, as the response was poor against the first call of tenders, the QR were revised but the criterion made was even more stringent. Removing the cut off limit of time period resulted in qualifying firms who had executed similar works as long back as 15 years probably with obsolete technology.

Case16 (VR2)
In a case of award of mechanical package by a Power Sector PSU, the PQ criteria appeared to be skewed in favour of a particular firm to whom work was finally awarded. For this project of 2000 MW, only two works of 200 MW were envisaged to be completed by the prospective bidders. Against this, a firm to whom the work was awarded produced two certificates having completed works of 200 MW and 210 MW only. Incidentally, the firm provided these two certificates also only after opening of bids.

Case 17(VR3)
In a case of award of E&M package by a Power Sector PSU, the case was finalized without properly examining the eligibility criteria vis-à-vis the proposals submitted by the bidders. Whereas the eligibility criteria envisaged major share of contribution by the leader in case of the Joint Venture bidder, but as per the proposal submitted by a Joint Venture, to whom the project was finally awarded, the distribution of work was indicated in an ambiguous manner. In the initial offer, the leader being a foreign company indicated major supplies from their offshore work but in the price bids, the distribution of works appeared such that major portion would be supplied from Indian partner. Prima-facie, the joint venture bagged the award by circumventing the prescribed eligibility criteria in the tender.

Case 18(VR4)
In one case, a PSU issued amended the Qualification Criteria through a corrigendum in such a way that suited a particular firm, i.e. the successful bidder. Normally the offered equipments are required to have a proven performance for a certain period say two years or one year on the date of opening of the bid. But in this case the amended qualification criteria did not specify any period and rather envisaged that the equipment should be in satisfactory operation as on the date of bid opening. This requirement was fulfilled by the said firm based on a user certificate stating that the

---

Man is the product of his thoughts. What he thinks, he becomes. *Mahatma Gandhi*
offered equipments were working satisfactorily since November 2000 as against the bid opening date of 4.6.2001. Incidentally the original Qualification Criteria envisaged, a specific technology based equipment having satisfactory operation for at least two years as on the date of opening of bids. The period of successful operation of the equipment was deliberately not specified in the amended qualification criteria to suit a particular firm.

Case 19(VR5)
In one case, the Certificate of Work Experience submitted by the bidders did not have the details regarding the date of starting of the work and the scope of work etc. It appeared that the evaluation of the QR was not done in an elaborate manner. In the certificates, it was not mentioned whether the works were completed in time or otherwise. Timely completion of works is an important attribute while evaluating the credentials of the bidders.

Case 20(VR6)
In some of the Power Sector PSUs, instead of pre-qualification, postqualification evaluation is adopted, i.e. the offers are scrutinized in terms of QRs after opening the price bids. The firms are selected through a process of elimination, i.e. if L1 bidder meets the QR, the work is awarded to such bidder otherwise L2 bidder is evaluated vis-à-vis QRs and so on. In such a system since the evaluation is done after knowing the price ranking, there are chances that the recommendations get biased because of one reason or the other. Such a system can be considered fool proof only when the QRs are defined absolutely in clear terms and without any scope for misinterpretation and manipulation by the bidders.

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.

Tender Evaluation and Award of Work
This is the most sensitive area susceptible to corruption. Corruption is inversely proportional to transparency and fairness. To ensure that evaluation is done in most transparent and fair & open manner ,following points should be taken care of ....

- Evaluation of tenders exactly as per the notified criteria.
- Timely decision within validity period.
- Complying with commission’s circular regarding negotiation.
- Ensuring that conditions / specifications are not relaxed in favour of contractor to whom the work is being awarded.
- Ensuring that L1 is not ignored on flimsy grounds.
- Compliance with the purchase preference policy of the govt.
- Ensuring that work order / supply order is placed within justified rates.

CVC guidelines in this regard have been issued vide following circulars-
- Circular No. 8(1)(H)/98(1) dated 18.11.98,
- Circular No. 98/ORD/1 dated 24.8.2000 / 15.3.99,
- CVC’S Office Order No. 13/3/05 (005/VGL/4) dated 16.3.2005,
- Circular No. 06-03-02-CTE-34 dated 20.10.03,
- Circular No. 004/DSP/11-6594 dated 24-2-2005
- Circular No. 005/CRD/012 dated 3.03.2007

The moment there is suspicion about a person’s motives, everything he does becomes tainted. Mahatma Gandhi
Some of the deficiencies observed in evaluation and award of work of power projects are as below-

Case 1 (04-NH-73)
Eleven firms were pre-qualified and tenders were invited on item rate basis for a housing project and eight agencies submitted their price bid. The rates quoted by L1 contractor M/s A were found on higher side for certain items and the bid was considered as front loaded. Once this L1 firm was asked to submit the bank guarantee against the difference for abnormally low rated (ALR) items, the firm asked for the analysis of rates of the department on the basis of which these items were categorized as ALR. Rather than supplying the information to the contractor, the department opted for snap bidding on percentage rate basis from the bidders who submitted the price bid. In the snap bidding, some other firm became L1, but the rate of this L1 bidder M/s B were higher by Rs.40 lakhs than the rates of M/s A. The organization could have shared the information with M/s A and accepted their offer keeping safeguard for front loaded bid.

Case 2 (05-WT-44)
For a transmission line, tenders were invited in six packages in the same period. Incidentally, in all the six packages only one firm became L1 and all the six packages were awarded to this firm on rates varying from 4% to 19% above the estimated cost. Since, all these six packages were similar in nature and were to be executed in similar terrain, then award of works at different rates does not appear to be in order.

Case 3 (05-WT-60)
In the work of main plant and off site area, costing Rs.37 crores, the rates of L1 bidder were 20% above the estimated cost. In order to justify these higher rates, the organization, obtained a single quotation from a local builder for aggregate and sand. In fact they should have gone for market enquiry and obtained quotations from various suppliers. This, casual approach resulted in award of work at higher rate.

Case 4 (05-SH-55)
In a case of a work of a central PSU, tenders were invited under International Competitive Bidding. After detailed evaluation of the bids, a JV firm with its quoted price of Rs. 650 crores emerged as lowest bidder (L-1). Accordingly, this firm was invited for post tender discussions. But during discussion, this firm started putting certain unwarranted conditions regarding exemption of taxes and duties etc. These conditions were not mentioned in the firms offer and the bid/offer same was in total conformity with the terms of tender documents. Sensing the reluctance on the part of the firm, the PSU conveyed this firm that in case they did not come forward for post tender discussion, their action would be treated as withdrawal of bid.
In the mean time, the minor partner of the Joint Venture approached the PSU concerned with the request that since the major partner of the JV is backing out, they might be allowed to replace the major partner with the firm of required credentials. Incidentally the PSU while considering the request, allowed this minor partner of JV to propose a new major partner within a period of four weeks. Despite this leaverage the minor JV partner could not suggest an acceptable replacement for major partner in the JV. In this background a decision was taken by the PSU to go for a snap bid among the agencies who participated in the original bidding and finally one of those emerged as L-1 bidder with its quoted price of Rs. 665 crores, which was Rs. 48 crores above the quoted price of earlier L-1, JV firm. Surprisingly, after

The Rich must live more simply so that the Poor may simply live. *Mahatma Gandhi*
taking a stand initially, that the action of the initial L-1 bidder would be treated as withdrawal of bid on account of putting the unwarranted conditions during post bid discussion, a new line of thought emerged whether this action of the original L-1 bidder should be treated as withdrawal of offer or the bid had become non-responsive. Taking shelter of the legal opinion sought in some other case, a decision was taken to not to forfeit the bid security of Rs. 9.0 crores on the plea that the bid had become non-responsive. It would be pertinent to mention that on this issue, the opinion of General Manager (Law) of the PSU was that since the conditions put forth by L-1 firm were unwarranted and were after opening of the bid, as such their action amounted to withdrawal of bid necessitating forfeiture of bid security of Rs. 9.0 crores. Top of all the opinion of GM(Law) was not placed before the board for taking decision on this issue.

In view of the foregoing background and with the facts that the original L-1 bidder was called for post tender negotiations, it is amply clear that their offer was in conformity with the bid conditions and cannot be treated as nonresponsive on whatsoever ground. Therefore, putting any conditions contrary to the bid requirements, at the time of post tender negotiations amounts to stalling the process of finalisation of tender and, eventually, withdrawal of the offer. The view taken by the PSU that too, against the advice of its Law Department, appears to have given an undue financial benefit of Rs. 9.0 crores to the bidder.

Case 5 (06-SH-44)
A power sector PSU ‘A’ invited tenders for main plant area of a thermal power plant wherein, one PSU ‘B’ bidder had quoted Rs.14950/- per unit rate for an item, but calculated item amount taking the unit rate of Rs.24950/-. As per the ambiguity clause, rate of the items quoted by the bidders had precedence over the amount worked out. The organization should have calculated item amount taking Rs.14950/- as a unit rate. However the organization considered Rs.24950/- as unit rate on the request of the bidder against violation of the tender condition.

Had the bid been evaluated as per terms of the tender document, the PSU bidder ‘B’ was L-1 with quoted amount of Rs.24.56 crores, but once the item rate was considered Rs.24950/- instead of Rs.14950 the PSU bidder ‘B’ became L2 with tendered amount Rs. 26.66/-. This PSU ‘B’ availed purchase preference and finally was awarded the work at Rs. 26.13 crores. Thus, power sector PSU ‘A’ awarded the work to PSU ‘B’ at higher rate by Rs. 1.57 crores (Rs.26.13 cr.-Rs.24.56) by violating ambiguity clause of tender document.

Case 6 (06-ET-05)
One PSU ‘A’ who was awarded a power plant project on nomination basis, divided the civil works in four packages, while sub contracting one package, the PSU ‘A’ did not extend the purchase preference policy to PSU ‘B’. The work was awarded to L-1 private contractor who subcontracted the work to the same PSU ‘B’. PSU ‘B’ further sub contracted to another private contractor. Thus, ultimately work was executed by 4th stage contractor.

Case 7 (05-ET-33)
In a power transmission line work, tender documents stipulated completion period as 27 months. However, before award of work, the period of completion was increased to 44 months. Thus, the L1 contractor got undue benefit on account of extended

Truth alone will endure; all the rest will be swept away before the tide of time. Mahatma Gandhi
completion period. The relaxation extended to L1 created a discriminatory treatment to others.

CASE 8 (05- ET-80)
In case of an Effluent Water Utilizations Project, four tenders were received, out of which only two were not techno-commercially acceptable and one firm M/s A did not submit the required earnest money, thus it was a single tender. However, M/s A’s tender was also considered, apparently to avoid a situation of a single tender.

Case 9 (05-SH-39)
In one of the power project, initially a particular sub-contractor proposed by the main contractor was disqualified on some flimsy grounds, but later on the same sub-contractor was considered qualified without any change in the status of the experience etc. of that sub-contractor.

Case 10 (05-SH-62)
In one of the power sector PSU for a particular project, feedback regarding the performance of the contractor was asked for the work considered for prequalification before award but it was observed that in spite of adverse feedback regarding the past work, this firm was awarded the work.

Case 11 (VR1)
In one case, a Joint Venture (JV) quoted their prices in a way giving them an advantage of 15% purchase preference allowed to indigenous manufacturers as per the Govt. policy for Mega Power projects. In the schedule 1 of the price bid which consisted of only CIF component, the JV kept disproportionately lower amounts so as to avoid the financial loadings and hence, resulting in a disadvantage to the other bidder, i.e. a JV between a Central PSU as leader and a foreign partner.

Case 12 (VR2)
In another case, a bid guarantee of Rs.10 crore given by L1 bidder was initially valid up to 31.10.2004 but after processing the case, the LOI was issued to this bidder on 3.12.2004, after the validity of the bid guarantee was over. It was only after placement of LOI, that the bid guarantee was got extended up to 6.12.2004, which is abnormal and needs to be discouraged as there was no bid guarantee during the intervening period from 1.11.2004 to 6.12.2004 during which the case was being processed.

Case 13 (VR3)
In a case of award of mechanical package by a Power Sector Undertaking, the bid evaluation criteria envisaged a large number of loading factors with unrealistic presumptions. For example, the SG (Boiler) efficiency was loaded for every 0.1% variation from the base for 25 years, presuming therein that efficiency can be consistently measured to such a minute precision. Moreover, the quoted efficiency is found to vary widely and the same is not consistent as seen from the offers submitted by the bidders. For example the successful bidder quoted efficiency of 84.92 % in case of one project but quoted 86.26 % efficiency in case of the other within a short span after losing the contract in the earlier tender, indicating a wide variation in acceptance of efficiency. Similarly, Coal Pulverizer components’ wear and tear is worked out for 25 years, whereas these components are replaced every two to three years. Incorporation of such clauses gives a leeway/handle to

Truth never damages a cause that is just. Mahatma Gandhi
manipulate/change the Inter-se-seniority. Further, what recourse could be taken by the PSU is not on record if after a period of 4-5 years of the commissioning of the Plant, it comes to light that the efficiencies prescribed or committed have not been attained /found not attainable. By then, the ineligible vendor would have already bagged the contract for such a large sum of a few thousand crores.

Case 14 (VR4)
In one Power Project, a PSU invited two types of price bids. One for mega power project status and the other one for non- mega power project status. Later on, the price bid with mega power project status was opened and the work was awarded after evaluation. However, the mega power project status was not accorded by the competent authority, i.e. the concerned Ministry, to this particular project till date of inspection when over half the project had been completed, though all the benefits had been extended in this case by considering the same as mega power project. It is worthwhile to mention here that there are certain concessions given to the bidders for mega power projects and processing the case without requisite approval of competent authority might have resulted in undue benefits to a particular bidder, i.e. the successful bidder in this case.

Case 15 (VR5)
One Power Sector PSU awarded a package to a Central PSU after considering the purchase preference entitlement to the Central PSU in case the value addition by such PSUs is minimum 20%. While quoting, the Central PSU stated that value addition would be minimum 20% but during execution of the work, it was found that the Central PSU off loaded most of the work to private companies on a back-to-back basis and it was established that the actual minimum value addition by the PSU was not 20% as there was no document to substantiate this fact.

Case 16 (VR6)
In yet another case of Power Project, the price preference of 15% on CIF component in a mega power project was found manipulated by a private sector company to beat an Indian PSU competitor. As per policy on mega power projects, a 15% loading is done on CIF component of the price bid. While quoting, the private company kept CIF component deliberately on the lower side so as to avoid this 15% price loading. However, in the supply order the CIF component was included in another schedule of the price bid, which was mainly for the Indian Rupee component of the price and thus, the purchase preference given by Govt. was wrongfully availed by a private company, to the disadvantage of a public sector company, who quoted mainly in Indian Rupees and was the bona-fide beneficiary of the price preference.

Case 17 (VR7)
In one case, the price bid was required to be given in two parts, i.e. supply portion and civil & erection work. The L1 bidder, who was finally awarded the work, quoted a very small portion in the civil & erection work and kept a major portion of the price part in the supply portion. However, while placing the LOAs (Letter of Acceptance), the work was redistributed in the two LOAs, which was not as quoted in the price bid. For e.g. civil & erection work as quoted in the price bid was only Rs.50,000/- but the same was enhanced to Rs.1.50 crore in the LOA while reducing the same amount in the other LOA for supply only. Although the over-all cost of the contract was same, but redistribution of the proportion of the cost in this manner may result in

Truth quenches untruth, love quenches anger, self-suffering quenches violence. This eternal rule is a rule not for saints only but for all Mahatma Gandhi
undue benefits to the contractor and hence needs to be severely discouraged.

Case 18 (VR8)
While evaluating the bids, the price reasonableness of the projects is not uniformly applied before accepting the tenders. In one case, the award value was Rs.240.69 crore against an estimated amount of Rs.385.75 crore for the E&M Package of the Power Project. The per MW cost for this package worked out to Rs.47.20 lakhs in Oct.’01 whereas while making a comparison with another project awarded in Jan.’99, the per MW cost for similar package came to Rs.73.20 lakhs. This indicates that the project awarded in Jan.’99 was at a very high cost and also gives an impression that a wide range of per MW cost is being justified while awarding the packages. A few check points are suggested to prevent above deficiencies-

Preparation of tender documents
- Adopt updated standard bidding document
- Ensure conformity among nomenclature of items, specifications, drawings, general and special conditions.
- Avoid stipulating such conditions in the contract, which are not feasible to be operated.
- Stipulate performance guarantee clause to eliminate non serious bidders
- Conduct pre-bid meeting i) to bring clarity regarding sprit of various provisions & ii) to bring necessary modifications, if required. Make minutes of the pre-bid meeting as part of agreement.
- Provide clause to deal with ambiguous provisions (order of precedence) in the tender document and ambiguity in the tender submitted by the contractor.
- Stipulate all prevailing govt. policy orders such as purchase preference policy (cvc’s circular no. Dated 15.03.99 & DPE’s circular dated 18.07.05), customs exemptions for material to be imported etc.
- Provide enough safeguards against misuse of mobilisation advance (CVC’s circular No.4CC-1-CTE-2 dated 10.04.07).
- Notify objective evaluation criteria in the tender document.
- Stipulate condition regarding splitting of quantities, if required, in the tender document
- Notify criteria of splitting in the tender document itself if splitting of work / supply order is envisaged (splitting is envisaged when L1’s capacity is less than required or to avoid heavy reliance on one firm)

Inviting tenders
- Prefer open tendering as far as possible
- In case limited tenders are resorted to, prepare & update panel of contractors/ vendors in a transparent way.
- Ensure adequate & wide publicity. (Web publicity is necessary even in case of limited tenders)
- Ensure adequate time for submission of offers.
- Upload NIT & tender document on web site, even in case of limited tenders (cvc’s circular dated 11.2.2004).
- Notify complete address of place of tender submission (cvc’s circular dated 8.6.2004).

Opening of Tenders
- Open the bids in presence of bidders.

_Why change the world when we can change ourselves? Mahatma Gandhi_
• Attest and account for corrections, omissions, insertions, overwriting
• Prepare 'on the spot summary' in tender opening register

Pre-qualification
• Keep the PQ criteria neither too stringent nor too lax.
• Prepare the PQ criteria specific to the requirement of the work in clear terms.
• Notify the evaluation criteria in the PQ document.
• Verify PQ credentials.
• Evaluate the bids exactly as per the notified criteria
• Retender if relaxation in PQ criteria is necessary.

CHAPTER-4 Execution Stage
During course of technical examination of various contracts by CTE organisation, it was
observed that, officials who are otherwise expert in their own technical field do not go
through the complete contract document. During performance of the contract, their main
focus seems to be on BOQ/specifications of the items. Other important contract
provisions, which otherwise are essential for smooth operation of contract get ignored.
The contractors/vendors tends to take advantage of the ignorance of the site staff to
their benefit. Many a times major financial irregularities occur during the performance of
the contract because of the officials are not thorough with the contract conditions.

The deficiencies in this stage are categorized as below-
• Compliance of agreement conditions
• Making payments
• Ensuring quality
• Timely completion

Compliance of Contract Conditions

Case 1 (04-WT-05)
As per contract condition, in case of a housing project costing Rs.15 crores, water for
construction was to be arranged by the contractor. They were also supposed to pay
royalty' for the surplus earth generated from excavation. The PSU provided the water
and did not deduct the royalty from the contractor’s bill. The contractor was unduly
benefited by Rs. 4 Lacs on this account.

Case 2 (04-WT-05)
As per the contract condition, if an item is repeated in different sub-heads, the minimum
rates of all sub-heads will be paid for that particular item. However, in violation of this
contract condition, different rates were paid for the same item in different sub-heads,
which resulted in overpayment of Rs.4 lacs. Also, due to delay in construction the PSU
could not avail rebate from local body.

Case 3 (04-WT-66)
In case of main plant work of power project, costing Rs.77 crores, there were express
provision for deployment of certain equipment, machinery and manpower. This was also
highlighted during pre bid discussion; obviously the organization had stipulated these
requirements to facilitate speedy completion of work. The contractor deployed less
number of machinery manpower etc. and saved in investment. This

“If we take care of the facts of a case, the law will take care of itself” Mahatma Gandhi
resulted inordinate delay. The organization neither took any action against contractor for non-deployment of machinery etc. nor for inordinate delay.

Case 4 (04-WT-66) general
As per the condition of contract, reconciliation of material issued by dept. was to be done at various stages of works, but it was found the same was not being done. In absence of stage wise reconciliation of material, the pilferage of material by contractor / Dept. cannot be ruled out.

Case 5 (06-SH-13)
In a power project costing Rs. 220 crores, 5% interest free advance was provided in the contract agreement. Another interest free advance of Rs.11 crores was allowed to the contractor without any contract provision. Thus, undue financial benefit was extended to the contractor.

Case 6 (06-SH-13)
As per the special condition of the contract for a power project, the service tax was the liability of the contractor; still it was being reimbursed to the contractor, causing undue financial benefit to the contractor.

Case 7 (06-ET-61)
In one of the power project, work contract tax was being recovered @ 2% of cost of a few materials used in the work instead of 2% of the gross value of work done. This as observed during intensive examination of tail race diversion work costing Rs.26 crores.

Case 8 (06-ET-61)
In case of two hydro power projects, where it was observed that safety related facilities like medical care, ventilation, safety sign board, helmets etc. were not provided by the contractor. This shows the apathy of contractors as well as of the site staff towards the work force, working in accident prone area. The site staff not only gave undue benefit to the contractor but also were callous towards labour.

Case 9 (06-ET-72)
Advance of Rs.20 crores @ 10% interest was paid to the contractor without agreement provision. This was observed in case of a 520MW hydro electric project.

Case 10 (05-ET-50)
In power transmission line project costing appx. Rs.5000 crores, reconciliation statement of owner supplied materials was not at all being prepared in any of the contract. Whereas, it should have been done at every running bill stage to arrest any possibility of pilferages.

Case 11 (05-ET-80)
In a power project, Effluent Water Utilizations work was nearing completion, still performance guaranteed test, walk ways, approach road, manhole covers, training to the departmental engineers, etc. were not provided.

Case 12 (05-SH-75)
In one of the power project, involving piling work, tools and plants deployed at site.

As human beings, our greatness lies not so much in being able to remake the world - that is the myth of the atomic age - as in being able to remake ourselves.  Mahatma Gandhi
were not sufficient even when it was specifically mentioned at the time of award of work and duly confirmed during the pre award meeting. As the overall progress of work is related and highly dependent on the deployment of necessary tools, plants and piling rigs, any deficiency in the deployment has resulted in the delay of completion of work in some of the projects inspected.

Case 13(General)
In number of cases it has been observed that plants/equipments/machinery are not being deployed as per contract stipulations. Certain number and type of machinery are stipulated in the contract to achieve desired speed of construction as well as quality standards. By allowing the contractor to deploy less number of equipment of required type, the organization not only extends undue financial benefit to the contractor but also loses in terms of speed and quality. In case of two hydro power project, it was seen that only one batching plant was deployed against two required. The contractor was not able to produce required quantity of concrete and consequently work was delayed. Similarly, in another case, batching plant was not installed at all even after lapse of 15 months from the date of start. As per the contract condition, work was to be executed using design mix concrete produced with batching plant, however concrete work was being executed at site using volumetric method. It is pertinent to mention that design mix method of concrete is more accurate than the volumetric method. Thus by not deploying batching plant, the contractor not only saved money but also compromised the quality.

Case 14(General)
In number of cases, it was observed that contractor’s are either not taking various insurance policies at all or taking these policies for part period or for part value of project. This not only defeats the very purpose of stipulating these insurance policies, but also results in undue financial gain to the contractor. CTEO’s inspections have resulted into huge recoveries on this account. During one of the CTEO’s inspections, CVO of one organization was asked to verify the status of insurance policies in other running contract. In turn, CVO reported the recovery of Rs.1.5 crores. This shows that the officials are not ensuring that required policies are taken for complete duration.

Case 15(VR1)
In one case, the LOI was issued on 3.12.2004 and the successful bidder was equired to furnish performance guarantee within 30 days of LOI and it was further stipulated that if the successful bidder failed to submit the contract performance guarantee in the prescribed form within 30 calendar days after date of LOI, then the bid guarantee amount of the successful bidder would be forfeited by the purchaser as LD. In this case, although the performance guarantee was submitted by the successful bidder after 62 days of issue of LOI no LD was imposed as stipulated in the tender document, which amounts to extending a financial favour to the contractor.

Case 15(VR2)
In a particular power PSU, the major items were required to be type tested by the contractor before supplying to the site. But it was found that type tests were waived and as a result, type test charges, as quoted by the bidder, were not paid to the contractor. Such incidence of waiving contract conditions may not only have bearing

The truth brings with it a great measure of absolution, always. ~R.D. Laing
on the quality aspects but also have financial bearing. This is not a transparent way of handling the contracts as the contractors may have direct or indirect savings by such waivers.

Case 16(VR3)
In some of the cases, the responsibilities of supervision are given to another PSU company by the principal PSU. In one such case, it was found that the supervising PSU was not having any control on the execution of the work and was merely signing the papers at the behest of the principal PSU. While examining the work on site, the quality of work was found to be of very low grade, which proved that there was no supervision at all from the agency appointed for the purpose.

Payment to the Contractors
The deficiencies observed in payments made to the contractors are concerned can be categorized into as follows-

• Mobilization Advance and it’s recovery- The basic purpose of Mobilisation advance is to extend financial assistance within the terms of contract to the contractor to mobilize the man and material resources for timely and smooth take off of the project or procurement of equipment material or other services contract. But, the Mobilisation Advance, especially the interest free advance was being misused in absence of either necessary safeguards or in absence of implementation of these safeguards provided in the contracts. Thus, the Mobilisation Advance so paid was prone to misuse by the contractors in building their own capital or for the purpose other than the one for which it was disbursed. In fact, the grant of interest free advance was proving to be counterproductive. In view of the history of its misuse, Commission vide its Circular No.NU/POL/19 dated 8th December1997 banned the provision of interest free Mobilisation. However, recently in view of representations from various organization, Commission has reviewed the earlier instructions and allowed the organizations to stipulate interest free advance with elaborate mechanism for safeguards against its misuse vide circular No.10/4/07 issued vide letter No.4CC-1-CTE-2 dated 10.04.2007. 
• More importantly the BGs taken in lieu of Mobilisation Advance need to be properly examined within respect to the acceptable format and any condition deterrent to the Govt.’s interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/encashment of BGs also need to be taken so as to protect the Govt. interest.

• Duplicate payment:
Some times, duplicate payment for the same activity is made under two different items.
• Recoveries for statutory taxes/duties: Recoveries for statutory taxes/duties like Work Contract Tax ,Royalty for various construction materials not made as per contract condition.
• Reimbursements:
Reimbursement of service tax, excise duty etc. is done without obtaining the actual proof of depositing the same with authorities concerned. In such situation there is possibility of excess reimbursement.
• Payments made for work not done:
Contractors are paid for even for that part of the work which was not done by them.

Men occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing had happened. ~Winston Churchill
• Escalation paid more than admissible:
  Some of the contracts provide escalation clause, with detailed formula in order to
  compensate the contractors for increase in the material cost during the contract period.
  It is observed in certain cases that formula is not applied correctly inadmissible payment.

• Hire charges not deducted:
  Some times in the interest of work the organisations allow their machinery to be used by
  the contractor, even though there is no provision in the contract. In such cases, if the
  hire charges are not deducted, contractors get unduly benefited.

A few examples regarding irregularities in payments are as below-

Case 1(04-NH-73)
The work of a housing project costing Rs.60 crores was to be executed with design mix
concrete using the ad-mixture. The design mix was to be submitted by the contractor. It
was observed that the contractor was executing the work with some old mix design
without use of ad-mixtures. On account of this the contractor saved approx. Rs. 1 lakh.
In fact proper mix design using admixtures should have been insisted from the contractor
before start of the work.

Case 2(06-ET-05)
In case of one main plant civil work of a power project, escalation payment was being
done on the gross value of work done, without deducting secured advance. Thus, the
contractor received escalation payment for the material purchased earlier.

Case 3 (06-ET-05)
Total excavated quantity of earth was considered for disposal under extra lead without
deducting for back-fill quantity. Thus, payment was made even for the quantity not
disposed. This was observed in the work of RCC chimney for a power project.

Case 4(06-ET-05)
During our sample inspections in year 2005,one organization, executing the works worth
Rs.5000 crores was reimbursing the excise duty to the contractors to the tune of Rs.800
Crores without verifying the excise duty challans. Even after the lapse of one and half
year, the organization is not able to submit the reconciled statement of
reimbursement of excise duty received by the contractor and the actual excise duty paid
by the contractor. Since the amount involved on this account is huge, the possibility of
excess reimbursement to the tune of few crores of rupees can not be ruled out.

Case 5 (05-ET-34)
Special advance of Rs. 4.69 crores was given to the contractor including direct payment
to sub supplier without any agreement provision in a power transmission line project. In
the same project Rs 64.7 lacs were reimbursed to agency towards the amount of ED &
CST for the part supply made through the sub contractor/ sub vendor, which was not
payable as per agreement.

Case 6(06-ET-45)
A few material like anti twist pilot wire, three sheave acriatrollers and dynamometer were
issued to the contractor executing power transmission line. Without provision in

_____________________________________________________________________________________
If you want to ruin the truth, stretch it.  ~Author Unknown
the agreement. The organization did not even recover any hire charges. Thus the contractor was unduly benefited.

Case 7(06-ET-45)
Central Sales tax was not being deducted from supply bills of the agency for the transmission line. The contractor had not submitted any documentary evidence of depositing sales tax with the concerned authorities.

Case 8(05-ET-80)
In a thermal power project, escalation payment was made to the contractor even on owner issue material like cement and steel.

Case 9(05-ET-33)
Work contract tax on survey part of the work was not being deducted in a power transmission contacts. The organisation confirmed recovery of Rs.16 lacs on this account.

Case 10(06-ET-05)
In case of a thermal power expansion project, concrete mix was designed with particular cement content, but at the time of approval of design mix, the cement content was increased arbitrarily. Since, the cement was to be supplied free of cost by the department, it ultimately resulted in infructuous expenditure to the tune several lacs. The possibility of pilferage of cement can not be ruled out.

Case 11(06-ET-61)
Testing charges for various mandatory test conducted by department in their laboratory for their ‘Tail Race Diversion’ work were not being recovered from the contractor as per the agreement provision.

Case 12(05-SH-62)
In one of the power project, the prices taken for escalation were on higher side resulting in an overpayment of Rs. 9 lakhs (appx.).

Case 13 (07-SH-13)
A power sector PSU allowed Rs.4 crores interest free advance during the execution of the work without any contract condition on the ground of rise in the steel prices. It will be worth mentioning here that here was a specific escalation clause for steel and contractor was being adequately compensated for rise in the steel prices, so the action of the organization virtually resulted in undue financial benefit to the contractor. If the rate of interest on this extra contractual advance payment is considered same as on the mobilization advance stipulated in the contract agreement, this undue benefit will amount to almost Rs.50 lakhs. In the same power project before award of work the L-1 firm confirmed that the mega project concessions will be passed on to the PSU. However, till the inspection, no mega project concessions were passed on to the PSU by the L-1 firm. Rather a proposal was in the process for payment of 16% of the total amount of mega project concessions to the L-1 firm as a fee for the consultant who will be appointed by the L-1 firm for availing these mega project concessions. This action of the PSU of allowing 16% of the amount of these concessions to the L-1 firm does not appear to be in order as before placing the award letter the PSU categorically rejected the

The truth is more important than the facts. ~Frank Lloyd Wright
demand of the L-1 firm on this account. The total Mega Project Concessions were estimated approximately Rs.20 crores at the initial stages of work. Thus, in violation of the contract, undue financial benefit is being extended to the contractor to the tune of Rs.3 crores (i.e. 16% of Rs.20 crores).

Quality
One of the cardinal principles of public procurement is to procure works or goods or services of specified quality. For this purpose, detailed quality standards are stipulated in the contracts. Any compromise in the quality will defeat the very purpose of stipulating such elaborate quality standards.

Case 1(06-SH-69)
As per the item nomenclature in a contract for a thermal power project, surface cleaning and preparation on steel structural members was to be done with wire brushing or mechanical tools depending upon the condition of surface. But, at site surface cleaning and preparation was being done only with wire-brush, whereas certain members of structural steel required cleaning with mechanical tools because of scaling. In the same project, honey-combing was observed in certain locations in beam and slab.

Case 2(06-ET-05)
Huge quantity of unsuitable sand was found lying at the batching plant sites of various packages in a power project. Such unsuitable material in general should have been removed immediately from the site so that the contractor is not tempted to use them. In this case use of this piled up rejected material by the contractor cannot be ruled out.

Case 3(06-ET-05)
During intensive examination of one cooling tower working costing Rs. 62 crores it was observed that the field test laboratory set up by the contractor was not operational. Thus the very purpose of setting up laboratory for quality assurance was defeated. It is not out of way to mention that the contractor had got this work on nomination basis.

Case 4(05-SH62/64)
In a power project, the thickness of paint over structural steel members was found less than the required. The painting was a high value activity and any deficiency in painting thickness will obviously adversely affect the overall life of steel structure beside undue financial benefit to the contractor. In the same project, honeycombing, bulging and undulations were observed on concrete surface in various locations, even the repair was done in a shabby manner and with a weak mortar.

Case 5(05-ET-80)
In number of projects, RCC work with design mix concrete was being executed by volumetric method. The contractors were not only saving cement & hire charges of batching plant but also were compromising on quality of work.

Case 6(07-SH-13)
In a Nuclear power project costing Rs. 260 crores the quality of finishing work was

Like all valuable commodities, truth is often counterfeited. ~James Cardinal Gibbons
found to be poor. Even in the critical areas where very stringent quality requirements were set out, inferior finish, including was observed at number of locations. Running cracks in the pavement were also observed.

Case 7(05-SH-06)
In a RR stone masonry drain work of a Nuclear power project bond stones were not provided at all, which are necessary for the stability of the stone work. Similarly the joints in the stone masonry were observed more than the maximum permissible size of the joints, which is also indicative of poor quality of construction.

Case 8(VR1)
In one case, it was found that while dispatching the material from contractor’s stores, the items, which were earlier rejected, deformed and rusted, were mixed with the other items ready for dispatch to erection site. It was only during CTE’s inspection that these items were pinpointed and were segregated from the other items before sending the same to the site. Such lapses prove that supervision at the time of execution is not given due importance by the PSUs particularly when the executing agency is another PSU.

Mandatory Tests
The contract documents stipulate mandatory tests for ensuring that the material represented by the sample conform to desired quality standard. It is observed that the supervisory staff does not ensure that the materials are tested at proper frequency. This not only defeats the objective of mandatory tests but also gives opportunity to the contractor to bring sub-standard materials and save on testing charges.

Time Overrun
While examining the correspondence files of some power projects, it was observed that many projects have been unduly delayed due to contractor’s fault such as non deployment of adequate plant & machinery, technical staff, material, labour etc. However, the organizations were found to have taken no Action against the contractor in terms of the agreement. In some projects, it was further observed that ‘Extension of Time’ had been granted without claiming compensation for ‘Liquidated Damages’, ignoring all such correspondence that implicate the contractor. A few check points are suggested to prevent above deficiencies-
• Match tender document with agreement
• Ensure that agreement is signed & sealed properly in time.
• Verify bank guarantees.
• Watch deviations, especially in abnormally high rated and high value items.
• Ensure recoveries as per contract.
• Reimburse taxes and duties, if applicable, only on the production of relevant document.
• Carry out mandatory tests.
• Ensure compliance of conditions regarding licensees, insurance policies and deployment of technical staff.
• Maintain proper record of hindrance.

If falsehood, like truth, had but one face, we would be more on equal terms. For we would consider the contrary of what the liar said to be certain. But the opposite of truth has a hundred thousand faces and an infinite field. ~Michel Eyquem de Montaigne
CHAPTER-5 General Guidance to CVOs
So far we have discussed various deficiencies, relevant instructions of the Commission and the check-list for the preventive measures in different stages of public procurement. CVOs being stationed in the organization can play vital role in minimizing these deficiencies.

Various causes leading to deficiencies can be listed below.
- No manual / Old manual
- Lack of standardization in contract conditions, specifications etc.
- Lack of knowledge of the public procurement process.
- Casual Approach
- Malafide Intentions

In order to address above causes, following preventive measures are suggested.
1. Get the manual updated, if required. If there is no manual get it prepared. The need to have well documented Policy guidelines in place in an organization to execute the procurement activity in a uniform and well coordinated manner with least time and cost overruns cannot be overemphasized. It has been observed that some of the Power Sectors do not have detailed Purchase Policy/Manual, which renders the system of procurement quite ad-hoc and arbitrary. This is a very important document required to guide officials in their day to day work. It is therefore, essential that a codified purchase/works manual containing the detailed purchase/works procedures, guidelines and also proper delegation of power is prepared by all the organizations so that there is a systematic and uniform approach in decision making. Such an integrated approach is not only likely to put a cap on corruption but would also ensure smoother and faster decision-making.
2. Go through the CTE’s intensive examination reports and complaints received in the organization to know the common irregularities occurring in the public procurement.
3. Login CVC website regularly to update with booklets issued by the CTEO’s / latest circulars / information.
4. Publish regular news-letters on website to update officers regarding common deficiencies and their preventions / CVC circulars.
5. Arrange adequate training to technical staff in sound engineering practices / contract management etc.

CTE type inspections/ Random Checks CTEO with their existing staff can undertake intensive examination of 200 public procurement. CVO being extended arm of commission, Commission expects that CVO should not only conduct CTE type periodic instruction, but also randomly check day to day activity of the organizations in public procurements. CVOs are being constantly given instructions/ guidance during various training programs / review meetings / interactions etc. for conducting CTE type intensive examination of works / purchase contracts etc. A manual for intensive examination for works / purchase contracts issued by the commission vide letter no. OFF-1-CTE-1(Pt) dated 07-07- 2004 and latest circular no. 21/05/2006 vide letter no. F.No.006/VGL/29 dated 01-05-2006 gives broad guidelines to CVOs for intensive examination of works / purchase contracts. These are available on the CVC website.

Respect for the truth is an acquired taste. ~Mark Van Doren, Liberal Education, 1943
Please browse through the following regularly and apply the checkpoints -
- Web-site
- Tender advertisement
- Tender opening register
- Tender evaluation notes
- Time frame for decisions
- Tenders/tender files
- Agreement
- Bills
- Verification of BGs
- Site records

Checkpoints for tender stage-
- Open tenders are called as far as possible
- The panel of contractor / vendors are prepared and updated periodically in transparent way.
- Prequalification criteria is notified and applied as per notified criteria.
- In case of relaxation in prequalification criteria tenders are recalled. Credentials are verified at least in case of L1.
- Commission’s circular regarding negotiations with L1 are to be complied with.
- Conditions of tenders are not relaxed after price bids are received.

Check points for execution stage-
- Agreement is signed & sealed properly
- Bank guarantees are verified
- Conditions regarding insurance policies, P.G., Labour licence etc. complied with.
- Major deviations not done.
- Recoveries are made as per contract.
- Proper record of hindrance maintained.
- Mandatory tests are carried out.

Recent Initiatives To Improve Transparency In Public Procurement
A few recent initiatives that have been to improve transparency and openness in Government functioning are enumerated below. The CVOs should take a lead in implementing these initiatives in their respective organizations.

- Right to information Act:
The Right to information Act 2005 which has come into force in October 2005, is an important weapon in the hands of Indian citizen to access almost any information from a public authority. The objective of the RTI Act 2005 is to promote transparency and accountability in the functioning of every public authority. Now any decision including decisions in the public procurement domain taken by any public authority can be accessed and scrutinized by any individual. CVOs should pursue with the management for proper maintenance of records and publishing of relevant information on the web-site to facilitate as much information suo motu to the public at regular intervals so that the public have minimum resort to the use of this Act to obtain information. Since this Act is basically to promote transparency and openness, CVOs should intensify their efforts to bring complete transparency and openness in all processes including public procurement.

When a man lies, he murders some part of the world. ~Rospo Pallenberg and John Boorman, Excalibur, based on Le Morte d'Arthur by Thomas Malory
• Integrity Pact:
This is a tool developed by Transparency International to help government, fight corruption in the field of public procurement. It is a binding voluntary agreement between the procurement agency and all bidders for a project. Both agree not to accept / give bribe to obtain or retain the particular contract. The implementation of integrity pact is to be monitored by independent monitors, selected by the organizations with the approval of the Commission. CVOs should take initiative in incorporating this pact in large value contracts to begin with.

• Leveraging information technology:
The Government is promoting E-Governance to improve transparency in government functioning. As regards public procurement, the modern IT tools can be leveraged in enhancing transparency in the form of ETendering, E-Procurements, E-payments & uploading of post tender details on the website. CVOs should ensure compliance of Commission’s instructions issued in this regard.

It is impossible to calculate the moral mischief, if I may so express it, that mental lying has produced in society. When a man has so far corrupted and prostituted the chastity of his mind as to subscribe his professional belief to things he does not believe he has prepared himself for the commission of every other crime. ~Thomas Paine, The Age of Reason
REPORT ON VIGILANCE AWARENESS PERIOD- 2010

As per the Directives of the CVC, Vigilance Awareness Period was observed in NCL from 25.10.10 to 1.11.10.

It was commenced with the administration of pledge and reading out of messages received at this end from Hon'ble President of India, Vice-President of India, Prime Minister of India and C.V.C.. The Vigilance Awareness Period was utilized to involve employees from the top of the hierarchy to the grass root level of the organization. In order to make the campaign of the fight against corruption visible to all sections of society, discussions were also held with the members of Unions, Officers Association and the local village Sarpanchs. Pamphlets were distributed to them for spreading the message about the need to fight corruption. All of them were found to be very enthusiastic in the meeting and they assured their co-operation in this respect. Like last year, this year also NCL has spread the message about the need to fight corruption. The students of NCL aided schools were involved to express their thoughts and views on issues like honesty, integrity and the need to fight the corrupt. The children were asked to draw and paint their feelings on the topic: “Corruption has made our life difficult". Through their colour and brushes the children have very emphatically revealed their anger against the corruption. Children were also asked to express their thoughts on the topic “Ways and Means to fight Corruption”. A declamation competition was also held on the topic: “No legacy is so rich as honesty”. Their paintings and essays give us the hope that the future of this country is safe in their hands.

A talk on “Integrity Pact” by Sri K.K.Ojha, Ex CGM (MM) organized during the Vigilance Awareness Period was not only informative but also benefited the attending employees.

A consumer conclave was organized by the Sales Deptt. on 27.10.10 where various consumers exchanged their ideas and grievances with NCL.

A workshop on “Procurement Procedure and Common irregularity in handling of tender” was conducted by Sri S.D.Narang EX-TE, CVC, and Director (SE), DGS&D, NEW Delhi on 29.10.10. The workshop proved to be a big success going by the interaction and exchange of views that took place between faculty and participants.

A talk on “Bid rigging and competition laws in India” delivered by Sri S.P.Deo, Addl. Director General, Competition Commission of India, had a tremendous impact on participants.
For Officers and Employees of NCL an essay and debate competition were organized on the topic “Black money is the only root of corruption in politics, business and bureaucracy” and “The accomplice to the crime of corruption is our own indifference” respectively. A slogan writing competition had also been organized. The participating employees made the competition a very lively one. The winners of different activities carried out in NCL were felicitated on the final day of the Vigilance Awareness Week, during the concluding ceremony on 01.11.2010.

The concluding day function of the Vigilance Awareness period was held at Officer’s Club Auditorium on 1.11.2010. Shri Om Prakash Mishra, Dir. (T/O), NCL was the Chief Guest of the function. The presence of shri S.K. Rawat, Dir. (Fin), NCL and Shri B. Pradhan, CVO, made the occasion successful. The proceeding of the evening started with a welcome song rendered by the students of Kendriya Vidyalaya, Singrauli. A brief account of the activities that took place during the Vigilance Awareness Period-10 was spelt out to the guests. An exhibition of the drawing and painting made by the School Children on the topic “Corruption has made our life difficult” was held at the same venue. The creative outpouring of the Children on Canvas struck an instantaneous chord with the Chief Guest, VIPs, executives, staff and others. The message conveyed through these painting was crystal clear – corruption has made our life difficult. In their address on the occasion, Dir. (T/O), Dir. (Fin) and Chief Vigilance Officer, NCL were unequivocal in being unrelenting in the fight against corruption and the need to differentiate between genuine mistakes made in the interest of production and deeds done with malafide intentions. The prize – winners from the School as well as NCL HQrs. were felicitated.

The various activities carried out by NCL during the Vigilance Awareness Period were widely covered by the mass media. The paper clippings have been annexed to the report.

*******

Beware of the half truth. You may have gotten hold of the wrong half. ~Author Unknown
PRIZE WINNING SLOGANS
सत्कर्ता जागृकता से संबंधित नारा

करो पारदर्शिता में सब काम,
सबसे अच्छा होगा परिणाम।
आपका प्रयास और जागरूकता ही,
सत्कर्ता जागरूकता पखवाड़ा विश्वास का ईनाम।

सत्कर्ता का अवतरण, देश का उन्नयन।
ब्रह्मचार का अवतरण, प्रगति का आरोहण।

ईमानदारी और सत्य की गौरवी फैलाओ।
ब्रह्मचार की विशेष आग बुझाओ।
देश और समाज को खोखला बना देता है ब्रह्मचार।
अपने को अपनी से विश्वासघात करता है ब्रह्मचार।

सोच को बदलो, सितारे बदल जायेंगे,
नजर को बदलो, नजारे बदल जायेंगे।
कर्तव्य बदलने की जरुरत नहीं,
दिशाओं को बदलो, किनारे बदल जायेंगे।

ईमानदारी का दामन ठामकर चलने वाला,
कामयाबी की हर मंजील प्राप्त कर सकता है।

ब्रह्मचार है धीमा जहर, फैला हुआ है शहर शहर।
सारे देश में इसका कहर, देशवासी है तंग हर पहर।

बढ़े चलो ईमानदारी की डगर, हो अरुले फिर भी मगर।
मार्ग के काटे भी देखना, फुल बन जायेंगे पथ पर।

बेईमानी की बाढ़ में, चली सत्कर्ता जागरूकता की नाव।
जन-जन में ईमानदारी, जागरूक हुआ देश का गाँव-गाँव।

बन्द ऑखां में ब्रह्मचार, खुली ऑखों में ईमानदारी।
पलकों को बनाकर पालकी, सत्कर्ता लेकर चले सत्य की ओर।

सत्य जीवन की सम्भावना, कभी न हो अवरूद्ध।
सत्कर्ता जागरूकता करता सदा, ब्रह्मचार से युद्ध।
"Condemn Corruption : Help in building a better and reliable system."

"Let not your conscience be polluted by corruption save your integrity : Say No to Corruption"

"No Corruption : No Evil show pure professionalism as your skill".

"Corruption will poison our society and family too. Lets Make Corruption a taboo."

"Let not your conscience be polluted by corruption save your integrity : Say No to Corruption"

"No Corruption : No Evil show pure professionalism as your skill".

"Honesty pay honour, and Corruption dishonour "

"Keep nothing under the table, except your shoes".

एक नसीहत बिल्कुल साफ, ।
ब्रह्मचार, पापों का बाप ॥

यदि चाहो, अपना उत्थान ।
ब्रह्मचार का करो अपमान ॥

ब्रह्मचारिकी की पहचान ।
झूकी नजरें, बन्द जुबान ॥
A little candor never leaves me. It is what protects me.  ~Antonio Porchia, Voces, 1943, translated from Spanish by W.S. Merwin
A new beginning was made at NCL so far as spreading the message of the need to
fight corruption was concerned. Having regard to the adage ‘CATCH THEM YOUNG’,
children of NCL aided Schools in Singrauli were involved to spread the values of “honesty
& integrity” and alert their parents, acquaintances, relations and friends about the need
to fight and expose the corrupt. This move was inspired by the thought to sow the seeds
of truthfulness in the Nation Builders of tomorrow.

Northern Coalfields Limited is having within its territorial jurisdiction around 10 Schools imparting education to the wards of employees as well as children belonging to the vicinity of NCL. Combat of corruption is possible only with the raising of awareness level of the employees as well as the stake holders of Northern Coalfields Limited. It was thought proper by the Vigilance Department of NCL to raise the awareness level of School Children against the need to fight corruption and through them to spread the message to their parents, the acquaintances relatives and friends that corruption adversely affects the society and that freedom from corruption is the fountain head of happiness in the society. Towards this end, a painting competition was organized in all these 10 Schools aided by NCL. In the painting competition, the classes were divided into three groups i.e. group A consisting of children of class-1 to 4, group B comprising of children of class 5 to 8 and group c consisting of students from class 9 to 12. The students were asked to paint / sketch their feelings and impressions on the following topics:

“Corruption has made our life difficult”

Through their colours and brushes the children have very emphatically revealed their anger against and opposition to corruption.

As per reports, around 5000 students participated in the competition. Presuming that each student would have discussed the topic, chosen by him, for participation in the painting and sketching competition, with a minimum of 4 persons (including his parents, acquaintances, relations and friends) it can be concluded that at least 25000 citizens (including around 5000 students) of the country residing in and around NCL, Singrauli would have been alerted (through the painting /sketching competition) about the menace of corruption in society and would have been persuaded about the need to fight corruption in social life.

No mask like open truth to cover lies, As to go naked is the best disguise -William Congreve
Order

While investigating a complaint of wrongful L.D deduction in a repair job of Excavation Department, it has been observed that records had not been properly maintained by a certain project regarding reasons / obstacles for delay in progress of repairing work. The responsibility for the delays either on account of NCL or the Contactor has not been accepted by both the parties, which led to a controversy.

In repair jobs of Excavation and E&M discipline, as there is a penalty clause for late delivery of the repaired jobs, the accountability for delays in progress of repairing works of E & M and Excavation discipline is to be recorded. Like Civil Engineering jobs, a hindrance register shall be maintained at the site by both the department (NCL) and the contractor or his authorized representative at site to record the various hindrances / obstacles encountered during the execution of the work and which affect the completion of work as per work order / LOI. Both the officer who directly executes the repair work and the contractor or his authorized representative will be required to sign on the hindrance register. The contractor may also record his observations in the hindrance register itself. In case the contractor has a different opinion regarding the hindrances / obstacles and a dispute arises, then the matter would be referred to the Engineer In charge of the work and or the next higher authority whose decision would be final & binding on the contractor & the decision taken by the department is to be communicated within 15 days to the contractor from the day that the dispute for the hindrance arises.

A format of Hindrance Register to be maintained is enclosed with this office order and it should be incorporated in the NIT and Work Order/LOI accordingly.

(Niranjan Das)
Director(Tech.)

Encl: as above.
HINDRANCE REGISTER

1. Name of Work:

2. Work Order / LOI No:

3. Latest date commencement as per Work Order / LOI:

4. Actual Date of Commencement:

5. Date of completion as per work Order / LOI:

6. Actual Date of Completion:

<table>
<thead>
<tr>
<th>Sl No</th>
<th>Details of Hindrance</th>
<th>Period of Hindrance</th>
<th>Date of Notification of Hindrance by Contractor</th>
<th>Date of Notification of Hindrance by Department (NCL)</th>
<th>Accountability of Hindrance (NCL/Contractor/any other Reasons)</th>
<th>Signature of Contractor or his representative</th>
<th>Signature of Engineer executing the work</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
<td>(8)</td>
</tr>
</tbody>
</table>
CIRCULAR

During the investigation of a case, it was observed that the committee constituted to examine the claims, of a contractor against the work supposedly done in different projects of NCL and for which payments had not been made, recommended for payment, which was not based on any documents like work order, measurement books entries and also when the Section in Charge had denied of giving any verbal instruction to the contractor for taking up the work.

Hence, following measures need to be adopted for avoidance of recurrence of such incidents in future:

- A notice should be uploaded in the official website of NCL stating that no contractor/supplier should undertake any work without issue of a formal work order/supply order and under no circumstances, the necessity of a formal work order/supply order preceding the resumption of work order/supply order will be relaxed.

- If any committee is constituted to look into the matter of payment, to a contractor, based on a complaint, then it should be ensured that the Section in Charge clearly states the conditions under which the work was undertaken and exact quantity of the work done and this matter should be recorded by the committee before making any recommendation for payment. Committee’s recommendation should be based on written statement of Section in Charge, besides documents like work order’s, measurement book’s for quantity of work done.

- System of issuing of gate pass/slips to contractors/suppliers for taking in/out any material for repair from the site should be drawn up and persons authorized to issue gate pass should clearly mention the work order number in the gate pass/slips, in order to avoid misuse of such gate passes afterwards by the contractors/suppliers.

All concerned are advised to take note of the above mentioned aspects and strictly follow the directions. A separate circular file should also be maintained so that circulars are accessible to all the persons dealing in tendering process.

(Niranjan Das)
D(T/P&P),NCL
A 10 Cum shovel loading Coal in 85 T dumper

IN MOTION RAPID LOADING SYSTEM (SILO)
2000 T OF COAL LOADED IN 45 MIN (Approx.) and Environmental Friendly