GUIDELINES ON VIGILANCE FOR NPCC OFFICIALS

Introduction

A vigilant workforce is key to progress of an organization. Strict compliance of rules and directions by one and all in the organization, itself is a benchmark of excellence. It enhances the possibility of ensuring probity in the organization for getting the best out of limited resources available. Through strict enforcement of rules and directives, Vigilance Department plays a reformative role. It brings efficiency to the organization by curbing irregularities, wastage and corruption and ensures to build high image of the organization. Employees of an efficient and corruption free organization maintain high morale that ensures healthy work environment.

While punitive vigilance penalizes the erring officials, the preventive and surveillance vigilance educate the officials and protect them from committing mistakes. It is noticed that for want of rules and guidelines on different issues, frequent mistakes are committed by employees leading to large number of vigilance cases against them. A careful examination of the vigilance cases being handled in the Vigilance Department reveals that quite a number of such cases are due to ignorance of rules by the employees. In absence of updated Manuals/rules/guidelines, the employees, particularly in the field are performing on the basis of individual judgment and assessment of the situation. It is, thus the responsibility of the senior officers to take action for capacity building of cutting edge level employees, for overall improvement of the situation. The rules and guidelines issued from time to time are required to be made available to the junior officers and staff by their controlling officers. Regular interactions with the employees on compliance of guidelines will educate the employees to function efficiently.

As a guide to officials of NPCC, issues relevant to the Company have been explained along with prevailing directions and guidelines of CVC. It is expected that NPCC officials will be benefited from the notes on the rules and directives as prepared here and will perform their duties confidently.

Shyamalima Banerjee
Chief Vigilance Officer, NPCC
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1. NECESSITIES AND JUSTIFICATION OF WORK

At times, proposals are initiated and work executed by the organizations without establishing the need or justification of such works.

Before according administrative approval for any project, it is necessary to establish its techno-commercial viability in terms of rate of return and other benefits and also to evaluate the available alternatives to ensure an optimum utilization of public funds.

One time purchase of capital plant and machinery should be justified by reference to the actual intended use. The equipment must confirm to the latest specification and technology available in the market. The state of art technology and the life of the equipment along with availability of spares, etc. should be kept in view while deciding the procurement.

Gross over-designing cannot be justified on the basis of unpredictable long-term futuristic demands.

2. ESTIMATES

Estimate rate is a vital element in establishing the reasonableness of prices and therefore preparation of estimates for contracts is an area, which needs special emphasis. A well-defined scope of work and a realistic market rate estimate can prove to be a vital input for successful execution of a contract with high standards of quality. The estimates should take into consideration all relevant factors based on the prevailing market price of various inputs at the concerned locations. The estimates inter-alia should include the basic price, fabrication charges, inspection fees, duties, packing, handling and transportation charges, sales tax on works (WCT), octroi or any other statutory levies and installation, erection, testing and commissioning charges, license fees, contingencies etc as applicable at the time of conception of the project.

Use of products with standard specifications

The items with standard specifications only should be stipulated in the bid documents. In case, items with out standard specifications are to be procured, reasons for procuring such items may be recorded and reasonability of rates must be checked before placing order.

(You may refer for further details CVC Circular No. 14/4/07 on “Use of products with standard specification”)

- Do prepare detailed estimates from drawings /sketches fully supported by calculations as far as possible.
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- Do try to include items with standard specifications only. However, if some items without standard specification become unavoidable, reasons for procuring such items may be recorded.

- Do prepare cost estimate based on CPWD/State PWD norms only and wherever the norms are not available, market rates with proper verification be taken.

- Do include in the estimate the basic price, fabrication charges, inspection fees, duties, packing, handling and transport charges, erection, testing and commissioning charges, contingencies charges etc as applicable at the time of conception of the project for preparing estimate based on realistic market rates and include all commercial clauses including taxes, duties of all types and other statutory charges.

- Do clearly mention various conditions of contract such as General conditions of contract, Technical specifications and Special conditions of contract. Don’t mention conflicting conditions.

- Don’t make vague estimates without adequate details, which may lead to huge quantity variations and creation of extra and substituted items. Don’t include such items or scope of work which are not needed in the work.

3. NOTICE INVITING TENDERS

The most competitive and transparent mode of tendering is to go in for open tendering.

In order to generate wide publicity for better competition and to avoid cartel formation and favoritism to selected firms, it is imperative that the advertised/global tender notice should be published in selected ‘National’ and ‘Local’ dailies with large circulation. Tender notice may also be displayed on the notice board of other organizations. In addition to the paper advertisements, the tender notices should also be put on the website indicating all the details of the tender. Limited tender should also be put on the website.

The Notice Inviting Tender (NIT) should contain all the relevant information in an explicit and categorical manner like estimated value, EMD, tender sale and tender opening dates.

In order to generate fair and adequate competition, it is important that sufficient time depending upon the magnitude and complexity of the project should be given to the bidders to submit their bids. The tender sale should preferably be kept open till the date of tender opening or just one day prior to the date of tender opening.

For big projects, extension, if asked by a majority of the bidders, may be considered in the larger interest of the project. Any corrigendum issued in support of
extension of dates or any other information should be individually intimated to the bidders who had purchased the tender and also be published in the media for wider publicity.

**Rejection of tender without any reasons**

Some of the notice inviting tenders (NITs) has a clause that the tender applications could be rejected without assigning any reason. The above clause in the bid document does not mean that the tender accepting authority is free to take decision in an arbitrary manner. He is bound to record clear, logical reason for any such action of rejection/recall of tender on the file.

*(You may refer for further details CVC Office Order No. 15/3/05 dated 24th March 2005 on “Notice inviting tenders-regarding”).*

The acceptance/rejection of any bid should not be arbitrary but on justified grounds as per laid down specifications as the bidders spent lot of time and energy besides financial costs initially in preparing the bid.

4. **Improving Vigilance administration: Increasing transparency in procurement/sales etc.**

The organization must ensure publication of the information pertaining to tenders on its website. While publishing the tender notices in the newspaper etc, directives maintained in CVC ref 98/ORD/1 dated 18th December 2003 be strictly complied with. Details of website address in which the said publication has been made/proposed to be made, must be given wide publicity to ensure maximum participation of the parties. After the publication of complete and up-to-date bid documents, application forms etc. in the web site, information must be sent immediately to the respective Vigilance Officers/CVO, in order to monitor the system of publicity of open tenders. *(Proforma given on page 51)*

Further, for short term tenders pertaining to the works below a specific value, notice may be put up on the respective website of the organization as the same saves time and costs involved in the newspaper advertisements.

*(You may refer for further details to MOWR Office Memorandum dated 10th April 2006)*

In order to bring about greater transparency in the procurement and tendering processes there is need for widest possible publicity.

Improving vigilance administration is possible only when system improvement is made to prevent the possibilities of corruption. In order to bring about greater transparency, the Central Vigilance Commission issues following instructions for compliance which are with regard to all cases where open tender system is resorted to for procurement or for auction/sale etc. of goods and services.
1. In addition to the existing rules and practices regarding issue of publicity of tenders through newspaper, trade journals and providing tender documents manually and through post etc., the complete bid documents along with application form shall be published on the web site. It should be ensured that the parties making use of this facility of website are not asked to again obtain some other related documents from the department manually for purpose of participating in the tender process i.e. all up to date documents should remain available and shall be equally legally valid for participation in the tender process as manual documents obtained from the departments through manual process.

2. The complete application should be available on the website for purposes of downloading and application made on such a form should be considered valid for participation in the tender process.

3. The organization must give its website address in the advertisement/NIT published in the newspaper.

4. If the organization wishes to charge for the application form downloaded from the computer then they may ask the bidding party to pay the amount by draft / cheque etc. at the time of submission of the application form and bid documents.

   While the above directions must be fully complied with, efforts should be made to eventually switch over to the process of e-procurement / e-sale wherever it is found to be feasible and practical. (You may refer for further details CVC directives vide 98/ORD/1 dated 18th December 2003 and Office Orders dated 9th February 2004 and 11th February 2004).

   • Do float press advertisements for open tenders in Local & National newspapers for wide circulation and provide all the relevant information regarding estimated cost, Earnest Money Deposit, sale, submission and opening of tender and organization website address in the advertisement / NIT published in the newspapers.

   • Do display the NIT and all necessary and relevant details of the tender (be it limited or open tender) on the website of the organization.

   • Do try to follow two-bid system.

   • Do provide sufficient time to bidder for preparation and submission of the bid.

   • Don’t reject any tender without assigning any reason as tender accepting authority is bound to record clear and logical reason for any such action.

   • Don’t forget to intimate any corrigendum issued in support of extension of date or any other information individually to the parties by various means and also to
publish in the media and display on organization website and notice boards for wider publicity.

5. **PRE-QUALIFICATION CRITERIA (PQ)**

The pre-qualification criterion is a yardstick to allow or disallow the firms to participate in the bids. The purpose of any selection procedure is to attract the participation of reputed and capable firms with proven track records. Vaguely defined PQ criteria results in stalling the process of finalizing the contract / award of the contract in a non-transparent manner.

The most important aspect of the PQ criteria is the nature of work for which the experience is required. While framing the pre-qualification conditions, the end purpose of doing so should be kept in view. The PQ condition should be exhaustive, yet specific. The cut off dates regarding work experience should be clearly indicated. For bigger and new projects, as far as possible, a preliminary survey may be conducted to collect relevant data from the market about the firms of repute in the field. The factors that may be kept in view while framing the PQ criteria are:

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

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

**Fixing of Pre-qualification criteria in clear terms (PQ)**

Pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and these may be suitably modified for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and clearly stipulated in unambiguous terms in the bid document so that there is fair competition among the bidders.

*(You may refer for further details CVC Office Memorandum dated 7th May 2004 on “Prequalification Criteria (PQ)”)*

**Fixing of Pre-qualification criteria (PQ)**

The pre-qualification criteria are yardstick to allow or disallow the firms to participate in the bids. It is therefore necessary to fix in advance, the minimum
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qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.

While framing the pre qualification criteria, the end purpose of doing so should be kept in view. The purpose of any selection procedure is to attract the participation of reputed and capable firms with proper track records. The PQ condition should be exhaustive, yet specific. The factors that may be kept in view while framing the PQ criteria includes the scope and nature of work, experience of firms in the same field and financial soundness of work.

The following points must be kept in view while fixing the eligibility criteria: -

A) **For Civil/ Electrical Works**

1) Average annual financial turnover during last 3 years, ending 31st March of the previous financial year, should be at least 30% of the estimated cost.

2) Experience of having successfully completed similar works during last 7 years ending last day of month previous to the one in which applications are invited should be either of the following: -
   a. Three similar completed works costing not less then the amount equal to 40% of the estimated cost.
   
   Or
   
   b. Two similar completed works costing not less then the amount equal to 50% of the estimated cost.
   
   Or
   
   c. One similar completed work costing not less than the amount equal to 80% of the estimated cost.

3) Definition of “similar works” should be clearly defined.

   In addition to above, the criteria regarding satisfactory performance of works, personnel, establishment, plant, equipment etc. may be incorporated according to the requirement of the project.

B) **For Store/Purchase Contracts**

Pre qualification / post qualification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their:

(1) Experience and past performance on similar contracts for last 2 years;

(2) Capabilities with respect to personnel, equipment and manufacturing facilities;
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(3) Financial standing through latest I.T.C.C., Annual report (Balance Sheet and Profit and Loss Account) of last 3 years, the quantity, delivery and value requirement shall be kept in view, while fixing the PQ criteria.

No bidder should be denied pre qualification / post qualification for the reasons unrelated to its capability and resources to successfully perform the contract.

(You may refer for further details CVC Office Memorandum dated 17th December 2002 on “Prequalification Criteria (PQ)”)

Transparency in tendering system- acceptability of the firm in qualifying criteria-Guidelines regarding

In order to maintain transparency and fairness, organization should evolve a practice of finalizing the acceptability of the building firms in respect of the qualifying criteria before or during holding technical negotiations with them. Obtaining revised price bids from the firms, which do not meet the qualification criteria, would be incorrect. Therefore, the exercise of short listing of the qualifying firms must be completed prior to seeking the revised price bids. Moreover, the intimation of rejection to the firms whose bids have been evaluated but found not to meet the qualification criteria, along with the return of the un-opened price bid will enhance transparency and plug the loopholes in the tendering system.

(You may refer for further details CVC Office Order No 72/12/04 dated 10th December 2004 on “Transparency in tendering system-Guidelines regarding”).

6. Tender Sample Clause

While procuring clothing and other textile items, the tender inviting authority insists on submission of a tender sample by the bidders, though detailed specifications for such items exist. The offers are rejected on the basis of tender sample not conforming to the requirements of feel, finish and workmanship as per the master sample. This is in spite of the fact that the bidders confirm in their bids that supply shall be made as per the tender specifications stipulated in the bid document.

CVC advises that Government departments/organizations should consider procurements of such items on the basis of detailed specifications. If required, provision may be stipulated for submission of an advance sample by successful bidder(s) for indeterminable, parameters such as shade/ tone, size, make-up, feel, finish and workmanship before giving clearance for bulk production of the supply. Such a system would not only avoid subjectivity at the tender decision stage but would also ensure healthy competition among bidders and thus take care of quality aspect as well as reasonableness of prices.

(You may refer for further details CVC Office Memorandum dated 15th October 2003 on “Tender Sample Clause”)

- Do ensure that the PQ criteria are exhaustive, yet specific and there is fair competition and clearly stipulated in unambiguous terms in the bid document.
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- Do fix in advance the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.

- Do incorporate the criteria regarding satisfactory performance of works, personnel, establishment, plant, equipment etc. according to the requirement of the project.

- Don’t deny participation to any bidder during pre qualification / post qualification for the reasons unrelated to its capability and resources to successfully perform the contract.

7. TENDER/ BID DOCUMENTS

Tender documents containing instructions to bidders, or the general and the special condition of contract should be updated to suit the contract requirements. All the important clauses pertaining to earnest money deposit, completion schedule, factory testing of equipments, performance bank guarantee, payment terms, penalty for delayed completion, comprehensive insurance cover, contractors liability, safety arrangements, statutory arrangements for labour welfare, arbitration etc. should be incorporated in the bid documents in a proper and explicit manner so as to fully safeguard the interest of the organization and to avoid disputes. These clauses have an indirect financial bearing on the evaluation of offers on equitable and fair basis and in a transparent manner and execution of the contracts. The bidders are required to be made aware of what is expected to be done by them after award of the contract so that all factors may be considered by them while submitting their bids.

The primary objective of submission of Earnest Money Deposit is to establish the earnestness of the bidder so that he does not withdraw, impair or modify the offer within the validity of the bid. It also helps in restricting, if not eliminating ‘speculative’, frivolous or ‘wait and see bids’. Since any relaxation regarding submission of EMD has financial implication besides giving encouragement to the bidders to submit frivolous bids therefore the terms and conditions should clearly stipulate that the offers without EMD would be considered as unresponsive and rejected. The form in which EMD is acceptable should also be clearly mentioned in the tender documents.

The amount of earnest money deposit particularly in the two-bid system needs to be incorporated as a fixed and reasonable amount on the basis of estimated value of the proposed work.

The evaluation/ loading criteria on account of acceptable range of deviation in the commercial terms and conditions viz. payment terms, request for advance, security deposit, completion schedule, performance bank guarantee, etc. should be incorporated in the bidding documents.
The evaluation of tenders should not be based on conditional discounts and suitable clauses regarding this should be included in the bidding documents.

The detailed generic technical specifications along with a list of preferred makes of major equipments should be incorporated in the bid documents. In addition, the performance parameters and the technical evaluation criteria, if any, need to be specified in the bidding documents in unequivocal terms. However, despite all precautions, there may be some contradicting and conflicting specifications and conditions. In order to overcome such crises, an order of preference should also be mentioned in the tender document.

- Do update tender documents to suit the present contract requirements containing instructions to bidders, the general and the special conditions of contract.

- Do fix reasonable amount of EMD on the basis of an estimated value of the proposed work particularly in the two bid system. The amount and the form in which EMD is acceptable should be clearly mentioned in the tender document.

- Do incorporate in the bid document, detailed generic technical specifications along with a list of preferred makes of major equipments.

- Do mention the order of precedence in the tender document to overcome some contradicting and conflicting specifications/conditions.

- Do specify in unequivocal terms in the bidding document, the performance parameters and the technical evaluation criterion, if any.

- Don’t forget to mention important clauses pertaining to earnest money deposit, completion schedule, factory testing of equipments, performance bank guarantee, payment terms, penalty for delayed completion, comprehensive insurance cover, contractor’s liability, safety arrangements, statutory arrangement for labour welfare, arbitration clause etc. in a proper and explicit manner.

8. RECEIPT OF TENDERS

In receipt and opening of the tenders, the emphasis should be given to maintain transparency. Suitable arrangement need to be ensured for receipt of sealed tenders at the scheduled date and time through conspicuously located tenders boxes. The tender notice should categorically contain the information regarding receipt of bids, viz. designation and address of officer to whom the tender should be addressed, the superscription/reference number to be indicated on the envelopes and the due date of opening of tenders to be written on the envelope containing tenders.

In cases, where the tenders are required to be submitted by hand, it may be ensured that the names and designation of at least two officers are mentioned in the bid documents and information about these officers should also be displayed at the entrance
reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders. The tenders after receipt should be opened on the stipulated date and time in the presence of intending bidders. (You may refer for further details CVC Office Memorandum dated 8th June 2004 on “Receipts and Opening of Tenders”).

- Do ensure suitable arrangements for receipt of sealed tenders at the scheduled date, time and location through conspicuously located tenders’ boxes.

- Do ensure that the tender notice should categorically contain the information regarding receipt of bids, viz. designation and address of officer to whom the tender should be addressed and due date of opening of tenders.

- Do ensure that in case where the tenders are required to be submitted by hand, the names and designation of at least two officers are mentioned in the bid documents.

- Do display information about these officers at the entrance/reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders.

9. POSTPONEMENT OF TENDER OPENING

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

- Do notify to all the bidders any change in the tender terms and conditions, specification and tender opening date etc., sufficiently in advance of the revised tender opening date.

- Do notify through the publication of corrigendum in the media and web site.

- Do extend tender sale date suitably so as to allow new participants in the bid in order to increase the competition, if technically possible.
10. OPENING OF TENDERS

The price bids should be opened only of those vendors who were technically qualified by the Organization and should be done in presence of the bidders ‘representatives’ who chose to be present. While opening the tenders by the tender opening officer/committee, each tender should be numbered serially, initialed and dated on the first page. It needs to be ensured that each page of tender should be encircled and initialed with the date, particularly the price and important terms and conditions. Alterations in tenders, if any, made by the firms should be initialed legibly to make it perfectly clear that such alterations were present on the tenders at the time of opening. Whenever any erasing, cutting or overwriting is observed, the substituted words should be encircled and initialed in red ink by the tender opening officer/committee to make it perfectly clear that such alterations were present on the tenders at the time of opening. The tender opening officer/committee should also prepare an ‘on the spot statement’ giving details of the quotations received and other particulars like the prices, taxes/duties, EMD, any rebates etc. as read out during the opening of tenders. A proper tender opening register in a printed format should be maintained containing information viz. date of opening including extension, if any, names and signature of all the persons present to witness the tender opening including the bidders’ representatives also.

In cases involving the two bid systems, it needs to be insured that the tender opening / committee should sign on the envelopes containing the price bids and the due date of opening the price bids should be clearly mentioned on the envelopes and should again be placed in the tender box or the envelopes containing the price bids should be put in a bigger envelope/box and the same should be properly sealed duly signed by the tender opening officer/committee and bidders representative.

(You may refer for further details CVC Office Memorandum dated 8th June 2004 on “Receipt and Opening of Tenders”)

The members of the tender committee should give an undertaking at the appropriate time that none of them has any personal interest in the Companies/Agencies participating in the tender process. Any member having interest in any Company/Agency should refrain from participating in the Tender Committee.

(You may refer for further details CVC Office Order No. 71/12/05 dated 9th December 2005 on “Undertaking by the Members of Tender Committee/Agency”)

- Don’t accept bids that are received after due date and time of receipt of bid.
- Do open tenders in presence of the bidders’ representatives who chose to be present and don’t entertain any unauthorized person during bid opening.
- Don’t consider bids without earnest money.
- Do ensure that each page of tender particularly the price and important terms and conditions, should be encircled and initialed with the date and any cutting/
overwriting should be encircled and initialed in red ink by all the tender opening committee members.

- Do prepare a statement giving details of the quotations received and other particulars like the prices, taxes/ duties, EMD, any rebates etc. as read out during the opening of tenders.

- Do maintain a proper tender opening register containing information viz. date of opening including extension, if any, names and signature of all the persons present to witness the tender opening which should include the bidder’s representatives also.

- Do ensure in cases involving the two bid system that the tender opening committee members should sign on the envelopes containing the price bids and the due date, if any, of opening the price bids should be clearly mentioned on the envelopes and they should again be placed in the tender box for safe custody.

11. TECHNO-COMMERCIAL EVALUATION OF TENDERS
OPEN /ADVERTISED TENDERS

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

In cases of the two-bid system, the makes and technical specification offered by various bidders should not be accepted without properly analyzing the techno-commercial equivalence of such offers so that bidders offering inferior specification/makes do not get undue advantage.

In cases of the two bids system, techno-commercial negotiations may be conducted with all the bidders to clarify the deviation vis-à-vis tender specifications/requirements. After bringing the acceptable offers on the common platform, all the commercial terms/conditions and technical specifications should be frozen. In case some changes are made in terms/conditions or technical specifications, the bidders may be given a fair chance to revise their price bids accordingly. Evaluation of tenders should not be based on conditional discounts. Once it has been established that the offers meet the laid down specifications, the question of grading as well as any pick and choose should not arise. The contract needs to be awarded to the lowest bidder meeting the laid down specifications. The distribution of work, if considered necessary, should be done in a fair and transparent manner.
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LIMITED TENDER

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

- Do conduct techno-commercial negotiations with all the bidders, if required, to clarify the deviation vis-à-vis tender specification/requirements for bringing the acceptable offers on the common platform and all the commercial terms/conditions and technical specifications should be frozen.

- Do give a fair chance to revise the price bids by the bidders if some changes are made in terms/conditions or technical specifications.

- Do the distribution of work, if considered necessary, in a fair and transparent manner.

12. POST TENDER NEGOTIATIONS (Negotiation with L-1)

There should be no post-tender negotiations with L-1 except in certain exceptional situations like procurement of proprietary items, items with limited source of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiation should be duly recorded and documented without any loss of time.

If due to the unreasonableness of the quoted rates, a decision is taken to go for re-tendering but the requirement are urgent and a re-tender for the entire requirement would delay the availability of the item thus jeopardizing the essential operations, maintenance and safety, negotiation would be permitted with L-1 bidder[s] for the supply of a bare minimum quantity. But the balance should be procured expeditiously through a re-tender following the normal tendering process.

Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions. This leads to delays in decision-making. If negotiation is allowed, then the authority recommending negotiations must record convincing reasons. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approval for the entire process of award of tenders does not exceed one month from the date of submission of recommendation. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. It should be ensured that tenders are invariably finalized with in their validity period.
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As regards the splitting of quantities, it may be stated that if after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organization decides in advance to have more than one source of supply (due to critical or vital nature of the item) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.

Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiation. However, any counter-offer thereafter to L-2, L-3 etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

In case L-1 backs-out, there should be a re-tender. (You may refer for further details CVC Circular No 4/3/07 dated 3rd March 2007 on “Tendering process-negotiations with L-1”)

- Do avoid post-tender negotiations with L-1 except in certain exceptional situations like procurement of proprietary items, items with limited source of supply and items where there is suspicion of a cartel formation.

- Do record and document without any loss of time, the justification and details of such negotiations, if any.

- Do negotiate with L-1 bidder[s] for the supply of a bare minimum quantity for the urgent requirements if the re-tendering is unavoidable but balance should be procured expeditiously through a re-tender following the normal tendering process.

- Do indicate a definite timeframe so that the time taken for according requisite approval for the entire process of award of tenders does not exceed one month from the date of submission of recommendation. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level.

- Do ensure that tenders are invariably finalized within their validity period.

- Do go for a re-tender in case L-1 backs out.

- Do pre-disclose the ratio of splitting the supply in the tender itself in cases where the organization decides in advance to have more than one source of supply (due to critical or vital nature of the item).

- Do make counter-offer to L-2, L-3 etc., (at the accepted rates of L-1) in case of splitting of quantities, as pre-disclosed in the tender. This shall not be deemed to
be a negotiation. Counter-offers to L-1 in order to arrive at an acceptable price, shall amount to negotiation.

- Do distribute the quantity being finally ordered among the other bidders in a manner that is fair, transparent and equitable if after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities.

13. REASONABLENESS OF PRICES/ MARKET RATE JUSTIFICATION

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

- Do establish the reasonableness of rates on the basis of estimated rates and the prevailing market rates before acceptance of the offer.
- Do identify the abnormally high rate (AHR) and abnormally low rate (ALR) items and the officials/agencies responsible for execution of work should be intimated to exercise appropriate control on such identified items.

14. AWARD OF WORK AND SIGNING OF CONTRACT AGREEMENT

In order to avoid any potential source of corruption, it should invariably be ensured that once the offer is found techno-financially acceptable, the work is awarded without any loss of time. All the necessary documents should be kept ready beforehand. A formal contract agreement containing all the requisite documents forming part of the agreement should be signed within a reasonable time for providing legal sanctity to the contract.

**Transparency in works/ Purchase/ Consultancy contracts awarded on nomination basis - regarding**

Tendering process or public auction is a basic requirement for the award of contract by any Government agency as any other method. In cases, where award of work on nomination basis by PSU becomes inevitable, there is need to bring greater transparency and accountability in award of work on the nomination basis and especially in the preparation of panel of contractor. In such cases, Commission strongly feels that the following points should be strictly observed.

(i) All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for scrutiny and vetting post facto.

(ii) The reports relating to award of such works should be submitted to the Board every quarter.
(iii) The audit committee may be required to check at least 10% of such cases. (You may refer for further details CVC Circular No. 15/5/06 dated 9th May 2006 on “Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis”).

It should be noted that the award of contract on nomination basis, would amount to breach of Article 14 of the Constitution guaranteeing right to equality to all interested parties.

A relevant extract from Supreme Court of India (arising out of SLP (civil) No. 10174 of 2006) is given below to reinforce this point.

“The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well known dailies having wide circulations in the locality with all relevant details such as date, time and place of auction, subject matter of auction technical specifications, estimated cost, earnest money deposit etc. The award of Government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance, during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or the contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there was no bidders or the bids offered were too low, etc, this normal rule may be departed from and such contracts may be awarded through ‘private negotiations’.”

(Copy of the full judgment is available on the website of the Hon’ble Supreme Court of India, i.e., www.supremecourtofindia.nic.in)

Further, all nominations/single tender contracts should be posted on the web-site ex post–facto. (You may refer for further details CVC Office Order No. 23/7/07 dated 5th July 2007 on “Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis”).

- Do ensure that once the offer is found techno-financially acceptable, the work is awarded without any loss of time.

- Do keep all the necessary documents ready before hand and a formal contract agreement containing all the requisite documents forming part of the agreement should be signed within a reasonable time.

- Do post all the details of awarded contracts on the web site.
Do make the contractors sign the detailed agreement within the time frame to avoid any complication in the contract at later date.

Don’t keep a file pending for decision by the approving authority after the recommendation of the tender committee has been received.

Don’t award any contract on nomination basis as it would amount to breach of Article 14 (guarantying right to equality to all interested parties) of the Constitution except in rare and exceptional cases.

15. ADVANCE PAYMENT & BANK GUARANTEES

The advance payments need to be generally discouraged except in specific cases. Whenever the payment of advance is considered unavoidable, the same should be interest bearing as per CVC guidelines and should be allowed after getting an acceptable Bank Guarantee for an equivalent amount with sufficient validity. Bank Guarantee needs to be properly examined with respect to the acceptable format. Timely action for revalidation/encashment of the bank guarantee also needs to be taken so as to protect the organization interest.

- Advance payments need to be generally discouraged.

- Do make advance payment, if unavoidable, but the same should be interest bearing as per CVC guidelines. Advance payment should be allowed after getting an acceptable bank guarantee for an equivalent amount with sufficient validity.

- Do take timely action for revalidation/encashment of the bank guarantee.

Mobilization advance

The Commission has issued the following guidelines on Mobilization Advance:

1. Provision of mobilization advance should essentially be need-based. Decision to provide such advance should rest at the level of Board (with concurrence of Finance) in the organization. However in case of interest bearing mobilization advance, Organization may delegate powers at appropriate levels such as CMD or Functional Directors.

2. Through the Commission does not encourage interest free mobilization advance, but, if the management feels its necessity in specific cases, then it should be clearly stipulated in the tender document and its recovery should be time-based and not linked with progress of work. This would ensure that even if the contractors is not executing the work or executing it at a slow pace, the recovery of advance could commence and scope for misuse of such advances could be reduced.
3. Part ‘Bank Guarantees’ (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment.

4. There should be a clear stipulation of interest to be changed on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.

5. The amount of mobilization advance; interest to be changed, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.

6. Relevant format for BG should be provided in the tender document, which should be enforced strictly, and authenticity of such BGs should also be invariably verified from the issuing bank, confidentiality and independently by the organization.

7. In case of ‘Machinery and Equipment advance’, insurance and hypothecation to the employer should be ensured.

8. Utilization certificate from the contractor for the mobilization advance should be obtained. Preferably, mobilization advance should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalments.

(You may refer for further details CVC Office Memorandum/ Circular No. 10/4/07 dated 10th April 2007 on “Mobilisation Advance” and Circular No. 5/2/08 dated 5th February 2008)

- Provision of mobilization advance should essentially be need-based.
- Do clearly stipulate in the tender document if the management feels the necessity of interest free mobilization advance in specific cases. However recovery of all such advances should be time-based and not linked with progress of work.
- Do take part ‘Bank Guarantees’ (BGs) against the mobilization advance in as many numbers as the proposed recovery instalments. Such guarantees should be equivalent to the amount of each instalment.
- Do clear stipulate rate of interest to be charged on delayed recoveries either due to late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
- Do clearly stipulate in the tender document; the amount of mobilization advance; interest to be charged, if any; its recovery schedule and any other relevant detail.
- Do provide relevant format for BG in the tender document.
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• Do verify the authenticity of such BGs from the issuing bank, confidentiality and independently from the organization side.

• Do ensure in case of ‘Machinery and Equipment advance’, insurance and hypothecation certificates are taken from the contractor.

• Do obtain Utilization certificate from the contractor for the mobilization advance.
• Do provide preferably, mobilization advance in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalments.

PERFORMANCE BANK GUARANTEE

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

ACCEPTANCE OF BANK GUARANTEES

To eliminate the possibility of acceptance of any forged /fake bank guarantees, the Commission advises the organization to evolve the procedure for acceptance of BGs which is compatible with the guidelines of Banks/Reserve Bank of India and frame their own detailed guidelines to ensure that BGs are genuine and encashable.

The steps to be ensured should include:-

(i) Copy of acceptable BG formats should be enclosed with the tender documents and it should be verified verbatim on receipt with original documents.

(ii) It should be insisted upon the Contractors that BGs to be submitted by them should be sent to the organization by the issuing bank directly under registered post (A/D).

(iii) In exceptional cases, where the BGs are received through the contractor, the issuing branch should be requested to send an unstamped duplicate copy of the guarantee directly to the organization with the covering letter by registered post (A/D). This BG should be compared with the original BG for confirming the genuineness of the BG submitted by the contractor.

(iv) All BGs should be independently verified by the organization.
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(v) In the Organization/Unit, one officer should be specifically designated with responsibility for verification/timely renewal and encashment of BGs.

(You may refer for further details CVC Office Memorandum/ Circular No.01/01/08 dated 31st December 2007 on “Acceptance of Bank Guarantees”)

16. INSURANCE

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

- Do also incorporate and implement a comprehensive all risks insurance clause for men and material

17. COMPLETION SCHEDULE OF CONTRACT

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

- Do stipulate milestone in the contract for the specific schedule of completion of contract in an unambiguous manner and monitor progress in accordance with such schedule.

- Do ensure that each and every contract, in case of big projects, should have its specific schedule of completion which inter-alia should be within the overall completion schedule of various activities in advance, if the work is broken into small contracts.

DEFECT LIABILITY PERIOD CLAUSE

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

- Do incorporate in the bid documents and in the resultant contract detailed Defect Liability Period clause embodying all the safeguards.

- Do reckon defect liability period only from the date of taking over of work viz. in the contract involving installations/commissioning of equipments, the defect liability period should be reckoned only from the date of installation/commissioning.

- Do proceed in such a manner that the time gap between supply and commissioning is minimal in case supply and installations have to be executed through separate contract due to some compelling reasons.

18. **PAYMENT TERMS AND APPLICABILITY OF TAXES AND DUTIES**

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

- Do make clear the applicability of various taxes/duties at the outset in the Instruction to the bidder’s part of the bid document in case of a composite contract for supply and erection.

- Do define payment terms unequivocally and do not change it after award of the contract.

- Do make the payment to the contractors as per the actual progress of the work.

- Do exercise appropriate check and control on the flow of funds while making the payments.

- Do pay the executed quantities beyond the stipulated time after deducting the LD as provided under the contract unless the valid extension for the contract is given.
19. **APPOINTMENT OF CONSULTANTS**

Consultants are appointed due to lack of in-house expertise in technical matters. The appointment should be need based and for specialized jobs only. It should not be done in an ad-hoc and non-transparent manner without inviting tenders and without collecting adequate data about their performance, capability and experience. Their selection should be made in a transparent manner through competitive bidding. The scope of work entrusted to the consultant and their role should be clearly defined and the contract should incorporate the clauses having adequate provision for penalizing the consultants in case of defaults by them at any stage of the project including delays attributable to them. Schedule indicating maximum permissible time for each activity should be prepared with a view to arrest time over runs of the project. The consultants should be appointed with clearly established job-content and consultation fee payable to them. The role of the consultant should be advisory and recommendatory and final authority and responsibility should be with the departmental officers only.

**Participation of Consultants in tender – guidelines regarding**

Consultants are appointed by the organization for preparation of project report. These appointments are made for any project, expansion, modernization/modification of the existing projects etc. The selection should be made with maximum attention to the suitably, competence and proven track record.

CVC directed that the Consultants/firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates will be disqualified from subsequently providing goods or works or services related to the initial assignment for the same project. (*You may refer for further details CVC Office Order No. 75/12/04 dated 24th Dec 2004 on “Participation of consultants in tender-guidelines regarding”*)

20. **Post Contract Management**

**Modifications of Contract Conditions / Specifications**

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

- Do discourage any relaxation in the contract terms/specifications after conclusions of the contract.

- Do allow modifications/amendments only in exceptional cases which are considered absolutely essential but only after taking into account the financial implications.
• Do withhold a sufficient amount against the items received in an unfinished/incomplete condition so as to ensure that no extra payments are made against such items/services.

21. Post Contract Monitoring

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

Appointment of Arbitrator as per contract

The concerned Unit Officer/ ZM should process the case for appointment of the Arbitrator immediately as per the contract so that Arbitrator is appointed in the scheduled time by the appointing authority and litigation is settled expeditiously. (You may refer for further details NPCC letter ref. no: 000735/97 dated 12th May 2005)

• Do process the case for appointment of the arbitrator if so provided in the tender documents well before its stipulated time so that the arbitrator is appointed within the time schedule and litigation is settled expeditiously.

• Do remember that once a case is under arbitration, the correspondence with the agency should be done with corporation legal expert.

• Do always keep in mind that a contractor always read in between the lines of the contract clause hence one should be careful in dealing with the contract and the contractor.

• Don’t delay the rightful payment of executed works as per contract to the agency to avoid unnecessary arbitration/court cases.

• Don’t delay the case for appointment of the arbitrator as per the contract.
22. **Banning of business dealings with firms/contractors-clarification regarding**

Business dealings with the firms/contractors may be banned whenever necessary. Advice of the central Vigilance Commission need not be sought for banning of the business with such firms/contractors or for withdrawal of banning orders.

Banning of business is an administration matter to be decided by the management of the organization and the Central Vigilance Commission does not give its advice in such matters.

*(You may refer for further details CVC Office Order No.18/3/05 dated 24th March 2005 on “Banning of business dealings with firms/contractors-clarification regarding”)*.

23. **Back to back tie up by PSUs-Instruction regarding**

It has been decided by the CVC that the procedure to be followed for award of the work by construction PSUs shall be finalized taking into account the following points:

1. PSUs (when bag the contract from the client Department) as a contractor has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back-to-back basis.

2. Open tenders to be invited for selection of sub-contractor as far as possible.

3. In case, it is not possible to invite open tenders, even in the case of limiting tendering, Commission has been insisting upon transparency in the preparation of panels of contractors. This approved panel of contractors is to be prepared for different categories, monetary limits, and regions in a transparent manner clearly publishing the eligibility criteria etc. and is to be updated every year. Selection should be carried out by inviting limited tenders from this approved panel of contractors

4. Tenders should be opened confidentially by a high level committee to maintain the secrecy of rates, if required. Tender opening register should be maintained in this regard duly signed by the officer/committee opening the tender and kept confidentially. This should be available for perusal when required by audit/vigilance.

5. The terms and conditions of the contract of the client especially those pertaining to subletting of the works should be strictly adhered by the PSUs.

6. Adequate staff to be deployed by the PSUs to ensure quality in construction etc.

7. The record of enlistment/ updation of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.
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(You may refer for further details CVC Office Memorandum dated 20.10.2003 on “Back to back tie up by PSUs-Instructions regarding”).

- Do invite open tenders for selection of sub-contractor as far as possible.
- Do select the contractors by inviting limited tenders from the approved panel of contractors in case it is not possible to invite open tenders.
- Do prepare the panel of contractors for different categories, monetary limits, and working regions in a transparent manner which should be updated every year.
- Do maintain a register containing the names, addresses and other details of pre-qualified contractors. The said panel is to be updated every year.
- Do submit pre-tender tie up tenders confidentially to client through a high level committee to maintain the secrecy of rates, if required.
- Do maintain tender opening register confidentially duly signed by the officer/committee opening the tenders.
- Do make available the register of enlistment of contractors and tender opening register when demanded for scrutiny by CTEO as well as audit officials.
- Do strictly adhere to the terms and conditions of the contract of the client and all tender formalities before selecting the contractor for subletting of the works.
- Deploy adequate qualified and experienced staff to ensure quality in construction.

24. Procedures/Guidelines for Pre-tender /Post tender tie up etc for Construction Works

With reference to minutes of 185th Board Meeting of NPCC [Item No. 185.3 (Part III)] and procedures for Contract & Marketing at page 9 of 12 of ISO 9001:2000 Manual, the procedures/guidelines issued for compliance on certain points requiring further additions in MOUs while framing the same and awarding the works to the contractors on pre-tender//post tender tie up basis are as follows: -

1. MOUs should contain the clause that some part of the work will be executed departmentally.

2. A register should be maintained as per the manual, which will contain the names, addresses and other pre-qualified listed contractors. All the procedures as per the NPCC Manual or CPWD Manual should be strictly adhered to. Periodical review at least once a year should be made to re-evaluate the listed contractors as per ISO 9001: 2000 Manual.
3. Rs. 5000/- should be collected from each listed contractor at the time of registration.

4. All the tender formalities shall be adhered to before selecting the contractors.

5. Without statutory registration like EPF, Sales tax, Income Tax and others, the contractors shall not be listed for registration and work should not be awarded and pre or post tender tie-up should not be considered.

6. Cost estimates should be based on CPWD/State PWD norms only. Wherever the norms are not there, market rates should be taken to evaluate the cost estimates. The concerned executive in engineering side and accounts side should certify the compliance so that bidding should be made on workable economic rates so that the company can make reasonable profit in each contract. (You may refer for further details NPCC Circular No. DF/301 dated 16th July 2003 on “Procedures/Guidelines for Pre-tender/Post tender tie-up etc. for construction of works”).

- Do maintain a register containing the names, addresses and other relevant details of pre-qualified contractors. The above panel should be updated every year.

- Do strictly adhere to all tender formalities before selecting the contractors.

25. Observation and remedial action to allotment of works and payment made

The remedial measures for common noticed discrepancies, as approved by the competent authorities, are given below for taking care in future.

1. **Offers accepted with corrections either by cutting or by applying whitener/eraser in price bid.**

   To avoid cutting /any doubt and to bring transparency, it is desired that the following insertion in the tender document be incorporated.

   a. Offered percentage_______ (fill either below or above) the estimated rates in 1st call_______% (-------------------percentage only).

   b. Offered percentage_______ (fill either below or above) the estimated rates in 2nd call_______% (-------------------percentage only).

   c. Offered percentage_______ (fill either below or above) the estimated rates in 3rd call_______% (-------------------percentage only).

   In this case, if the agency wants to quote the rates in different calls by varying the % margin, NPCC will accept the higher margin only if the rates are quoted below and lowest margin if the rates are quoted above the estimated rates.
2. **Delay in issuance of Work-Orders**

   It is advised that contractors are invariably made to sign the detailed agreement within the time frame to avoid any complication in the contract at later date.

3. **Payments made under the contract**

   No variation of the quantities /amount under the contract shall be made /paid without approval of competent authority.

   Until unless the valid extension for the contract is given, the executed quantities beyond the stipulated time shall be paid after deducting the LD as provided under the contract.

4. **Competency of approval for Variations or New Items-regarding**

   The nature viz. item rate, Lump sum, % etc. of the contract as approved by the competent authority shall in no case (except specifically allowed by the Competent Authority) be changed without bringing it to appropriate Competent Authority.

   The contract approved on % basis shall not be changed to item rate or vice versa and similarly Lump sum approval shall not be changed to Item rate / % basis or vice versa.

5. **Responsible of answering queries regarding contract**

   The present incumbent (UO/ZM) shall be responsible for replies to queries asked by Internal/Statutory/Govt. Auditors based on available records even though the matter pertains to previous incumbent. While furnishing the replies, the present incumbent may seek the information’s, if required, from the previous incumbent. (You may refer for further details NPCC Circular No.400782/Misc/IA/35 dated 23rd /24th May 2007).

26. **Improving Vigilance Administration by Leveraging Technology - Increasing transparency through use of website.**

   The Commission while emphasizing the need of leverage technology as an effective tool in vigilance administration in discharge of regulatory, enforcement and other functions, directed all organizations to post on their websites, information in respect of the rules and procedures governing the issue of licenses/permissions etc. and to make available all the application forms on the websites in a downloaded form besides, making available the status of individual application on the organizations website. The Commission also directed the organizations to post on their web site monthly, a summary of all the contracts/purchases made above the threshold value covering at least 60% of the
transactions every month. (This threshold value has to be decided by the organizations which should be such that at least 60% of the transactions are covered.)

For improving vigilance administration by leveraging technology by increasing transparency through effective use of website, it is directed by the Commission that:-

(i) All application forms and information in respect of rules and procedures should be uploaded on the website.

(ii) All the application forms should be available in the downloadable form in the website and status of the individual application should also be available in the organization website.

(iii) Details of awarded tenders above the threshold value should be posted on the website.

(You may refer for further details CVC Office Order No.13/3/05 dated 16th March 05 and Circular No. 13/4/07 dated 18th April 2007)

27. Menace of Counterfeit and refurbished IT Products.

It is often difficult to know the difference between PC made of genuine parts and that made of counterfeit parts due to ignorance or having little or no technical knowledge in the matter.

Counterfeiting is designed to cheat nave consumers/organizations. To help/inform and enable due diligence as well as for curbing the menace of counterfeit and refurbished IT products disguised as new, CVC had come out with the Circular No.07/02/08 dated 15.02.08.

As a first step, the buyer PSU should insist on signed undertaking from some authority (not lower than the Company Secretary of the system OEM) that would certify that all the components/parts/assembly/software used in the desktops and servers were original/new and no refurbished/duplicate/second hand components were being used/would be used. Model Undertaking of Authenticity form as enclosed with the circular is placed on page 99.

The organization should ask for ‘Factory Sealed Boxes’ with System OEM seal to ensure that the contents have not been changed en-route.

The Commission had suggested advisory check points to help identify the fraudulent practices that have come to notice for the following:-

(You may refer to the CVC Circular No.07/02/08 dated 15th February 2008 for details on “Measures to curb the menace of counterfeit and refurbished IT products-regarding”).

28. **Introduction to the Integrity Pact (IP)**

Integrity Pact programme is a tool developed by Transparency International to create islands of integrity through a voluntary contract between the buyer and seller to eliminate corrupt practices and to help governments, businesses and civil society to fight corruption in the field of public contracting. It has been implemented in more than fourteen countries and has been very successful. The global overview of experience indicate that the IP concept is sound and workable. Integrity Pact concept is suitable both for construction and supply contract. It covers all the activities related to the contract from the pre-selection of bidders, the bidding & contracting implementation to its completion and operation.

It is flexible enough to adapt to many local legal structures and requirements as well as to the different degrees in which government are willing to proceed along the lines set forth here.

Transparency International (TI) is a non profit organization, with headquarters in Berlin, with an objective to fight against corruption and encourages governments to implement effective anti corruption policies and measures and to raise public awareness. This effort of TI helps in increasing the development process and improving the moral health of the society.

In India, TI was set up in Delhi in 1999 and now it has nine state chapters with eminent citizens as the boards of Directors. It is learned that ONGC, Vizag Steel Plant, HPCL, GAIL and Coal India Limited have already adopted the Integrity Pact. It is claimed that the pact ensures timely completion of projects with reduced cost of execution.

IP programme consists of a process that includes an agreement between a government or a government department and all bidders for a public sector contract. All the involved agencies sign the Integrity Pact which establishes mutual contractual rights and obligations to the effect that neither side will pay, offer, demand or accept bribes or
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collude with competitors either to obtain the contract or during execution. Also, 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 sanction range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contacts on the side of the bidders and criminal or disciplinary action against employees of the government. The pact enables Companies to abstain from bribing by providing assurances to associated agencies that they will follow transparent procedures.

The company will undertake to prevent corruption, including extortion by their officials and to follow transparent procedures which will enable the company to reduce the high cost and the distortion impact of corruption in public procurement and works.

The integrity pact programme provides for appointment of an Independent External Monitor(s) by the authority to oversee the Integrity Pact Program implementation and effectiveness. The Independent External Monitor reviews the situation and offers the advice as and when required.

If a counter party commits any violation of the Integrity pact, it may loose bid security and performance bond. In addition, the Principal will terminate any current contract and business relationships with such counter party and its associates and may initiate criminal proceedings against violating counter party. The Principal would blacklist and exclude the counter party from future dealings until the External independent Monitor is satisfied that the counter party will not commit any violation in future.

If violation is committed by Principal or Contractee party, the counter parties will be liable to damages as determined by the External Independent Monitor.

Application of Integrity Pact

- Integrity Pact can function only if all bidders submit to it. It is, therefore, highly desirable to make signing of the IP mandatory.
- Internet is a highly relevant development facility for total transparency. The high degree of transparency achieved through this real time access to public decision making clearly reduces the opportunity for manipulation and should enhance the willingness of officials and bidders alike to commit to a corruption free contracting procedure.
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- The political will to reduce corruption and to revive honesty and integrity in government contacting is a sine-qua-non for success.
- IP enables the compliance of laws by leveling the playing field and assuring the contenders that all will behave under the same pattern.
- It helps in considerable saving in cost of the project and develops a mutual trust among the bidders and the authority. It can save unnecessary judicial claims and create trust in authority action.
- Companies can be black listed for violating the pact.

It is expected that the Integrity Pact would enhance credibility of the Companies implementing projects and would place them at a prestigious position by creating an environment of mutual trust and respect. Once this is implemented, the prestige, reputation and credibility of the Company will increase manifold. Integrity Pact can be treated as a vigilance tool. Transparency, fairness and accountability will help in increasing the image of any PSU in the eyes of the client and the citizens.

CVC recommends the Integrity Pact concept and encourages its adoption and implementation. As the role of the Independent External Monitors is very important in ensuring implementation of the IP, it is necessary that the person so appointed have adequate experience in the relevant fields and are persons of high integrity and reputation. The Commission therefore directs that the Independent external Monitors are to be appointed after obtaining approval of the Commission for the names to be included in the panel.

For more information you may visit TII web site: http://www.transparency.org. (You may refer CVC Office Order No. 41/12/07 dated 4th December 2007, Office Order No 43/12 /07 dated 28th December 2007 and Circular No 18/05/08 dated 19th May 2008 on “Adoption of Integrity Pact in major Govt. Procurement Activities - regarding”)