

CONTENTS

- Message from Director (E, R&D)
- Lecture Series of CVC
- Important Circulars
- Case Studies
- Contribution by employees

Message from Director (E, R&D)



I am extremely happy to note that Vigilance Department is coming out with the next edition of in-house e-Newsletter "Disha".

The cardinal principle of public procurement is to procure materials / services / works of the specified quality, at the most competitive prices in a fair, just and transparent manner. To achieve this end, we have a well-documented policy / guidelines in the organization, so that this vital activity is executed in a well-coordinated manner within the minimum possible time and with least cost overruns, along with a systematic and uniform approach in decision-making.

Corruption is a phenomenon which adversely affects people from all walks of life. It stands in the way of good governance, sustainable development and the democratic process. There is a need for continuous effort at educating and creating awareness among the employees for taking the decision, which has the right values, and this is a prerequisite for healthy Corporate Governance.

Integrity / ethics is one of our core values and should govern all our actions, if our organization has to reach commanding heights. It is the responsibility of each one of us to be watchful, to be alert, and to be vigilant in our day to day business activities.

In this perspective, Vigilance is considered to be one of the important responsibilities of management, as an integral part of our business processes.

I wish all the best to the vigilance team and appreciate their sincere efforts in the publication of the Vigilance e-Newsletter "Disha" which will encourage and motivate the BHEL fraternity to pursue righteousness in all actions.

(Subrata Biswas)

Lecture by Smt. Sumitra Mahajan, Hon'ble Speaker, Lok Sabha

The 27th lecture of the "Lecture Series" organized by the Commission was delivered by Smt. Sumitra Mahajan, Hon'ble Speaker, Lok Sabha on the topic "My Experiences as a Representative of People".



The distinguished speaker spoke about the need for society to introspect and look within itself in order to change attitudes towards corruption, and to further the positive ideal of ethical conduct. Her address drew inspiration from India's traditional ideals in this regard and she discussed a wide range of issues using examples from traditional Indian spiritual thought as well as from her experiences as a representative of the public. She opined that society must look inwards at itself for inspiration in order to promote good conduct, both in the public as well as private spheres of life. The importance of prevention as being more effective than punishment was emphasized in her lecture. She also spoke of the need to examine instances of spending more than known sources of income in order to detect corruption.

She narrated many interesting instances from her experiences as a public representative, which highlighted the need for society to introspect upon the decline in ethical values and the need to promote integrity in public life. The duties and responsibilities of a public representative were also explained using many examples from her interactions with people from all walks of life. She felt that we ourselves are collectively responsible for this social change and we must draw inspiration from our own culture and ideals in order to do so.

Her initiatives towards setting up the Speaker's Research Initiative in Parliament and the importance of training for members of Parliament were also discussed during the course of the lecture. The lecture was followed by a lively question and answer session.

If you have integrity, nothing else matters. If you don't have integrity, nothing else matters.

Alan K. Simpson.

Dr. Rathin Roy, Director, NIPFP delivers 28th CVC Lecture



The 28th lecture of the “Lecture Series” organized by the Central Vigilance Commission (CVC) was delivered by Dr. Rathin Roy, Director, National Institute of Public Finance and Policy here today on the topic “Why Fiscal Rectitude Matters”.

The speaker dealt with the structural roots of India’s fiscal and revenue deficits, explaining their historical roots and outlined governmental constraints in the budget making aspect of Indian public finance. The propensity to fund revenue expenditure from borrowing was explained and some unique features of India’s taxation system as well as its relationship with the practice of deficit financing of the economy was explained in detail. The speaker also identified a gap in the analytical and policy making system in the public financial sector, and he felt that the institution of a Fiscal Council on the lines of those set up in many other countries is a long term solution to this problem, in order to enable better economic decision making. The lecture was followed by a lively question and answer session.

Dr. Ajay Bhushan Pandey, CEO, UIDAI delivers 29th CVC Lecture



The Chief Executive Officer (CEO), UIDAI, Dr. Ajay Bhushan Pandey delivered 29th lecture of the “Lecture Series”, organised by the Central Vigilance Commission (CVC), in New Delhi on March 26, 2018. The Central Vigilance Commissioner, Shri K.V. Chowdary and the Secretary, CVC, Smt. Nilam Sawhney also graced the occasion.

Integrity is essential and irreplaceable. It is the most valuable asset for a person, a company, or a society seeking to build and progress.

Rex Tillerson

(i) Mandatory Open Tender (OT)
(COM-SS&P Circular No. 35 of 2017-18 dated 05.02.2018)

1.0 With a focus on competitive procurement, it has been decided that Open Tender shall mandatorily be resorted to in all cases of item/ material category having estimated enquiry value of Rs. One Crore or more provided the last purchase of same item/ material category was finalized against less than four techno-commercially qualified bids. In these cases, specifications/ PQR shall be necessarily reviewed before floating such Open Tender with a view to broad base them to enhance supplier base resulting in increased competitiveness.

Purchases falling under Single Tender purchases as per Purchase Policy-2013 excluding 5.3.1 J) will not qualify for this mandatory OT.

In case of repeat order proposals on or after the issue of this circular, if the original purchase qualifies the criteria as per above, the purchase should be done through Open Tender only.

2.0 Any exemption to the above shall require specific approval of Head of the Unit / Region not below the rank of GM(I) with recorded reasons. However, such exemptions are to be taken on exception basis only on case to case basis. All such exemptions to be reported to Corporate Operations Management / Sourcing Strategy & Policy on monthly basis as per A2 of Annexure-A.

Customer approval of the supplier shall normally not be a ground for exemption. In cases where Customer approval of suppliers is to be taken as per Customer contract requirements, Customer approval is to be taken for techno-commercially qualified suppliers before price bid opening.

3.0 In order to assess the efficacy of purchases through Open Tenders, details of all Open Tenders floated under PP, new supplier participations, techno-commercial qualifications, new supplier registrations etc. to be reported as per A 1 of Annexure-A.

4.0 This will supersede earlier circulars/ instructions dated 17.03.2012, 09.04.2012, 18.04.2013 (circular No. 03 of 2013-14), 17.06.2015 (sr. no. 3.1) from *erstwhile* Corp. MM and will be applicable from the date of issue of the circular.

सत्य परेशान हो सकता है, लेकिन पराजित नहीं....

(ii) Overwriting in Price bids reg. (COM-SS&P Circular No. 36 of 2017-18 dated 21.02.2018)

It has been observed that in few cases the rates in price bids were re-written by changing both figures & words and the total value also omitted by ink. Overwriting in final figure raises suspicion in the fairness of the tender process, cartel formation and rigging of rates.

In view of the above, following is advised:

(i) Tender opening

Erasure / cutting / overwriting / use of whitener / columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders.

Total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid and announced in public bid opening.

In absence of any alteration / overwriting / whitener / blanks, the remark "no correction noted" should be written.

(ii) Clause in NIT

Bid should be free from correction, overwriting, using corrective fluid, etc. Any interlineation, cutting, erasure or overwriting shall be valid only if they are attested under full signature(s) of person(s) signing the bid else bid shall be liable for rejection.

All overwriting / cutting etc. will be numbered by bid opening officials and announced during bid opening.

This will come into effect for all tenders (covered under Purchase policy / Works Policy) floated on or after one month of issue of this circular.

This issues with the approval of competent authority.

There is no better test of a man's integrity than his behaviour when he is wrong.

Marvin Williams

(ii) Clarification regarding definition of Goods and Services under the Public Procurement Policy for MSEs Order – 2012 reg.

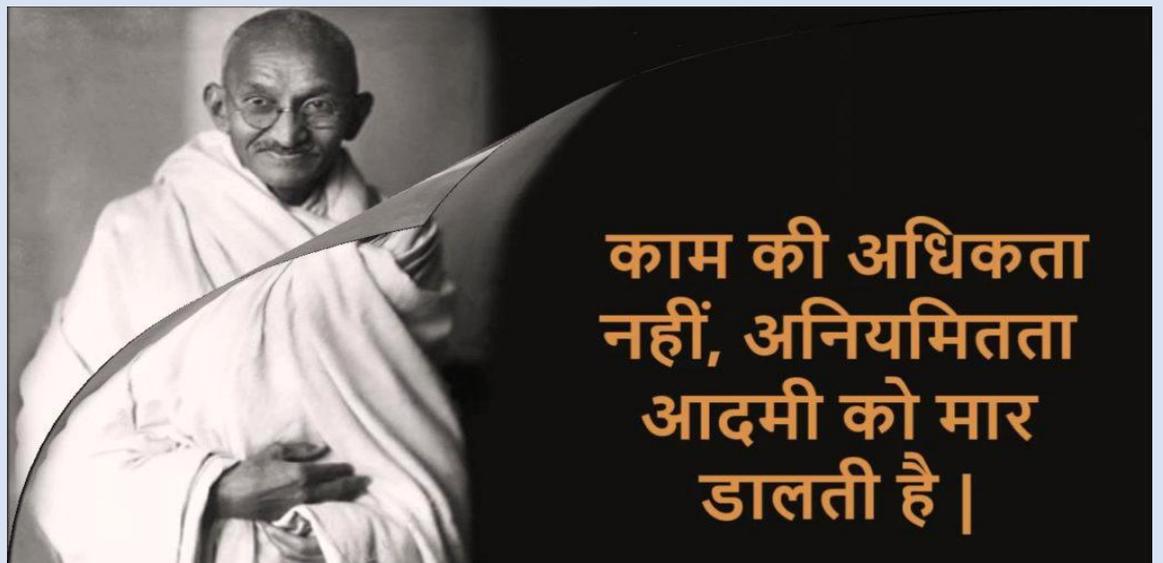
(COM-SS&P Circular No. 38 of 2017-18 dated 30.03.2018)

Public Procurement Policy for MSEs Order 2012 was notified with respect to procurement of Goods and Services, produced and provided by Micro and Small Enterprises (MSEs) and benefits as envisaged in the policy are to be provided accordingly.

Vide Office memorandum F. No. 21(8)/2011-MA dated 09.11.2016, Office of AS&DC, Ministry of MSME has issued clarification regarding definition of Goods and Services under the Public Procurement Policy for MSEs Order – 2012 which was issued for compliance vide circular No. 33 of 2016-17 dated 05.01.2017.

However, it has been observed that in certain cases, Units / Regions are providing benefits to MSEs irrespective of the nature of procurement i.e. Goods, Services and Works as well. Hence, in accordance with the Public Procurement Policy for MSEs Order 2012 and OM regarding definition of Goods and Services issued by Ministry of MSME, it is clarified that benefits as envisaged in the Public Procurement Policy for MSEs Order 2012 are to be provided in respect of the procurement related to the Goods (Defined as 'Materials' in Purchase policy 2013) and Services (as defined in Works Policy 2016), produced and provided by Micro and Small Enterprises (MSEs) only and no benefit is to be given in case of Works Contracts.

This issues with the approval of the competent authority.



Case of avoidable compensation paid to contractors, resulting in loss to the Company

- ❖ One of the Power Sector Regions issued an open tender for the General Civil works for two units of a thermal power project.
- ❖ Reverse Auction was conducted on 21.01.2011 among the Techno-commercially qualified bidders. M/s. 'A' was the L1 bidder for Unit 1 with a final price of Rs.64 Crore. In line with NIT terms, the L1 rate was counter offered to the L2 bidder (M/s. 'B') and the same was accepted by the bidder for Unit-2.
- ❖ Engineering department of the Company, vide e-mail dated 24.01.2011 (3 days after conclusion of RA), intimated that there is a reduction in scope / change in bill of quantities which has resulted in reduction of contract value by 34% from Rs.64 Crore to Rs.42 crore for each Unit. The e-mail regarding change in BOQ quantities was addressed to Mr. 'X' who was the Head of civil department of that Region and his subordinate Mr 'Y' who was the Tender Committee Member. Clarification in this matter was sought by Mr. 'X' on 24.01.2011 and the same was clarified by the engineering department on the same day.
- ❖ Mr. 'Y' (member of Tender Committee), did not bring the fact regarding reduction in scope of quantity by more than 30% in the award proposal dated 25.01.2011 for Unit-I and proposal dated 07.02.2011 for Unit-II.
- ❖ As per clause 20.1 (iv) (d) Works Policy, 2008 **Role of Tender Committee is to comment on "Scope of Work, if changed, will necessitate calling of fresh tenders."** Also, as per clause 28(f) of Works Policy 2008, **retendering may be resorted to in case of major changes in scope. Mr. 'X' also** did not bring the fact regarding the reduction in the scope of work to the notice of Sub-Contracting Department (which processed the tender from enquiry to award) and Approving Authority for the placement of order.
- ❖ The LOI was issued on 14.03.2011 to M/s. 'A' for Unit-I and to M/s. 'B' on 31.03.2011 for Unit-II at a price of Rs.64 Crore per unit.
- ❖ As per Clause 2.14 of GCC of the NIT, "...in case the finally executed contract value reduces by more than 15% of contract value due to quantity variation specified above, the contractor will be eligible for compensation @ 15% of the difference between the lower limit of the contract value and the actual executed value...". Further as per contract, interest bearing Mobilization Advance @ 5% of the contract value was to be paid to the contractor.

- ❖ The contract was awarded at Rs.64 Crore for each unit without taking into account the reduction in quantities by more than 30% as indicated above. Accordingly, the compensation to be payable to the contractor was around Rs.1.8 crore per Unit i.e. Rs.3.6 crore for both units. Further, the actual executed value for unit 1 & 2 reduced to Rs.28 crores and Rs.39 crores respectively. Thus, the compensation to the contractors on account of reduction in quantities shall be to the tune of Rs.6 crores (approx.) for both the units.
- ❖ The purpose of providing compensation due to quantity variation is to give financial relief to the contractor who mobilized manpower, material, tool & plant, working capital etc. thinking that the tendered quantity will be executed by him. In this case, RA was conducted on 21.01.2011, the fact regarding reduction of scope quantities was intimated on 24.01.2011, LOIs were issued on 14.03.2011 and 31.03.2011 and work commenced on 24.06.2011 and 16.06.2011 for unit 1 & 2 respectively.
- ❖ LOIs were placed almost after two months after receipt of information regarding reduction in quantities. However, the issue regarding compensation due to scope reduction was not negotiated and settled with the contractors before the issuance of LOIs to save precious money for the company.
- ❖ There appears to be no urgency at site since the work started after about three months from the date of issue of LOIs. and the case could have been processed for retendering in line with clause No. 28(f) of Works Policy, 2008 if the contractors would not have agreed for the settlement of compensation on account of scope reduction.

Learnings

- Retendering should be resorted to in case of major change in scope of work.
- The reasons for taking a decision, which is taken in the interest of company, should be clearly spelt out in the approval note along with the implications to the Company if such decision were not taken.

You cannot escape the responsibility of tomorrow by evading it today.

Abraham Lincoln

VIGILANCE - A MANAGEMENT PERSPECTIVE

The Public Sector Undertakings in the country have been playing a significant role in the economic as well as social development of the country. These undertakings are no longer regarded as large commercial concerns judged on their commercial results but have in varying degrees wider objectives than commercial concerns in private sector.

Vigilance has to be looked upon as one of the essential components of management of PSUs. It is as important a segment in an organization like Finance, Personnel, Technical and Marketing. If the vigilance set up is effective in an organization, it will certainly ensure the functioning of the other segments like Finance, Personnel, Technical and Marketing in an efficient way. It has therefore to be given a rightful place in the management.

Vigilance is like a Bitter Pill. For the health of the organization, the Bitter Bill has to be administered. The administration of vigilance will taste sour Like a Bitter Pill. But in the long run, it will be in the good health of an organization and its absence will be harmful to the organization. The objective of vigilance is to ensure that the management gets the maximum out of its various transactions. In the field of purchases, it should get the quality product at competitive rates. In the field of sales, it should get the maximum realization for its products at the minimal selling cost. In the field of personnel, it recruits the best talented people and keeps the morale of the people high. Likewise, in anyone of its transactions, it should endeavour to get the best.

Vigilance is not something external. It should be accepted as an essential part of management. Vigilance connotes watchfulness. It is not the purpose of vigilance to wait for lapses to be committed and then try to conduct post mortem. What is more important than punitive vigilance is preventive vigilance. In short, management should be interested in preventive vigilance measures. If adequate attention is paid to preventive vigilance, many irregularities will not arise.

जो बात सिद्धांत में गलत है , वह बात व्यवहार में भी सही नहीं है |

डॉ. राजेन्द्र प्रसाद

Ethics & Governance

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. Our policies and systems are good but the implementation needs much more than the desired. That is why the importance of Corporate Governance and Ethics comes into being.

Organisations are managed by Policies, Guidelines and Systems. These are dynamic instruments and, therefore, need to be reviewed from time to time to gauge its efficacy to the 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 policies 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 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, in order to take the right decision, in the best interest 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 note should also contain the implications to the organization if the decision was not taken. Opinion of the concerned corporate functions shall also be taken in such cases. 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 'as is where is' basis.

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 achieved higher growth? Here, Business Ethics & Corporate Governance need to be focused on.

"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.

INTEGRITY PACT

Integrity Pact (IP) is an important tool of preventive vigilance which is aimed at preventing corruption and ensuring integrity in public procurement. The Central Vigilance Commission is the nodal authority for the implementation of Integrity Pact in India. It not only addresses bribery, but also other corrupt practices such as collusion and bid rigging. IP is a written agreement between the Government Department / Company and all the bidders agreeing to refrain themselves from bribery, collusion, etc. If the written agreement is violated, the pact describes the sanctions that shall apply. These include:

- i. Loss or denial of contract;
- ii. Forfeiture of the bid or performance bond;
- iii. Liability for damages;
- iv. Exclusion from bidding on future contracts(debarment); and
- v. Criminal or disciplinary action.

Ingredients of the Pact

The Pact essentially envisages an agreement between the prospective bidders and the buyer, committing the officials of both sides, not to resort to any corrupt practices in any aspect / stage of the contract. Only those 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:

- a) Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- b) Principal to treat all bidders with equity and reason;
- c) Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- d) Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- e) Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC Act or IPC;
- f) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;

- g) Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary;
- h) Bidders to disclose any transgressions with any other company that may impinge on the anti-corruption principle.

Integrity Pact, in respect of a particular contract, would be operative from the date IP is signed by both the parties till the final completion of the contract. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

Independent External Monitors

The Central Vigilance Commission nominates Independent External Monitors (IEMs) to monitor implementation of Integrity Pact. Thus, IP in its present form has three players:

- i. The Principal or the Company / Department,
- ii. The Vendor, and
- iii. The Independent External Monitor (IEM)

CVC Circulars

CVC through its Office Order No. 41/12/07 dated 04.12.2007 and No. 43/12/07 dated 28.12.2007 as well as Circular No. 24/08/08 dated 05.08.2008 recommended adoption of Integrity Pact to all the organisations and provided basic guidelines for its implementation in respect of major procurements in Government Organisations. Standard Operating Procedures (SOP) were issued by the Commission and further clarifications are also issued from time to time.

IP in BHEL

Integrity Pact has been implemented in BHEL since 19-02-2009 for all procurements valued Rs.50 Crores and above. The threshold limit was reduced to Rs.20 Crores w.e.f 01-04- 2010 and further reduced to Rs.10 Crores w.e.f. 01-06-2011. The threshold value is reduced to Rs.5 Crores w.e.f. 01-02-2016. Accordingly, Integrity Pact is applicable for all tenders (both under Purchase Policy and Works Policy) with estimated value Rs.5 Crores and above issued on or after 01-02-2016

(extract from CVC's Vigilance Manual 2017)

**Any suggestion(s) /
article(s) upto 1200
words may be mailed to
vigilance@bhel.in**