

ABSTRACT OF IMPORTANT CIRCULARS RELATED TO CONSTRUCTION

**AS AN INITIATIVE FOR
PREVENTIVE VIGILANCE**



Prepared by Vigilance Division

National Projects Construction Corporation Ltd.
(A GOVERNMENT OF INDIA ENTERPRISE)
(AN ISO 9001:2000 COMPANY)

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1. NECESSITIES AND JUSTIFICATION OF WORK

Proposals are initiated by organizations for execution of Project after considering all aspects including requirement of the Project/Work after establishing the need or justification of such works and anticipating infrastructure inputs to execute the work.

Before according administrative approval for the execution of any project, it is necessary to establish techno-commercial viability of the project in terms of rate of return and related benefits as 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 with reference to the actual intended use. The equipment must conform to the latest specifications 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. PREPARATION OF DPR /ESTIMATES

Successful contracts performance depends on the quality of detailed project report. The detailed project report prepared on ad-hoc basis based on some old project and not according to the present site requirements results in delays, deviations resulting in time and cost overrun. The detailed project report prepared in a hurried manner without checking the conformity/consistency among various schedule of items, drawings, specifications and contract conditions etc. further adds to time and cost overrun of the Project. The poor DPR leaves opportunity for the contractor to exploit and gain profits out of ambiguity in the contract.

Thus estimate of rates 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 estimate should not be prepared only on the basis of last accepted rates though accepted rates do help in the preparation of the estimates. The estimates should take into consideration all relevant factors based on the prevailing market price of various inputs at the concerned locations and should be based on the actual site conditions. 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.

- Do prepare DPR as per actual site requirement in consultation with the field staff otherwise it may lead to deviations and delay.

- Do ensure conformity among nomenclature of the items, drawings and specifications to avoid ambiguities at a later stage.
- Do take care to prepare estimates on the basis of detailed analysis of rates considering rates prevailing at the project site to arrive at realistic cost.
- Don't prepare estimates solely on the basis of last accepted rates of similar tenders.

a) Use of products with standard specifications

Ambiguous and vague specifications permit the contractor to do sub standard work. Necessary care should be taken for drafting tender documents particularly while preparing specification for special items.

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.

(For further details:- CVC Circular No. 14/4/07 dated 26.04.07 on "Use of Products with standard specification")

- Do prepare detailed estimates from drawings /sketches fully supported by calculations as far as practicable and with adequate details.
- Do try to include items with standard specifications only. However, if inclusion of some items without standard specification becomes unavoidable, reasons for procuring such items must 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, contingency 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 in the contract.
- Don't make vague estimates as it may lead to huge quantity variations and creation of extra and substituted items.
- Don't include any items in scope of work, which is not needed in the work.

b) Alternative items- rate only items

These items are provided without any quantities in tender documents. Contractors invariably quote exorbitant rates for such items, as the amounts corresponding to such rates are not reflected in the comparative statements. No alternative items should be provided in the tender document. If any extra item

becomes necessary to be executed, then it is always safer to work out a rate for such an item according to laid out procedure in agreement for extra & substituted items.

3. 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. 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 at any stage of the project for their default including delays attributable to them. The consultants should be appointed with clearly established job-content and consultation fee payable to them. Their selection should be done in transparent manner by inviting tenders i.e. through competitive bidding by collecting adequate data about their performance, capability and experience. Schedule indicating maximum permissible time for each activity should be prepared with a view to arrest time over runs of the project. The role of the consultant should be advisory and recommendatory and final authority and responsibility should be with the departmental officers only. The Consultant should not be hired for any assignment that would be in conflict with their prior or current obligations to other employers.

a) 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 or any of its affiliates hired to provide consulting services for the preparation or implementation of a project will be disqualified from subsequently providing goods or works or services related to the initial assignment for the same project.

(For further details: -CVC Office Order No. 75/12/04 dated 24th Dec 2004 on "Participation of consultants in tender-guidelines regarding")

b) Selection & engagement of Consultants.

CVC has circulated that the following guidelines which should be kept in view while engaging consultants:

- i) Conflict of Interest: Consultant and its affiliates should not engage in consulting or other activities that conflict with the interest of the organization under the contract.
- ii) Professional Liabilities: Consultant is expected to carry out its assignment with due diligence and in accordance with the prevailing standards of the profession.
- iii) Unfair Competitive Advantage: Consultant or their affiliates competing for a specific assignment should not derive a competitive advantage from having provided consulting services related to this assignment in question. Thus, employer shall make all information related to it to all prospective consultants.

c). **Provisions in the contract for limiting future engagement.**

The Consultants shall provide professional, objective and impartial advise holding the Employer's interest paramount and without any consideration for future work. They shall not be hired for any assignment that could be in conflict with their prior or current obligations to other Employers or that may place them in a position of being unable to carry out the assignment in the best interest of the Employer. The Consultants shall not be hired under the circumstances set forth below:

- i) **Conflict between consulting activities and procurement of goods, works or non consulting services (i.e. services other than consulting services covered by these Guidelines)-** A firm that has been engaged by the employer in provide goods, works, or non-consulting services for a project or its affiliates directly or indirectly controls, is controlled by or is under common control with that firm shall be disqualified from providing consulting services resulting from or directly related in these goods, works, or non-consulting services. Conversely a firm hired to provide consulting services for the preparation or implementation of a project or any its affiliates shall be disqualified them subsequently prevailing goods, works, or services (other than consulting services covered by these Guidelines) resulting from or directly related to the consulting services for such preparation or implementation. This provision doest not apply to the various firms (consultants' contractors or suppliers) which together are performing the contractor's obligations under a turnkey or design and built contract.
- ii) **Conflict among consulting assignments-** Consultants or their affiliates shall not be hired for any assignment that by its nature may be in conflict with other assignment of the Consultants. For example Consultant hired to prepare terms of reference for an assignment shall not be hired for the assignment in question.
- iii) **Relationship with Employer's staff** - Consultants that have a close business of family relationship with a professional staff of the Employer who are directly or indirectly involved in any part of: (I) the preparation of the TOR for the assignment (II) The selection process for the contract or (III) The supervision of such contract may not be awarded a contract, acceptable to the Employer throughout the selection process and the execution of the contract.

(For further details: -CVC Circular No. 08/06/11 dated 24th June, 2011 on "Selection and Employment of Consultants")

- Do appoint consultant in a fair and transparent way.
- Do provide advisory role only to the Consultant keeping the decision making to rest with executives.
- Do provide safeguards against consultant's failure such as performance guarantee professional liability insurance etc.
- Don't give decision making to the consultants, which should rest with the executives.

TENDER STAGE

Tender stage is bifurcated into following stages

- Preparation of tender documents.
- Inviting & opening of tenders
- Prequalification
- Tender evaluation and award of work

4. TENDER/ BID DOCUMENTS

Preparation of bid documents is also an important part of tendering as the tender after acceptance and signing becomes the contract which is a legal document. An ambiguous agreement leads to poor contract performance and litigations as well and gives an opportunity to a contractor to make profit out of ambiguous conditions. Tender documents should be prepared after checking the conformity among the schedule of items, drawings, specifications and contract conditions etc., as different part of the tenders are prepared by different people. Documents should be compiled properly after correlating them. Care should be thus taken to ensure that the technical specifications do not contradict with items in bills of quantity or the working drawings. Tender documents containing instructions to bidders, 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 also 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. Rate only items should not be provided in the tender documents as Contractors invariably quote exorbitant rates for such items since amount of these items are not reflected in the comparative statements. If any such item becomes necessary, then rates for such item should be calculated as per contract conditions.

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.

a) **Doctrine of Contra- Proferentem**

It states that when a contract provision can be interpreted in more than one way, the court will prefer that interpretation which is more favourable to the party which has not drafted the agreement. The underlying philosophy behind this doctrine is that one should be rewarded for his own fault. The doctrine places the cost of losses on the party who was in the best position to avoid the harm.

It is applicable when the various interpretations are equally sound, reasonable and possible and no clear intention contrary to the interpretation is being adopted on this principle is prima- facie evident in the contract document.

The doctrine seeks to encourage clear, explicit and unambiguous drafting of the agreement and to avoid latent and hidden meanings of the clauses.

The doctrine of Contra-Proferentem puts an added responsibility on framer, checkers and approvers of tender documents and emphasizes additional efforts on their part to avoid ambiguities and to make contract documents clear, explicit and unambiguous in nature.

Thus they should read re-read and re-re-read the various provisions of the tender document and ensure that its various provisions are clear explicit and unambiguous and for carrying out this responsibility.

- a. The latent hidden or implied meanings to contract clauses are to be avoided.
- b. The contract conditions need to be realistic.
- c. All information required for working out rates by prospective bidders needs to be given in the tender document.
- d. Technical specifications and mode of measurements should be clear.
- e. The tender document should take care of various contingent events.
- f. One should take lesson from the construction disputes and prescribe proper provision in the tender documents to deal with them so as not to repeat these in future.

(For further details: - Article by Nirmal Goel, Technical Examiner, CVC on "Doctrine of Contra- Proferentem in Contracts Management")

b) **Earnest Money Deposit.**

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 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 and the form in which EMD is acceptable should also be clearly mentioned in the tender documents.

- Do update tender documents to suit the present contract requirements containing instructions to bidder, 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 the performance parameters and the technical evaluation criterion, if any, in unequivocal terms in the bidding document.
- Don't forget to mention important clauses pertaining to earnest money deposit, completion schedule, testing of equipments, performance bank guarantee, payment terms, penalty for delayed completion, comprehensive insurance cover, contractor's liability, safety arrangements, statutory requirements for labour welfare, arbitration clause etc. in a proper and explicit manner.

5. 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 as 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.

(For further details: -CVC Office Memorandum dated 15th October 2003 on "Tender Sample Clause")

6. NOTICE INVITING TENDERS

Open tendering is the most competitive and transparent mode of tendering. It is imperative that the advertised/global tender notice should be published in selected 'National' and 'Local' dailies with large circulation. In order to generate wide publicity for better competition and to avoid cartel formation and favoritism to selected firms, tender notice may also be displayed on the notice board of the organization & other organizations as well. 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.

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.

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 to generate fair and adequate competition. 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.

a) Rejection of tender without any reasons

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 initially in preparing the bid besides financial costs.

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

(For further details: -CVC Office Order No. 15/3/05 dated 24th March 2005 on "Notice inviting tenders-regarding").

7. IMPROVING VIGILANCE ADMINISTRATION: INCREASING TRANSPARENCY IN PROCUREMENT /SALES ETC.

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 organization must ensure publication of the information pertaining to tenders on its website. Details of website address where 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.

In order to bring about greater transparency in the procurement and tendering processes, there is need for widest possible publicity through well circulated national and local news papers besides loading the NIT and also tender documents in a down loadable form on the web site.

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. The web site publicity is to be given even in the case of limited tenders.

The Central Vigilance Commission issued following instructions for compliance 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.

(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, period of sale of tender, place and time of sale, submission and opening of tender and organization website address in the advertisement /NIT published in the newspapers.

- Do load the NIT including all necessary 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 reasons for all actions of rejection.
- 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. It should also be published in the media and displayed on organization website and notice boards for wider publicity.

8. **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 result in either stalling the process of finalizing the contract or the contract is awarded in a non-transparent manner. The prequalification criteria that the Organization wants to adopt should be made explicit at the time of inviting tenders.

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 and the PQ criteria should be prepared specific to the requirement of the contract and in clear terms. 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. Timely completion of works is an important attribute while evaluating the credentials of the firms.

a) **Fixing of Pre-qualification criteria**

The purpose of any selection procedure is to attract the participation of reputed and capable firms with proper track records. 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 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. It is necessary to fix in advance pre-qualification criteria consisting of the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution. Pre-qualification, evaluation/ exclusion criteria etc. should be made explicit at the time of inviting tenders so that basic concept of transparency and interests of equity and fairness are satisfied.

(For further details: - CVC Office Memorandum dated 7th May 2004 on "Prequalification Criteria (PQ)")

Thus, while framing the pre qualification criteria, the end purpose of doing so should be kept in view. It is clarified that the guidelines may be suitably modified for specialized jobs/works, if considered necessary.

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 than the amount equal to 40% of the estimated cost.
 - or
 - b. Two similar completed works costing not less than the amount equal to 50% of the estimated cost.
 - or
 - c. One similar completed work costing not less than the amount equal to 80% of the estimated cost.
- 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;
- (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.
(For further details: -CVC Office Memorandum dated 17th December 2002 on "Pre-qualification Criteria (PQ)")

The acceptance / rejection of any bid should not be arbitrary but on the justified grounds as per the laid down specifications, evaluation/exclusion criterion leaving no room for complaints as all the bidders spent a lot of time and energy in preparing the bids besides incurring financial costs.
(For further details: -CVC Office Order No. 33/7/03 dated 9th July 2003 on "Short-coming in bid documents.")

It should be ensured that pre-qualification, performance and evaluation criteria are incorporated in the bid documents in clear and unambiguous terms, as these criterions are very important to evaluate bids in a transparent manner. Whenever required, the departments/ organizations should follow two-bid system i.e. technical and price bids. The price bids of only those vendors should be opened who were technically qualified.
(For further details: -CVC Office Order No. 44/9/03 dated 4th September 2003 on "Irregularities in award of contracts.")

b) 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. Therefore, the exercise of short listing of the qualifying firms must be completed prior to seeking the revised price bids. Obtaining revised price bids from the firms, which do not meet the qualification criteria, would be incorrect. 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.
(For further details: - CVC Office Order No. 72/12/04 dated 10th December 2004 on "Transparency in tendering system-Guidelines regarding").

- Do ensure that the PQ criteria are exhaustive, yet specific and clearly stipulated in unambiguous terms in the bid document.
- 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 to ensure fair completion.

- 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 unless such parties are black listed.

9. **POSTPONEMENT OF TENDER OPENING**

In order to give equal opportunity to all the bidders and to maintain sanctity of tendering system, 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 by individual intimation to 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.
- Don't extend date of submission or opening of tender without any genuine reason

10. **RECEIPT OF TENDERS**

The emphasis should be given to maintain transparency in the tender process. 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, the superscription/ reference number to be indicated on the envelopes, if any, the due date of opening of tenders and designation and address of officer to whom the tender should be addressed,

In cases, where the tenders are required to be submitted by hand due to the bulky size of tender documents to a designated officer, it may be ensured that the names and designation of at least two officers are mentioned in the bid documents. The information about these officers should also be displayed at the entrance/ reception of the premises where tenders are to be deposited so as to ensure convenient approach for the bidders. The tenders after receipt should be opened on the stipulated date and time in the presence of intending bidders.

(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 tender boxes.
- Do ensure that the tender notice should categorically contain the information regarding receipt of bids and due date and time of opening of tender, designation and address of officer to whom the tender should be addressed.
- Do ensure that in cases where the tenders are required to be submitted by hand to a designated officer, 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.

11. OPENING OF TENDERS

The price bids of technically qualified vendors should only be opened 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 initialed with the date, particularly the price and important terms and conditions. Alterations, if any in tenders, made by the firms should be initialed. Similarly, 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 alteration/ erasing/cutting / overwriting were present on the tender 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.

For 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 mentioning the due date of opening the price bids should be clearly mentioned on the envelopes. These price bids should either again be placed in the tender box or the envelopes containing the price bids should be put in a bigger envelope and the same should be properly sealed duly signed by the tender opening officer /committee and bidders representative.

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.

(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 scheduled due date and time of receipt of bid.
- Do open tenders in presence of the bidder's representatives who chose to be present and don't entertain any unauthorized person during tender 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. Do ensure that 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 signatures of all the persons present to witness the tender opening including the bidder's representatives.
- Do ensure in cases involving the two bid system that the tender opening committee members should sign on the envelopes containing the price bid mentioning clearly the due date of opening the price bids on the envelope. These envelopes should again be placed in the tender box for safe custody.

a) **TENDER EVALUATION AND AWARD OF WORK**

It should be insured that evaluation is done in most transparent and fair and open manner, following points should be taken care of:

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

12. **TECHNO-COMMERCIAL EVALUATION OF TENDERS**

The single bid system is normally resorted to when the specifications are adequately defined and 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. 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 conditions having financial implications should be loaded properly in the tender evaluation and in the comparative statement. 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.

a) LIMITED TENDER

When firms are short-listed for issuing of tenders on limited basis, the techno-commercial competence and other credentials are required to be scrutinized thoroughly. The offers from such short-listed firms should normally be not rejected 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 & technical specifications should be frozen before calling price bids.
- Do give a fair chance to revise the price bids by the bidders if some changes are made in terms/ conditions or technical specifications.

13. 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 or items where there is suspicion of a cartel formation. The justification and details of such negotiation should be duly recorded and documented properly.

If due to the unreasonableness of the quoted rates, a re-tendering decision is taken but to meet urgent requirement, 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 however negotiation is allowed, then the authority recommending negotiations must record convincing reasons.

As regards the splitting of quantities, 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. But 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 and this must be followed scrupulously.

It may be noted that 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.
(For further details:- CVC Circular No 4/3/07 dated 3rd March 2007 on "Tendering process-negotiations with L-1")

It is clarified by the Commission that there should normally be no post-tender negotiations. If at all negotiations are warranted under exceptional circumstances, then it can be with L-1 (Lowest tenderer) only in case where the tender pertains to the award of work/supply orders etc. where the Company has to make payment or if the tender is for sale of material by the Company, with H1 (i.e. Highest tenderer), if required.
(For further details: -CVC Circular No. 01/01/10 dated 20th January 2010 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, 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 negotiations under exceptional circumstances with L-1 only if it is warranted in case where Company has to make payment or with H1, if it is warranted, if the tender is for sale of material by the Company.
- 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 vital or critical 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 but 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.

14. REASONABLENESS OF PRICES/ MARKET RATE JUSTIFICATION

Reasonableness of rates in relation to the estimated rates and the prevailing market rates should be established before acceptance of the offer. The AHR (Abnormally high rated) and ALR (Abnormally low rated) items should be duly identified and the officials/ agencies responsible for execution of work should 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 accepting 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 exercise appropriate control on such identified items.

15. TIME BOUND PROCESSING OF TENDERS

Competent Authority should exercise due diligence with reference to time and tender process i.e. while ordering negotiations or accepting a tender or calling for a re-tender and a definite time frame should be indicated so that the time taken to accord 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.

When ever the processing of tenders is inordinately delayed, time and cost overruns results causing litigation. Thus, it should invariably be ensured that tenders are finalized and contracts subsequently awarded in time bound manner within original validity period of tender and without seeking further extension of validity.

While a short validity period calls for prompt finalization by observing specific time period for processing, a longer validity period has the disadvantage of vendors loading their offers in anticipation of likely increase in costs during the period. Hence it is important to fix the period of validity with utmost care. The commission therefore advises the concerned organizations to fix a reasonable time for bids to remain valid while issuing tender enquiries, keeping in view the complexity of tender, time required for processing the tender, for seeking the approval of the Competent Authority and to

ensure the finalization of the tender within the stipulated original validity. Any delay, which is not due to unforeseen circumstances, should be viewed seriously and prompt action should be taken against those found responsible for non-performance.

Extension of validity should be resorted to in exceptional situations only and it is imperative that the valid and logical grounds justifying the said validity should be brought on record.

(For further details: -CVC Circular No 31/11/08 dated 6th November 2008 on "Time bound processing of procurement")

- 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

16. QUALIFIED ACCEPTANCE OF OFFERS

Acceptance is the act of giving consent to the proposal and the proposal when accepted becomes a contract. An acceptance to be valid must be absolute and unqualified and according to the exact terms of the offer. An acceptance with a variation is a mere counter offer which the original offeror may or may not accept. Acceptance must be communicated to the offeror and must be according to the mode prescribed and within a reasonable time. It must be in response to offer and must be given by the person to whom the offer is made.

17. TRANSPARENCY IN WORKS/ PURCHASE/ CONSULTANCY CONTRACTS AWARDED ON NOMINATION BASIS

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 such contracts 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.

(For further details: -CVC Circular No. 15/5/06 dated 9th May 2006 on "Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis").

In a recent judgment of the Hon'ble Supreme Court, it has been emphasized that all the public tenders should be in an open and transparent manner with adequate publicity. In this judgment, the Hon'ble Supreme Court has stressed that award of contract on nomination basis should be resorted to in rare and exceptional cases only. 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. supremecourtindia.nic.in](http://www.supremecourtindia.nic.in))

Further, all nominations/single tender contracts should be posted on the web site ex post – facto.

(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").

Commission vide Circular No. 15/5/06 had prescribed certain measures to be followed on the works/purchase/consultancy contracts awarded on nomination basis by PSUs. After reviewing these, Commission is of the view that the Board of the PSU is not required to scrutinize or post facto vet the actions of the operational managers and their decisions to award work on nomination basis.

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

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

Read as

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

(For further details: -CVC Office Order No.19/05/10 dated 19th May 2010 on "Transparency in Works/Purchase/Consultancy contracts awarded on Nomination basis").

EXECUTION STAGE

Important items in the execution stage are:

- o Issue of letter of Indent/Award, Work/Supply order and signing of agreement.
- o Implementation of various contract provisions such as obtaining Labour Licenses, Insurance Policies, CAR Policy, Workmen Compensation Policy etc.),employing technical staff etc.
- o Various advance payments like Mobilization Advance, Secured Advance etc.
- o Checking quality of work, ensuring mandatory tendering and visual inspections.
- o Payments for the work done/supply made/services provided by the contractor/ vendor etc.
- o Watching time and cost overrun.
- o Submission of various returns required to be sent for the project.

18. 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 before hand and 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.

a) Posting of the details on award of tenders / contracts on website of organization

The Commission has directed to post every month, a summary of all contracts / purchases made above the threshold value on the website every month. The Competent Authority of NPCC has fixed value as Rs.10.0 crores for the time being. It is advised, therefore, to ensure that the details of the tenders awarded for a value of Rs.10.0 crores or more to the agencies are uploaded on organizational website in the prescribed format (provided with CVC office order No. 13/3/05 dated 16.03.2005) and are updated every month.

(For further details: -CVC Office Order No. 13/3/05 dated 16th March,2005 and Circular No.17/7/09 dated 14th July, 2009 on " Posting of details on award of tenders/ contracts on websites ").

- 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 so that 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 bring all works awarded on nomination basis to the notice to the Board of the PSU for information.
- 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.

19. 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 needs 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.
- Don't give Bank Guarantee in the hands of the agency for obtaining time extension/ revalidation from the bank.

a) Mobilization Advance

The basic purpose of Mobilization Advance is to extend financial assistance within the terms of contract to mobilize the man and material resources for timely and smooth take off of the project. Necessary safeguards should be provided in the contract to stop its misuse. The BGs taken in lieu of Mobilization Advance need to be properly examined with respect to the acceptable format and any condition deterrent to the Govt.'s interest should be got withdrawn before acceptance besides verifying genuineness of the Bank Guarantees from the bankers. Timely action for revalidation /encashment of BGs also needs to be taken to protect the company's interest.

The Commission's guidelines on Mobilization Advance listed below needs careful consideration:

1. Provision of Mobilization Advance should essentially be need-based. Decision to provide interest free mobilization advance in the tender document should rest at the level of Board (with concurrence of Finance) in the organization. However in

case of interest bearing mobilization advance, Organizations 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 installments and should be equivalent to the amount of each installment.
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 with 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 installments and subsequent installments should be released after getting satisfactory utilization certificate from the contractor for the earlier installments.

(For further details: -CVC Office Memorandum/ Circular No. 10/4/07 dated 10th April 2007 on "Mobilization Advance" and Circular No. 5/2/08 dated 5th February 2008)

Commission had decided that following additional guidelines be followed in case of grant of Mobilization Advance.

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

Mobilization Advance should not be paid in less than two installments except in special circumstances (for which the reasons should be recorded). This will keep check on contractor mis-utilizing the mobilization advance when the work is delayed considerably.

A clause in the tender enquiry and the contract of cases providing for interest free mobilization advances may be stipulated that if the contract is terminated due to default of the contractor, the 'Mobilization Advance' would be deemed as interest bearing advance at an interest rate of _____ % (to be stipulated depending on the

prevailing rate at the time of issue of NIT) to be compounded quarterly. (For further details:-CVC Circular No. 02/02/11 dated 17th February 2011on " Mobilization Advance)

- Provision of Mobilization Advance should essentially be need-based.
- Do clearly stipulate in the tender document if the management feels the necessity of providing 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 'Bank Guarantees' (BGs) towards security of the Mobilization Advance for at least 110% of the advance to enable recovery of Principal and interest portion, if required.
- Do take part 'Bank Guarantees' (BGs) against the Mobilization Advance in as many numbers as the proposed recovery installments equivalent to the amount of each installment.
- 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 and interest to be charged, if any; its recovery schedule and any other relevant detail.
- Do provide relevant format for BG in the tender document.
- 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 provide Mobilization Advance preferably in installments (should not be less than two) except in special circumstances, the reasons of which should be recorded.
- Do release subsequent installments after getting satisfactory utilization certificate from the contractor for the earlier installments except in exceptional circumstances, the reasons of which should be recorded.
- Do stipulate a clause in the tender enquiry and the contract of cases providing for interest free mobilization advance that if the contract is terminated due to the default of the contract, the mobilization advance would be deemed as interest bearing advances at an interest rate of ____ % (to be stipulated depending on the prevailing rate at the time of issue of NIT) to be compounded quarterly.

b) 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.

c) Acceptance of Bank Guarantees

The Bank Guarantees should be accepted in the prescribed format only and independently verified from issuing bank. It should be ensured that the Banker along with the seal of the Bank Guarantee issuing Bank should initialize all the cuttings, additions and alterations, if any. Bank guarantee should be kept in safe custody and its validity needs to be properly monitored. The extension letter should be strictly in accordance with the original BGs and there should not be any change in the terms & conditions from the original guarantee. The extension of the Bank Guarantee should be taken on the same value of the stamp paper on which the original BG is executed.

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.). The BG submitted by the contractor should be compared with the original BG for confirming the genuineness of the BG.
- (iv) All BGs should be independently verified by the organization.
- (v) In the Organization/Unit, one officer should be specifically designated with responsibility for verification / timely renewal and encashment of BGs.

(For further details: -CVC Office Memorandum/ Circular No.01/01/08 dated 31st December 2007 on "Acceptance of Bank Guarantees")