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20. INSURANCE

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

- Do also incorporate and implement a comprehensive all risks insurance clause for men and material so as to meet any contingency arising on account of fire/earthquake, mishap during execution.

21. COMPLETION SCHEDULE OF CONTRACT

The specific schedule of completion of contract should be stipulated in the contract in an unambiguous manner. Completion of contract should imply overall completion of all the events of the contract. In case of big projects, if the work is broken into small contracts; each and every contract should have its specific schedule of completion, which inter alia should be within the overall completion schedule of the main contract.

Overall progress of work is related and highly dependent on the deployment of necessary tools, plant and machinery. The contractors should be asked to submit the list of necessary equipment and completion schedule of various activities in advance and the progress should be monitored in accordance with such schedule. The rules for recording timely measurements of hidden items should be strictly enforced. The adequate supervision and control over the quality of works and the execution speed is very important for successful completion of the project. Proper planning and taking timely decisions can achieve the timely completion of the project. The project cost should be kept to a minimum value by better technical and managerial inputs and efficient construction methodology.

- Do stipulate milestone in the contract for the specific schedule of completion of contract in an unambiguous manner and monitor progress in accordance with such schedule.
- Do ensure that each and every contract, in case of big projects, should have its specific schedule of completion of intermediate milestone activities which inter-alia should be within the overall completion schedule of various activities in advance, if the work is broken into small contracts.

a) Time and cost over runs

Due to time and cost over runs, the project becomes uneconomical and economic development is adversely effected. It further gives rise to disputes & litigations. Besides that, there is unavailability of the resources to support other projects.

Hence, it is important to adhere to the originally contemplated time schedule for the project completion, which can be achieved by proper planning & taking prompt

decisions. Time over runs should be avoided. Besides that, the project cost be kept down to the minimum extent possible.

The time & cost over runs can be minimized to improve the prospects of successful completion of the project by taking care of (i) Adequate project formulation (ii) Sound project organization with experienced and expert manpower (iii) Proper implementation planning (iv) Advance action for procurement of scarce materials (v) Timely availability of funds (vi) Judiciously and timely tendering of contracts (vii) Better contract management & effective monitoring.

22. DEFECT LIABILITY PERIOD CLAUSE

Detailed defect liability period clause embodying all the safeguards needs to be incorporated in the bid documents and in the resultant contract. In case of delay in completion of contract (implying overall completion of all the events of the contract), it should be invoked as incorporated in the agreement. In the contract involving installations /commissioning of equipments, the defect-liability period should be reckoned only from the date of installation / commissioning. In case supply and installations have to be executed through separate contract due to some compelling reasons, both the contracts should be processed in such a manner that the time-gap between supply and commissioning is minimal.

- Do incorporate in the bid documents and in the resultant contract detailed defect liability period clause embodying all the safeguards.
- Do reckon defect liability period only from the date of taking over of work viz. in the contract involving installations /commissioning of equipments, the defect liability period should be reckoned only from the date of installation/ commissioning of equipments.
- Do proceed in such a manner that the time gap between supply and commissioning is minimal in case supply and installations have to be executed through separate contract.
- Do maintain a proper record of hindrance and do record date of completion.

23. CONTROL & ADEQUATE SUPERVISION

Adequate supervision & control over the quality of the work and speed of the execution plays an important part in construction work. Site inspection book should be used for recording all observations and defects. The compliance of the observations should also be taken care.

The rules for recording the timely measurements of hidden items & entering the measurements simultaneously at site should be strictly enforced. The senior officers should test- check the measurement to the required extent.

24. PAYMENT TERMS AND APPLICABILITY OF TAXES AND DUTIES

The payment terms should be defined unequivocally and should not be changed after award of the contract. An appropriate control on the flow of funds

should be exercised while making the payment. The payment terms should be so structured that the payments made to the contractors are linked and commensurate with the actual progress of the work as far as possible. In case of contracts where a price break is required for payment purposes, the break up should be realistic and should be approved by the Competent Authority. The rates so approved should be deemed the tendered rates as if the rates were called for item rate contract. These rates should be considered for making any proportionate recoveries or withholding of payments or for working out any taxes duties etc. In the case of a composite contract for supply and erection, the applicability of various taxes/duties should be made clear at the outset in the Instruction to the bidder's part of the bid document.

- Do make clear the applicability of various taxes/duties at the outset in the Instruction to the bidder's part of the bid document in case of a composite contract for supply and erection.
 - Do define payment terms unequivocally and do not change it after award of the contract.
- a) **Payments for the work done/supply made/services provided by the contractor/vendors etc.**

Payments should be released with a valid extension of time period only, in case, the work is extended. In such cases, the timely extensions of the contract and bank guarantees, if any, should be ensured.

There is a direction from CVC regarding switching over to E-payments to have transparency in issues relating to payments and to reduce the time involved in the payment process so as to help the beneficiaries to realize their payments on time.

E-payment is making payments electronically without physical transfer of money or instrument of money. When the organization makes e-payment, the payee is paid by directly crediting to its bank account & without issuing any cheque or DD either to the payee or to the bank. With tremendous progress in computerization including networking of branches it is possible to do e-banking by making use of facilities like electronic clearing system (ECS) and electronic fund transfer (EFT) etc. This significantly not only reduces processing costs in preparation and dispatch of cheques but also reduces the risk of frauds by providing speed, efficiency and easier reconciliation of accounts.

CVC had issued instructions to all Govt. Departments, PSEs, Banks and other agencies to pay to all suppliers / vendors, refunds of various nature, other routine payments & salary and other payments to the employees of the organizations through electronic payment mechanism at all centers where such facilities are available in the banks clearing system.

CVC has urged all the departments/Organizations to provide an enabling environment and facilities to make e-payment and e-receipt initiatives successful and were asked to forward the details regarding the implementation of e-payment mechanism enclosing the format vide their order no. 68/10/04.

(For further details: - CVC Office Order No. 20/4/04 dated 6th April 2004 on "Increasing Transparency and cutting delays by e-payments and e-receipts by Govt. Organization & 68/10/04 dated 20th October 2004 on "Leveraging Technology : e-payment & e-receipt")

- Do make the payment to the contractors as per the actual progress of the work.
- Do exercise appropriate check and control on the flow of funds while making the payments.
- Do pay the executed quantities beyond the stipulated time after deducting the LD as provided under the contract unless the valid extension for the contract is given.
- Do implement e-payment mechanism immediately, if not initiated earlier.
- Do make all payments to suppliers / vendors, refunds of various nature and other routine payments through electronic payment mechanisms where such facilities are available in the banks.
- Do make salary and other payments of the employees through electronic clearing system (ECS) where such facilities exist.

25. POST CONTRACT MANAGEMENT

Modifications of Contract conditions / specifications

After conclusion of the contract, any relaxation in the contract terms/specifications should be severely discouraged. However in exceptional cases, where the modifications/ amendments are considered absolutely essential, the same should be allowed only after taking into account the financial implications for the same. Further, sufficient amount should be withheld against the items received in an unfinished /incomplete condition so as to ensure that no extra payments are made against such items/ services later on. Reconciliation of material issued by Department, if any, should be reconciled at various stages of work.

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

26. POST CONTRACT MONITORING

It is essential to accord priority to the post contract follow up for execution of works. The time extension should be granted only on bonafide requests and not in a routine and casual manner. After expiry of the contract period, the contractee should refrain from exchanging correspondence with the contractor. For any delays on part of

the contractor in completing the contract, the liquidity damage clause should be invoked. In case, if more than one contractors are engaged on a project and delay occurs, the case should be analyzed in a total perspective and the agencies responsible for the delay, including the consultant should be penalized. There is a dire need to inculcate a transparent and professional contracting culture so that the non-performers are weeded out and only reliable contractors, who can prove their credentials by consistent performance in terms of quality and timely completion of contracts, are encouraged.

a) Excess payment to the Agency

During examination/complaints, it has been observed that excess payments to the contractors have been observed which may be due to ambiguity in the contract or misinterpretation of various clauses of the contract. Sometimes variations in the contract clauses or specifications are allowed without financial adjustments, thus, giving undue benefit to the contractor. It is normally recommended by CVC to recover such excess payments from the contractors.

In number of cases, contractors invoke arbitration to avoid such recoveries and in addition submit huge claims to deter the authorities from making recoveries. Organizations fail to affect the recoveries citing reference to arbitration by the contractor.

In view of the above, CVC has issued the following directions that whenever any excess payment is detected, it should be recovered from the contractor from the available amount at the first opportunity following due procedure prescribed in the contract, unless any stay has been granted by the court.

(For further details: -CVC Circular No. 21/05/10 dated 2nd June 2010 on "Delay in initiating Disciplinary Proceedings").

b) Banning of business dealings with firms/contractors-clarification regarding

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

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

(For further details:- CVC Office Order No.18/3/05 dated 24th March 2005 on "Banning of business dealings with firms/contractors-clarification regarding").

c.) Appointment of Arbitrator as per contract

The concerned Project Manager/ Zonal Manager should process the case for appointment of the Arbitrator immediately as per the contract so that Arbitrator is appointed in the scheduled time by the appointing authority and litigation is settled expeditiously.

(Refer for further details NPCC letter ref. no: 000735/97 dated 12th May 2005)

- Do process the case for appointment of the arbitrator, if so provided in the tender documents, well before its stipulated time so that the arbitrator is appointed within the time schedule and litigation is settled expeditiously.
- Do remember that once a case is under arbitration, the correspondence with the agency should be done with corporation legal expert.
- Do always keep in mind that a contractor always read in between the lines of the contract clause. Hence one should be careful in dealing with the contract and the contractor.
- Do remember to consider all claims /receivables etc. before hand so that claims/ counter claims are comprehensive.
- Don't delay the rightful payment of executed works as per contract to the agency to as it is most critical for successful and timely execution of works to avoid unnecessary litigation.
- Don't forget to take action as per arbitration clauses if an arbitration case is initiated under Arbitration and Conciliation Act 1996.

27. ARBITRATION AND CONCILIATION ACT 1996

OBJECT & SCHEME

To make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration , to minimize the supervisory role of courts in the arbitral process and to permit an arbitral Tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in settlement of disputes, etc.

The scheme of the act consists of four parts , part one contains the general provisions on arbitration , part two deals with enforcement of certain foreign awards, part three dealing with conciliation and fourth part deals with certain supplementary provisions.

Objectives

- To comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation.
- To make provision for a fair and efficient arbitral procedure capable of meeting the needs of the specific arbitration.
- To provide that the arbitral tribunal gives reasons for its arbitral awards.
- To ensure that the arbitral tribunal remains within the limits of its jurisdiction.
- To minimize the supervisory role of courts in the arbitral process.
- To permit an arbitral tribunal to use mediation, conciliation or other procedures during the proceedings to encourage se of disputes.

- vii. To provide that every final arbitral award is enforced in the same manner as if it were a decree of the court.
- viii. To provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal
- ix. To provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two International Conventions relating to foreign arbitral awards to which India is a party applies, would be treated as a foreign award.

Salient features of the Act

- 1. The arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent as per Section 21.
- 2. Section 23 to 27 lay down the procedure to be followed in arbitration proceedings. It is open to the parties to lay down by the agreement the procedure to be followed in the arbitration proceedings but must not be contrary to any provisions especially that of section 23 to 25.
- 3. The grounds on which challenges to the appointment of arbitrators are listed in Section 12 and procedure for such challenge in Section 13. The present Act does not contemplate the removal of an arbitrator by the Court .The arbitrator can be removed either by the parties themselves or by the Arbitral Tribunal.
- 4. Under the Act while ruling on an objection with respect to existence or validity of the arbitration agreement, the arbitral tribunal for that purpose shall treat an arbitration clause which forms part of a contract as an agreement independent of the terms of the contract and a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the individuality of the arbitration clause.
- 5. An Arbitral Tribunal may rule on its own jurisdiction under section 16 of the Act including ruling on any objections with respect to the existence or validity of the arbitration agreement.
- 6. .Arbitral Tribunal can use only such material which both the parties are aware and which they have an opportunity to counter. Section 24 makes two provisions, viz
 - i) Tribunal shall communicate to the other party, all the materials, including statements, documents, information or applications made to the Tribunal by one party and
 - ii) Tribunal shall communicate to all the parties any expert report or evidentiary document on which arbitration tribunal rely in making its decisions.

Thus, it is a prudent course to make a rule of handing over to the opponent all written statements sent to him by a party, and to take care that no kind of communication concerning the points under discussion is made to him without giving information of it to the other side.

7. The Tribunal may appoint one or more experts for a report to it on specific issues which have to be determined by the Tribunal as per Section-26.
8. The Tribunal may by itself, or a party with its approval may apply to the court for assistance in taking evidence. The application has to specify the particulars as stated in Section 27.
9. Section 31 (7) (a) of the Act provides for the grant of interest by the Arbitral Tribunal on an award for the payment of money for the period between the date on which the cause of action arose and the date on which the award is made unless otherwise agreed by the parties .Section 31 (7) (b) provides for the grant of interest on the sum of money awarded for the period between the date of award to the date of payment. Thus the Arbitrator has the power to award interest at all stages i.e. .pre-reference period, period of pendency of arbitration proceedings and date of award to the date of realization.
10. The arbitration award should be a valid award. It must confirm to submission, must be certain, must be consistent & not vague and must be complete and final. No decree is required to be passed in terms of the award and the award is itself executable as a decree of the court
11. An award can be set aside only on the grounds mentioned in Section 34 of the Act. The purpose of setting aside is to modify in some way the award in part or wholly.
12. Sub-section (3) of Section 34 specifies a three month time-period within which the application for setting aside an award has to be made, from the day when the applicant receives the award. The proviso to the sub-section provides that if the applicant can show that he was prevented by sufficient cause from making the application within three months, a further period of 30 days can be given to him for filing the application but not thereafter. Use of words but not thereafter makes it clear that even if a sufficient cause is made out for longer extension, extension can not be granted beyond thirty days.
13. The Arbitration proceedings stands automatically concluded when the final arbitral award is made except (i) when proceedings under Section 33 have been initiated for correction of errors or for interpretation of the award or for making an additional award or (ii) when proceedings for setting aside an award under section 34 (1) have been adjourned by the Court to enable the Arbitral Tribunal to take action to eliminate the grounds for setting aside the award.

28. BACK TO BACK TIE UP BY PSUs-INSTRUCTION REGARDING

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

1. PSUs (when bag the contract from the client Department) as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back-to-back basis.
2. Open tenders should be invited for selection of sub-contractors as far as possible.
3. In case, it is not possible to invite open tenders, selection should be carried out by inviting limited tenders from the approved panel. Commission has been insisting upon transparency in the preparation of panels of contractors. This approved panel of contractors is to be prepared for different categories, monetary limits, and regions, in a transparent manner clearly publishing the eligibility criteria etc. which is to be updated every year. Selection of the contractor should be carried out by inviting limited tenders from this approved panel of contractors.
4. A high level committee to maintain the secrecy of rates, if required should open tenders confidentially. Tender opening register should be maintained in this regard duly signed by the officer/committee opening the tender and kept confidentially. This should be available for perusal when required by Audit / Vigilance.
5. The terms and conditions of the contract of the client especially those pertaining to subletting of the works should be strictly adhered by the PSUs.
6. Adequate staff to be deployed by the PSUs to ensure quality in construction etc.
7. The record of enlistment/ updating of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.

(For further details: -CVC Office Memorandum dated 20.10.2003 on "Back to back tie up by PSUs-Instructions regarding").

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

29. PROCEDURES/GUIDELINES FOR PRE-TENDER /POST TENDER TIE UP ETC. FOR CONSTRUCTION WORKS

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

1. MOUs should contain the clause that some part of the work will be executed departmentally.
2. A register should be maintained as per the manual, which will contain the names, addresses and other pre-qualified listed contractors. All the procedures as per the NPCC Manual or CPWD Manual should be strictly adhered to. Periodical review at least once a year should be made to re-evaluate the listed contractors as per ISO 9001: 2000 Manual.
3. Rs. 5000/- should be collected from each listed contractor at the time of registration.
4. All the tender formalities shall be adhered to before selecting the contractors.
5. Without statutory registration like EPF, Sales tax, Income Tax and others, the contractors shall not be listed for registration and work should not be awarded and pre or post tender tie-up should not be considered. There should be minimum three registered parties submitting the rates.
6. Cost estimates should be based on CPWD/State PWD norms only. Wherever the norms are not there, market rates should be taken to evaluate the cost estimates. The concerned executive in engineering side and accounts side should certify the compliance so that bidding should be made on workable economic rates so that the company can make reasonable profit in each contract.

(For further details NPCC Circular No. DF/301 dated 16th July 2003 on "Procedures /Guidelines for Pre-tender/Post tender tie-up etc. for construction of works").

- Do maintain a register containing the names, addresses and other relevant details of pre- qualified contractors. The above panel should be updated every year.
- Do strictly adhere to all tender formalities before selecting the contractors.

30. OBSERVATION & REMEDIAL ACTION TO ALLOTMENT OF WORKS & PAYMENT MADE

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

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

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

- i) Offered percentage_____ (Fill either below or above) the estimated rates in Ist call_____ %(-----percentage only).
- ii) Offered percentage_____ (Fill either below or above) the estimated rates in IInd call_____ %(-----percentage only).
- iii) Offered percentage_____ (Fill either below or above) the estimated rates in IIIrd call_____ %(-----percentage only).

In this case, if the agency wants to quote the rates in different calls by varying the % margin, NPCC will accept the higher margin only if the rates are quoted below and lowest margin if the rates are quoted above the estimated rates.

2. **Delay in issuance of Work- Orders**

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

3. **Payments made under the contract**

No variation of the quantities /amount under the contract shall be made /paid without approval of Competent Authority. Until, unless the valid extension for the contract is given, the executed quantities beyond the stipulated time shall be paid after deducting the LD as provided under the contract.

4. **Competency of approval for variations or new items-regarding**

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

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

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

The present incumbent (Project Manager/Zonal Manager) shall be responsible for replies to queries asked by Internal/Statutory/Govt. Auditors based on available records even though the matter may pertain to previous incumbent. While furnishing the replies, the present incumbent may seek the information, if required, from the previous incumbent.

(Refer for further details NPCC Circular No. 400782/Misc/IA/35 dated 23rd /24th May 2007).

31. **IMPROVING VIGILANCE ADMINISTRATION BY LEVERAGING TECHNOLOGY - INCREASING TRANSPARENCY THROUGH USE OF WEBSITE.**

The Commission, while emphasizing the need of leverage technology as an effective tool in vigilance administration in discharge of regulatory, enforcement and

other functions, directed all organizations to post on their websites, information in respect of the rules and procedures governing the issue of licenses/permissions etc. and to make available all the application forms on the websites in a downloaded form besides, making available the status of individual application on the Organization's website. The Commission also directed the organizations to post on their web site monthly, a summary of all the contracts/purchases made above the threshold value.

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

- (i) All application forms and information in respect of rules and procedures should be uploaded on the website.
- (ii) All the application forms should be available in the downloadable form in the website and status of the individual application should also be available in the organization website.
- (iii) Details of awarded tenders above the threshold value should be posted on the website.

(For further details:- CVC Office Order No.13/3/05 dated 16th March 05 and Circular No. 13/4/07 dated 18th April 2007)

It was observed by the Commission that publication of information by some Organizations were not as per the prescribed format laid by the Commission while in some cases, the information was not being updated. Some organizations had placed information on restricted access, which defeated the basic purpose of increasing transparency. The Commission therefore directs that: -

- (i) All organizations/ departments to strictly adhere and post summary of details of contracts/purchases awarded so as to cover 75% of the value of the transactions without any further delay. The Commission would view any failure on the part of the organizations on this account seriously.

(For further details: -CVC Circular No.17/7/09 dated 14th July 09 on "Posting of details on award of tenders / contracts on websites")

32. IMPLEMENTATION OF E-TENDERING SOLUTIONS

The Commission's view regarding the methodology for selection of sole application service provider for implementing the e-tendering solutions in various organizations is that the organizations should follow a fair, transparent and open tendering procedure to select the application service provider. The standard guidelines on tendering procedures should hold good for the procurement of these services as well.

The organizations must take due care to see that the effective security provisions are made in the system to prevent any misuse. In this regard, the guidelines on security related issues in e tendering have been circulated by CVC by its circular no. 29/9/09. Organizations may follow these guidelines while implementing e-tendering solutions to contain the security related loopholes.

CTEO during security audit of e-procurement solutions found shortcomings/ deficiencies of repetitive nature. CVC by its circular no. 18/04/2010 had formed a check list to achieve safety considerations in e-procurement solutions so that the Organizations may follow the same while implementing e-tendering solutions to address the security related concerns.

(For further details: CVC Office Order No. 01/01/09 dated 13th January 2009, Circular No. 29/9/09 dated 17th Sept 2009 and No. 18/04/2010 dated 26th April 2010 on "Implementation of e-tendering solutions")

33. MENACE OF COUNTERFEIT AND REFURBISHED IT PRODUCTS

It is often difficult to know the difference between PC made of "Genuine Parts" and that made of "Counterfeit Parts" due to ignorance or having little or no technical knowledge in the matter.

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

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

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

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

(i) CPU (ii) Hard Disk (iii) Monitors (iv) Operating System (v) Mechanical Key Boards (vi) Low Quality Memory Module (vii) Fraudulently Marked SMPS (viii) Counterfeited Consumables.

(For further details: CVC Circular No.07/02/08 dated 15th February 2008 for details on "Measures to curb the menace of counterfeit and refurbished IT products-regarding").

34. INTRODUCTION TO THE INTEGRITY PACT (IP)

Integrity Pact programme is a tool developed by Transparency International to create islands of integrity through a voluntary contract between the buyer and seller to eliminate corrupt practices and to help Governments, Public Sector Undertakings, Business and Civil society to fight corruption in the field of public contracting. Integrity Pact has been implemented in more than fourteen countries and has been very successful everywhere. The global over view of experience indicates that the IP concept is sound and workable.

Integrity Pact concept is suitable both for construction and supply contracts. It covers all the activities related to the contract from the pre-selection of bidders, the bidding & contracting implementation to its completion and operation. It is flexible enough to adapt to many local legal structures and requirements as well as to the different degrees in which government are willing to proceed along the lines set forth here.

Transparency International (TI) is a non profit organization, with headquarters in Berlin. Its objective is to fight against corruption. It also encourages governments to implement effective anti -corruption policies and measures and to raise public awareness. This effort of TI helps in increasing the development process by curtailing wastage and irregularities and building the moral health of the society.

In India, TI was set up in Delhi in 1999 and now it has state chapters in nine states with eminent citizens as the Board of Directors. ONGC was the first central Public Sector Undertaking to adopt IP in July 05. Vizag Steel Plant, HPCL, GAIL, Coal India Limited and Airports Authority of India have also adopted the Integrity Pact. It is claimed that the pact ensures timely completion of projects with reduced cost of execution and ensures a healthy environment of mutual trust and respect between the client and the executors.

IP program consists of a process that includes an agreement for a public sector contract between a government or a government department and all bidders. All the involved agencies sign the Integrity Pact, which establishes mutual contractual rights and obligations to the effect that neither side will pay, offer, demand or accept bribes or collude with competitors either to obtain the contract or during execution. Also, bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract and that sanctions will apply when violations occur. These sanction range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contacts on the side of the bidders and criminal or disciplinary action against concerned employees of the government. The pact enables companies to ensure total integrity by providing assurances to associated agencies that they will follow transparent procedures and their competitors will also refrain from any type of manipulations or bribery.

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

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

If a counter party commits any violation of the Integrity pact, it may loose bid security and performance bond. In addition, the Principal will terminate any current contract and business relationships with such counter party and its associates and may initiate criminal proceedings against violating counter party. The Principal would black

list and exclude the counter party from future dealings until the External independent Monitor is satisfied that the counter party will not commit any violation in future.

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

Application of Integrity Pact

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

Benefits of adopting Integrity Pact

It creates an environment of mutual trust and respect and the prestige, reputation and credibility of the company increases manifold. Transparency, fairness and accountability helps in increasing the image of any PSE in the eyes of the client and the citizens. It also helps in reducing lawsuits and arbitrations and all frivolous interventions and false complaints ceases. Competitive rates are received and the processing of contracts is faster. It helps in improved satisfaction ensuring overall efficiency and low cost of project. It also enhances credibility of the Companies implementing project.

Recommendations of CVC

CVC recommends the Integrity Pact concept and emphasize the need for its adoption and implementation in respect of major procurement activities. The role of the Independent External Monitors is very important in ensuring implementation of the IP. It is thus necessary that the person so appointed has adequate experience in the relevant fields and are persons of high integrity and reputation. The Commission therefore directs that the organizations may forward the panel of names of eminent persons for appointment and consideration as Independent external Monitors directly

to the Commission for approval along with a detailed bio-data in respect of the persons so proposed. The bio-data should also include the postings during the last ten years before the superannuation of the person, in case the person has worked in the government sector. Bio-data should include details regarding experience older than ten years before superannuation of the proposed person, if they have relevant domain experience in the activities of PSUs where they are considered as IEMs.

The Commission stresses that all organizations must make sustained efforts to realize the spirit and objective of the Integrity Pact. It had suggested the following guidelines:-

- a. Adoption of Integrity Pact in an organization is voluntary, but once adopted it should cover all tenders/ documents above a specified threshold value (to be set by the organization itself).
- b. IP should cover all phases of the contract i.e. from the stage of Notice Inviting Tender / pre bid stage to the stage of last payment or a still later stage, covered through warranty, guarantee etc.
- c. The name of one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be referred to the full panel of IEMs, who would examine the records, conduct the investigation and submit a report to the management, giving joint findings.
- d. A maximum of three IEMs would be appointed in Navratna PSUs and up to two in other Public Sector Undertakings. For the PSUs having a large territorial spread or having several subsidiaries, the Commission may consider approving a large no of IEMs but not more than two IEMs would be assigned to any one subsidy.
- e. Remuneration payable to the IEMs may be similar to the Independent Directors in the Organization.

For more information visit TII web site:- <http://www.transparency.org>.

(For further details: -CVC Office Order No. 41/12/07 dated 4th December 2007 & 43/12/07 dated 28th December 2007, Circular No 18/05/08 dated 19th May 2008 and 24/08/08 dated 05th August 2008 on "Adoption of Integrity Pact in major Govt. Procurement Activities")

35. ADOPTION OF THE INTEGRITY PACT

The Commission has formulated "Standard Operating Procedure" for adoption of Integrity Pact and circulated vide Circular Number 10/5/09.

The Commission has emphasized the necessity to adopt Integrity Pact in Govt. Organizations in their major procurement activities and to nominate Independent External Monitor (IEMs) out of a panel of names proposed by an Organization with the approval of the Commission. Commission has clarified that the review system for the

CVOs wherein and internal assessment of the impact of Integrity Pact are to be carried out annually and report to the commission. The Organization, which has adopted Integrity Pact, may report compliance of review system through monthly report.

Organizations desirous of implementing Integrity Pact are required to forward at most three names of Independent External Monitor (IEMs) along with the proposal to the Commission for approval which should be selected after due diligence and scrutiny.

The names for appointment of IEM considered should be officers of Govt. of India departments or Public Sector Undertakings retiring from top management positions. Eminent persons, executives of private sector of considerable eminence could also be considered and names recommended for approval. The serving officers or officer/executive retiring from the same organization to be an IEM in the same organization will not be considered. The appointment of IEM would be for an initial period of three years that could be extended for another term of two years on the request of the organization appointing the IEM. An Independent External Monitor can have a maximum tenure of five years in an organization.

(For further details:-CVC Circular No. 10/05/09 dated 18th May 2009 on "Adoption of Integrity Pact-Standard Operating Procedure-regarding", 22/08/09 dated 11th August 2009 on "Adoption of Integrity Pact –Periodical regarding " and 17/04/10 dated 19th April 2010 on "Integrity Pact-Selection and recommendation of Independent External Monitor (IEMs)")

36. CORPORATE SOCIAL RESPONSIBILITY (CSR)

It is a concept whereby organizations consider the interests of society by taking responsibility for the impact of their activities on customers, suppliers, employees, shareholders, communities and other stakeholders, as well as the environment. This obligation is seen to extend beyond the statutory obligation to comply with legislation and sees organizations voluntarily taking further steps to improve the quality of life for employees and their families as well as for the local community and society at large.

Corporations benefit in multiple ways by operating with a perspective broader and longer than their own immediate, short-term profits. More than goodwill, corporate community involvement or strategic corporate philanthropy, corporate responsibility is a genuine attempt by a company to build meaningful relationships between the corporate sector and the rest of society. Corporate responsibility is achieved when a business adapts all of its practices to ensure that it operates in ways that meet, or exceeds, the ethical, legal, commercial and public expectations that society has of business.

Corporate responsibility must be an integrated part of day-to-day business, engaging all stakeholders and including strategies to support individual managers to make socially responsible decisions, conform to ethical behavior and obey the law to be effective.

37. INITIATIVE TO IMPROVE TRANSPARENCY & CREDIBILITY

The Public Sector Enterprises play a significant role in the economic as well as special development of the country. Thus, these enterprises besides commercial concerns have varying degrees wider objections than those of Private Sector. These are accountable to Parliament and are subject to public criticism through press and electronic media. There is an eternal need to have measures, which contribute to the effective and efficient achievement of their objectives and make them transparent

Central Vigilance Commission has stressed to adopt several strategies to enhance the credibility of these Enterprises:

- i. Adoption of the Integrity Pact in major procurement activities with independent external monitors.
- ii. Publication of the details of the award of tenders/ contracts on website in order to increase transparency in tender process for procurement, sale reverse auction etc.
- iii. Payment transaction is to be made by ECS/EFT to increase transparency and minimize delay by using e-payment & e-receipts.
- iv. Tender negotiations should ordinarily be not resorted too but in exceptional circumstances with L-1 or H-1 only depending on the situation.
- v. Adoption of preventive vigilance measures & review and reporting through e-mails & website.

A. Right to Information Act - 2005

The Right to Information Act 2005 has come into force in Oct., 2005 and is basically meant to promote transparency and openness. It is unique in sense that it was first time; a registration was made on the initiative of citizens.

It is an important weapon in the hands of Indian Citizen to access almost any information from a public authority. The objectivity of the RTI Act 2005 is to promote transparency and accountability in the functioning of every public authority and has already brought good results.

B. Integrity Pact

Integrity pact is a vigilance tool first promoted by Transparency International to help fight corruption in the field of public tendering. It is a binding voluntary agreement between the procurement agency and all bidders for a project. Both agree not to accept / give bribe to obtain or retain the particular contract.

The pact essentially envisages an agreement between the prospective bidders and the buyers committing the officials of both the parties not to exercise any corrupt influence on any part of the contract. Only those bidders who have entered into such

integrity pact with the buyer would be competent to participate in the tendering. Entering in to pact would be a preliminary qualification and it forms a part of pre-bid document.

The Integrity pact in respect of the particular contract would be affected from the stage of invitation of the bid till the complete execution of the contract. The implementation of integrity pact is to be monitored by independent monitors, selected by the organizations with the approval of CVC.

C. Introduction to E- Governance

E-Governance is the use of Information & Technology by the Government for discharge of their social responsibilities in a more organized and efficient manner. The government is promoting E- Governance to improve transparency in government functioning But it must be noted that the use of computers in Government operations cannot be referred to as E-Governance. It is more appropriately defined as the use of Information technology for the governance of the people of the society like maintaining of digital records, issue of electronic notification, providing for filing of online returns, etc.

The concept of E-Governance in India was given recognition for the first time under chapter III of Information Technology Act, 2000, where section 6 provides for use of electronic records and digital signatures by the Government and its agencies.

In the last five years, the things have improved and have become easier for Citizens. Now they can file various forms online like TDS returns, Shopping bills, Sales tax, Service Tax returns etc.

The modern IT tools can be leveraged in enhancing transparency in the form of E-Tendering, E-Procurements, E-Payments and uploading of post tender details on the web site.

a) E-Procurement

e-procurement is the procurement process that uses Internet as the main mechanism to facilitate or conclude transactions.

The CVC had identify that e-procurement can usher greater economy and efficiency in the procurement of goods, works and services and also brings greater transparency. CVC has issued a directed that all Government organizations, (including PSEs) should published their tender and complete bed documents on the websites. (For details: - CVC Circular No. 98/ORD/I dated 18th December 2003)

E-Procurement provides a platform for the collaborative procurements of goods, works and services using electronic methods at every stage of the procurement process. The E-Procurement platform transacts confidential procurement data and is exposed to several security threats. Commission advises all Departments/Organizations to get their systems certified by Department of Information Technology to ensure proper security of E-Procurement system.

(For details: - CVC Circular No. 23/06/0107 dated 23rd June 2010)

b) E-Payment

Another directive of the CVC regarding leveraging technology pertains to the introduction of E-Payment to bring economy, efficiency and transparency. CVC has issued the following instructions for compliance:

1. The payment to all suppliers/ vendors, refunds of various nature, and other payments which the organizations routinely make shall be made through electronic payment mechanism at all centers where such facilities are available in the banks.
2. Salary and other payments to the employees of the concerned organizations at such centers shall also be made through electronic clearing system (ECS) wherever such facilities exist.

CVC had also instructed that the payment transactions should be made through ECS (Electronic Clearing System) / EFT (Electronic Fund Transfer) mechanism instead of payment through cheques. These instructions are applicable to all Metro Cities and other urban centers where the banks provide ECS / EFT and similar other facilities.

Besides significantly reducing processing costs in preparation and dispatch of cheques, it also reduces the risk of frauds by providing speed, efficiency and earlier reconciliation of the accounts.

(For details: -CVC Office Order No. 20/4/04 dated 6th April 2004 on " increasing Transparency and cutting delays by e-payments and e-receipts by Govt. Organization" & 68/10/04 dated 20th October 2004 on " Leveraging Technology- e-payment & e-receipt")

c) Reverse Auction

Reverse Auction is being used in industrial business-to-business procurement. In reverse auction, the role of the buyer and seller is reversed, with the intention to drive purchase prices downward, as sellers compete to obtain business. Thus a slim market is created at the time of holding the reverse auction, thereby ensuring more transparency and also assuring better advantage to the Corporation in terms of price, quality, delivery performance and technical capabilities offered by bidders.

Reverse Auction event for the project is carried out among the Technically Qualified Bidders, for providing opportunity to the Bidders to quote the price dynamically for the project.

Reverse Auction is conducted as per English Reverse Auction with no tie & hence bidders can not have identical bid price.

Bidders can participate in Reverse Auction event from their own office/ place of their choice. Internet connectivity and other requirements shall have to be ensured by bidders themselves.

Names of bidders are masked in the Reverse Auction process and are given random dummy names. They are given unique Login ID & Password. Password can be changed to ensure confidentiality. All bids made from the Login ID, given to the Bidders, will be deemed to have been made by the concerned Bidder/ his representative.

Date and time of commencement along with duration of Reverse Auction is communicated well in advance. Reverse Auction will normally, be for a fixed period already specified.

All the bidders will be able to view during the auction time, the current lowest price (only total), the opening price and the last bid price placed by the respective bidder at any point of time.

Any bid once made by the Bidder through registered Login ID & password can not be cancelled. The bidder is bound to work/ supply at the bid price of Reverse Auction.

The successful bidder has to give break up of his last / lowest bid price as per bill of quantities at the end of Reverse Auction event within a specified time period.

CVC had clarified that the department/ organization may themselves decides policy for e-procurement/ reverse auction for purchases or sales and accordingly work out all the detailed procedure in this regard ensuring that the entire process is conducted with transparent and fair manner.

(For further details:-CVC Office Order No. 46/9/03 dated 11th September, 2003 on " E-procurement /Reverse Auction")

D. Corporate Governance

Corporate Governance is the set of process, customs, policies, laws, and instructions affecting the way a corporation is directed, administered or controlled. An important theme of corporate governance is the nature and extent of accountability of particular individuals in the organization and mechanisms that try to reduce or eliminate the principal agent problem. Corporate Governance also includes the relationships among the many stakeholder involved and the goals for which the Corporation is governed.

a) Corporate Governance and Ethics

CVC had circulated the note on "Corporate Governess and Ethics –Challenges and Imperatives" by former Vigilance Commissioner, Smt. Ranjana Kumar for information of all employees in the organization vide which deals with various issues relating to Principles of Corporate Governance.

Ethics in managing an organization are vital for long-term survival. It is defined, as disciplined dealing with what is good and what is bad and what are moral duties and obligations. As far as business ethics are concerned a minimum code of ethics has to be practiced in competition public relations and social responsibilities. Corporate Governance encourages ethical standards and sound business practices.

Corporate Governance is about ethical conduct in business. Ethics is concerned with the code of value and principles that enables a person to choose between right and wrong and therefore, select from alternative courses of action. Corporate Governance is nothing but the moral or ethical or value framework under which corporate decisions are taken.

Corporate governance and ethical behavior have a number of advantages. It helps to build good brand image for the company which helps in greater loyalty and thus commitment to the employees by virtue of which the employees becomes more creative which is vital to get a competitive age.

(For further details: CVC Circular no. 38/10/07 dated 29th Oct 2007 on "Corporate Governance and Ethics –Challenges and Imperatives, a note by Smt. Ranjana Kumar, Vigilance Commissioner")

E. Information Technology:-

Information Technology is thriving industry that touches every aspect of business and daily life. I.T. is evolving new applications so rapidly that we need to struggle to keep pace with it. It includes computers; information systems and telecommunications, which have, became a part of every day life.

a) Information Technology Act - 2000

The aims and objective of IT ACT 2000 include facilitating the use of commerce and providing equal treatment to users of paper-based documentation and to user of computer-based information.

The Act offers the much-needed legal framework so that information is not denied legal effect, validity or enforceability, on the ground that it is in the form of electronic records. The Act seeks to empower departments to accept filling, creating and retention of official documents in the digital format. The Act has proposed a legal framework for the authentication and origin of electronic records/ communications through digital signature

Under the Act, e-mail would now be a valid and legal form of communication in our country and can be duly produced and approved in a court of Law and allows Government to issue notification on the web thus heralding e-governance.

The IT Act 2000 deals with the following issues:

- i. Secure electronic transaction –these enables parties to enter into electronic contracts.
- ii. Attribution of electronic messages.
- iii. Electronic signatures and electronic records given legal status.
- iv. Contraventions regarding electronic records, viz, hacking, theft of electronic records, manipulation of records and spreading viruses etc.

- v. Information technology offences.
- vi. Facilitates e-commerce as well as electronic filing and maintenance of records as against the government.
- vii. Tempering with computer source documents.
- viii. Hacking with computer system.
- ix. Publishing of information that is obscene in electronic form.
- x. Liabilities of internet service provider for content on the internet is limited in so far as the provider exercises all due diligence etc.