

# **Technical Guide on Internal Audit of Tendering Process**



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

# **Technical Guide on Internal Audit of Tendering Process**

## **DISCLAIMER**

The views expressed in this Technical Guide are those of author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).



**Internal Audit Standards Board**  
**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
New Delhi

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## Foreword

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A proper tendering process is one of the building blocks of a sound governance system. Procedure for the acceptance of tenders and awarding of contracts, in government or private organizations, must be transparent, fair and open. Tendering and procurement processes must be robust and fair to all the parties involved, such as contractors, consultants, and purchasers and they must also meet the expected standards for good practice. Further, E -Tendering, E-Procurement are some of technology borne issues that introduce new layers of complexity in tendering process. Chartered accountants are well equipped to play a meaningful role in this area by helping the organizations to promote fair and open competition for their business while minimizing exposure to fraud and collusion.

Considering this, the Internal Audit Standards Board is issuing “*Technical Guide on Internal Audit of Tendering Process*” to help the members to play an important role in this area. The objective of the tender audit is to assess the present controls of the organization over the tendering process and assist in developing a transparent and effective tender process. I congratulate CA. Rajkumar S. Adukia, Chairman, Internal Audit Standards Board, CA. Rajendra Kumar P., Vice Chairman, Internal Audit Standards Board and other members of the Board for bringing out this “*Technical Guide on Internal Audit of Tendering Process*” as tender is an important document of business processes. This comprehensive publication would surely help the members to understand entire spectrum of operational, conceptual and practical issues related to internal audit of Tendering process.

I am sure that this Technical Guide would be an informative and useful publication for the members.

May 11, 2012  
New Delhi

**CA. Jaydeep Narendra Shah**  
President, ICAI



## Preface

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Establishing an objective and unbiased approach based on which an equitable and fair decision can be reached is ultimately the goal of an efficient and effective tendering process. This requires a well chartered approach and high standard of ethics throughout the tendering process, thus resulting in efficient, economical and effective use of public and human resources.

Cultivating openness, accountability and responsiveness is the aim of Internal Audit of Tendering Process. Access to information which is timely, accessible, accurate and transparent ensures social evils like corruption, collusion and all other forms of criminality are mitigated. This possible with the help of an effective internal control system in place, which requires frequent monitoring in the form of Internal Audit procedures. Tender audit is a mechanism to ensure that the existing process is in line with the documented process and adequate controls exist to prevent and detect fraud and errors in the tendering process.

Success of any project relies on making the right decision during tendering processes. The need for tender audit has grown with high value orders involving both capital and revenue purchases. Chartered accountants with their multi-faceted knowledge are well equipped to conduct the internal audit of tendering processes which are in a growing trend both in terms of complexity and volume.

Having understood the need for a well chartered audit plan, the Internal Audit Standards Board of ICAI is issuing this publication "*Technical Guide on Internal Audit of Tendering Process*", to provide extensive knowledge to the members on the laid down practices and procedures followed by large departments, agencies and other organizations in the tendering process. While the methodology and procedure may differ in different situations but the guiding philosophy of tendering is to obtain materials/ services of the desired quality and quantity at the most suitable technical specifications, commercial terms, affordable risk and competitive rates within a given time frame and in a transparent manner.

This Guide covers types of tender, stages of tender, e-tendering, risk based internal audit, pitfalls in tender and detail audit checklist of tendering process. It contains important Central Vigilance Commission Guidelines. This Guide does not cover tender process from vendor end, process of auctions, special audits and investigations.

At this juncture, I am grateful to CA. P. R. Roy for sharing his experience and knowledge with us in this area and CA. Monark Shah for preparing the draft

of the Technical Guide. I would also like to thank to CA. Guru Prasad M. for reviewing the draft.

I also wish to thank CA. Jaydeep N. Shah, President, ICAI and CA. Subodh Kumar Agrawal, Vice President, ICAI for their continuous support and encouragement to the initiatives of the Board. I must also thank our colleagues from the Council at the Internal Audit Standards Board, viz., CA. Rajendra Kumar P., CA. Amarjit Chopra, CA. Shiwaji B. Zaware, CA. Ravi Holani, CA. Anuj Goyal, CA. Nilesh S. Vikamsey, CA. Atul C. Bheda, CA. Charanjot Singh Nanda, CA. Pankaj Tyagee, CA. G. Ramaswamy, CA. J. Venkateswarlu, CA. Abhijit Bandyopadhyay, CA. S. Santhanakrishnan, Shri Prithvi Haldea, Smt. Usha Narayanan, Shri Gautam Guha, Ms. Revathi Bedi, Shri Manoj Kumar, Shri Sidharth Birla for their vision and support. I also wish to place on record my gratitude for the co-opted members on the Board viz., CA. Porus Doctor, CA. Masani Hormuzd Bhadur, CA. Ghia Tarun Jamnadas, CA. Deepjee A Singhal, CA. Nitin Alshi, CA. Narendra Aneja and CA. Guru Prasad M for their invaluable guidance and also their dedication and support to various initiatives of the Board. I also wish to express my thanks to CA. Jyoti Singh, Secretary, Internal Audit Standards Board and CA. Harsh Kumar, Executive Officer for giving final shape to the Guide.

I firmly believe that this publication would serve as basic guide for the members and other readers interested in the subject.

May 14, 2012  
Mumbai

**CA. Rajkumar S. Adukia**  
Chairman  
Internal Audit Standards Board

## Abbreviations

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BG	Bank Guarantee
CAG	Comptroller Auditor General of India
CVC	Central Vigilance Commission
EMD	Earnest Money Deposit
EOQ	Economic Order Quantity
HOD	Head of Department
IEM	Independent External Monitors
IP	Integrity Pact
IT	Information Technology
LOI	Letter of Intent
NOC	No Objection Certificate
OEM	Original Equipment Manufacturer
PO	Purchase Order
PSU	Public Sector Units
RFP	Request for Proposal
RFQ	Request for Quote
TCC	Tender Consideration Committee
TOC	Tender Opening Committee





# Introduction

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1. Indian economy shed its policy of protectionism and opened up in the nineties to integrate with the global economy. To scale up, it became essential to invest staggering amounts of resources in infrastructure, energy, health and defense. The IT revolution that took the world by storm around this time, helped in deepening and broadening the understanding of world affairs while at the same time, accentuating the process of governance, transparency and accountability.

2. The sense of urgency to hasten the process of inclusive growth has led to the need to understand, appreciate and leverage the process of tendering to ensure optimal deployment of resources and timely implementation of plans and projects.

3. To corroborate this approach relevant portion of an address by the first CAG of India Shri V. Narahari Rao delivered at ICAI HQ way back on April 5, 1954 is quoted "Accounting is becoming more and more intricate with the advance of modern technique in industry. After all, accounts follow facts... an accountant must have a very good inkling- a very comprehensive idea of what he is looking into.... He has to know a great deal in each sphere of activity. He has to be a jack of all trades. He has got to know something of everything."

*(Source: Front cover, The Chartered Accountant Journal, Volume 60 / No.5 / November 2011)*

4. Chartered Accountants are increasingly joining industry and those who are in practice are increasingly asked to provide advisory services, expert opinion and undertake auditing assignments of business processes ever growing in complexity and volume.

Keeping in mind, these requirements, this Technical Guide is meant to enhance the capability of Chartered Accountants in evaluating and reporting while undertaking internal audit assignments from the perspective of a business process analyst. This Technical Guide is prepared on the basis of the laid down practices and procedures followed by large departments, agencies and public sector undertakings in India.

5. Tendering methodology and procedure may differ from place to place, situation to situation, country to country, but the basic concept of tendering is to source materials and or services of the desired quality, quantity at the

most suitable technical specifications, commercial terms, affordable risk and competitive rates within a given time frame and in a transparent manner. A proper tendering process is one of the building blocks of a sound governance system. Tendering is not only the source of procurement by government departments but also for private companies at large.

6. Objectives of tender audit are as follows:

- (i) Assessing the present controls of the organization over the tendering process
- (ii) A documented process.
- (iii) Existing process is in line with the documented process.
- (iv) Identifying cost saving measures and effective utilization of resources.
- (v) Prevention and detention of frauds and errors.

7. This Guide is meant for awarding works and purchase contracts to the bidder. The lowest bidder (L1) is awarded the contract. However, in case of disposals, the process is reverse and the contract is awarded to the highest bidder (H1). Any service provider can be termed as a vendor whether providing service or supplying materials. Hence vendor covers the entire gamut of service providers in this guide.

8. The purpose of this Guide is to provide members guidance regarding conduct of audit of tender process.

- (i) This Guide should be read with other standards which elaborate other aspects relating to conduct of audit and reporting.
- (ii) Tenders are very common for sourcing vendors for routine orders. The need for tender audit arises since the value of orders is large involving both capital and revenue purchase and due to inherent risk of wastage and fraud.
- (iii) The Guide covers various aspects about tender – general aspects, types, stages and audit procedures.
- (iv) At the end of each chapter, relevant extracts of CVC guidelines<sup>1</sup> have been given for reference.

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<sup>1</sup> It may be noted that CVC guidelines applies primarily to enterprises covered under CVC Act, 2003. Its reference is drawn to make document more inclusive and also to serve as benchmark for better practices.

9. This technical guide does not cover following aspects:
- (i) Tender process from vendor end;
  - (ii) Auctions;
  - (iii) Special audits; and
  - (iv) Investigations.



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# Chapter 1

## General Aspects

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### Meaning

1.1 The word 'Tender' comes from the Latin word *tendre* which means to offer. Historically, in past ages the merchant ships arrived at a port of call, they would post a notice describing the goods they wished to buy or sell. This notice was delivered ahead of the ship by a tender—a small boat—and hence, the process is known as tendering.

1.2 Purchase/ Procurement is the acquisition of goods or services. It is favorable that the goods/ services are appropriate and that they are procured at the best possible cost to meet the needs of the purchaser in terms of quality and quantity, time, and location. Corporations and public bodies often define processes intended to promote fair and open competition for their business while minimizing exposure to fraud and collusion.

### Definition

1.3 Legal definition of a Tender:

- (i) to present to another person an unconditional offer to enter into a contract.
- (ii) to present payment to another.
- (iii) delivery, except that the recipient has the choice not to accept the tender.

However, the act of tender completes the responsibility of the person making the tender.

A formal offer, as:

- a. Law An offer of money or service in payment of an obligation.
  - b. A written offer to contract goods or services at a specified cost or rate; a bid.
2. Something, especially money, offered in payment.

**Tender Function – a:** an act or instance of tendering **b:** an unconditional offer of payment or performance (as in discharge of an obligation) that is coupled with a manifestation of willingness and ability to follow through (as

by producing a check). Details are given in under legal principles in this chapter.

## **Party to Float Tender**

1.4 In India, any individual, partnership firm, Limited liability partnership, corporate or a legal entity competent to contract can float a tender for goods and services from manufacturers/ service providers/ suppliers who should also be competent to contract and respond to tender invitation. Floating a tender and/ or responding to a tender does not per-se amount to an offer and acceptance.

## **Purpose of Tendering**

1.5 A tender is floated to ensure that the process of sourcing materials, services, etc. is conducted in a more transparent manner and value for money is obtained. The main criteria of a tendering process are as follows:

- (i) A structured approach ensuring transparency and fair play
- (ii) Value for money
- (iii) Accountability.

1.6 The guiding philosophy of tendering process is same all over the world notwithstanding differences in methodology and nomenclature. This Guide up is meant to explain the tendering process followed in India. Keeping in mind the extensive level of computerization, in certain government departments, armed forces, business houses the records, registers etc, may be in softcopy format, etc.

## **Advantages and Weaknesses of Tendering**

1.7 The advantages of tendering include:

- (i) Transparency;
- (ii) Better negotiations/ better price;
- (iii) An audit trail;
- (iv) Compliance with the organization's policy;
- (v) Fairness to all parties;
- (vi) The encouragement of competition;

- (vii) The production of a written quotation, along with relevant supporting information, against a prescribed need;
  - (viii) An easier comparison of offers.
- 1.8 The weaknesses of tendering include:
- (i) It can be bureaucratic.
  - (ii) It may provide a barrier for SMEs.
  - (iii) It can be a triumph of process over substance.
  - (iv) It can inhibit flair, creativity and innovation.
  - (v) It can be expensive for all parties e.g., the time and resource in preparation and evaluation of tenders.
  - (vi) It can inhibit negotiation.
  - (vii) Prices submitted are often inflated to allow room for negotiation.
  - (viii) Formation of cartels defeat the benefits of tendering.

## **Pre-Requisites for Tendering**

1.9 A good specification is the only important factor in achieving value for money. It is vital when inviting tenders. Purchasing and supply management ensure the existence of an appropriate specification.

Generally, the specification should be about output or outcome.

1.10 There are various elements that could comprise an invitation to tender (ITT) document such as:

- (i) A covering letter providing instructions, e.g., labels to be used, return date, contact names and numbers etc., with some background to the requirement and also a statement that reads along the lines of "we are not bound to accept any, or the lowest tender".
- (ii) In case of a limited tender, a acknowledgement form - to be returned stating whether or not the supplier is intending to submit a tender.
- (iii) A cost, price and delivery schedule - to be completed with the price and corresponding costs component e.g., information to assist whole life costing along with the expected delivery or lead time.
- (iv) A quality schedule - declaring which quality standards are met by the supplier.

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- (v) A Guarantee/ parent company guarantee/ performance bond to be completed as appropriate.
- (vi) A list of information required on the supplier's company profile, certificates pertaining to registration with various statutory bodies.
- (vii) A request for the supplier's company accounts for the last three years.
- (viii) List of satisfied customers along with at least one reference.

## **Legal Principles Governing Tendering**

1.11 A tender when accepted by both parties becomes a contract.

### **Contract**

A contract is any agreement enforceable by law.

The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

### **Proposal or Offer**

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the bidders is proposal. The invitation to tender and instructions to vendors do not constitute a proposal.

### **Offer versus Invitation to Treat**

It is important to distinguish between an offer and an invitation to treat which, taken alone, will not lead to a contract. An invitation to treat is no more than an invitation to others to make an offer and cannot be accepted to make a contract. In context of procurement, the issue of tender advertisements and requests for tender (RFTs) is usually considered an invitation to treat, and a tender is usually an offer.

Although the tender invitation or RFT may be a mere invitation to treat, provisions in relevant codes of practice could result in the courts finding that a tender gives rise to a binding obligation of good faith and fair dealing in running the procurement process (requiring the inviter, for example, to give

equal opportunity to vendors and evaluate the tenders as described in the RFT documents.

### **Acceptance of the Proposal**

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. Accepting an offer creates contractual relations between the parties. The acceptance is the act that completes the formation of the contract. Before acceptance, there is usually only a revocable offer that binds neither party. After acceptance, a contract is formed which binds both parties. The acceptance must be absolute and unconditional, and must indicate willingness to contract on the exact terms put by the proposer. An acceptance that seeks to add or vary some terms of the offer is in law, no acceptance at all. In this case, the purported acceptance is treated as a counter offer, which can be accepted by the proposer.

### **Consideration**

Contracts bargain move from the promisee contract where both for the other. Consideration is defined as “something of value given or promised in return for something of value given or promised.” Consideration cannot be:

- (i) A mere moral obligation;
- (ii) Past consideration;
- (iii) Illusory; or
- (iv) The performance or promise to perform either a public duty already imposed by law on the promisor or a duty already imposed on the promisor by an existing contract between the same promisor and promisee.

The consideration may not be adequate but must be sufficient.

Where a standing offer agreement, such as a State Contracts Control Board (SCCB) period panel contract for goods and services, is created following a procurement process, there is usually no consideration paid by the inviter to the vendor. Instead, the standing offer agreement is made binding by putting it into the form of a deed.

### **Agreement**

An agreement is a contract, enforceable by law when the following conditions are satisfied.

- (a) Competency of the parties

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- (b) Freedom of consent of both parties
- (c) Lawfulness of consideration
- (d) Lawfulness of object
- (e) Time is essence of contract and time elapsed

A defect affecting any of these renders a contract in enforceable.

### Withdrawal of an Offer or Proposal

A vendor firm, who is the proposer, may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the bidder to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening tender*.

No legal obligations arise out of such withdrawal or revision or modification of the offer. However, a vendor agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the vendor in consideration of his being supplied the subsidiary contract and withdrawal of offer by the vendor before the specified period would entitle the purchaser to forfeit the earnest money.

### Competency of Parties

1.12 Under law, any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

1.13 Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads:

- (a) **Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and

the tender signed by the individual himself as proprietor or by his duly authorized attorney.

- (b) **Partnership:** A partnership firm is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.
- (c) **Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person who has an existence quite distinct and separate from the members or shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced.

Therefore, in cases of doubt, the company must be asked to provide its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine that he person signing the tender is authorized by the company to enter into contracts on its behalf.

- (d) **Corporations other than Limited Companies:** Associations of individuals incorporated under statutes, such as Trade Union Act, Cooperative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one such corporations or associations, the capacity of such associations to enter into contract



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should be verified and also the authority of the person coming representing Association.

- (e) **Joint Venture (JV)/ Consortiums:** Joint ventures and consortiums are generally engage
- (f) in large tenders, a JV/ consortium agreement should be obtained. For tenders submitted as Joint Venture/ Consortium, the turnover and working capital of each of the partners of the Joint Venture/ Consortium is added to determine the Bidders minimum average annual turnover. All the Partners of the Joint Venture/ Consortium are liable jointly and severally for the execution of the contract in accordance with the contract terms and a copy of the contract entered into by the Joint Venture/ Consortium Partners having such a provision is submitted with the Bid during the subsequent tendering. A firm/ company is entitled to form only one joint venture/ consortium under a tender.

## Communication of an Offer or Proposal

1.14 The communication of a proposal is complete when it comes to the knowledge of the person with whom it is made. A time is, generally, provided in the tender forms for submission of the tender. Purchaser is not bound to accept a tender, which is received beyond that time.

## Communication of Acceptance

1.15 A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the vendor firm should be obtained to keep the offer open for further period or periods. Communication of an acceptance is complete as against the proposer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer. The medium of communication in government contracts is, generally, by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due,

etc. Lately, however, e-tendering is being made mandatory for government departments, agencies, PSUs, etc.

## Discharge of Contracts

1.16 A contract is discharged and parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged:

- (a) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfill the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- (b) **By breach:** In case, a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- (c) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case, the promisee has a right of immediate action for damages.
- (d) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

## CVC Guidelines

1.17 As per CVC Guidelines circulated vide letter No. 8 (1) (h)/ 98 (1) dated. 18.11.98, it has been brought out that "the tenders are generally a major source of corruption. In order to avoid corruption, a more transparent and effective system must be introduced. As post tender negotiations are the main source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiations with L-1 (i.e. Lowest

## Technical Guide on Internal Audit of Tendering Process

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Bidder)". CVC has also issued guidelines on adoption of Integrity Pact (IP) which is given in **Appendix 1**.

1.18 Efforts should be initiated to bring transparency and fairness in the tendering process by the organization. This will enable the prospective vendors to formulate competitive tenders with confidence. The following are some important measures to achieve it and secure best value for money:

- (a) The text of the tender document should be user-friendly, self-contained, comprehensive, unambiguous, and relevant. The use of terminology used in common parlance in the industry should be preferred.
- (b) The specifications of the required goods should be framed giving sufficient details in such a manner that it is neither too elaborately restrictive as to deter potential vendors or increase the cost of purchase nor too vague to leave scope for sub-standard supply. The specifications must meet the essential requirements of the user department. Efforts should also be made to use standard specifications, which are widely used in the industry.
- (c) The tender document should clearly mention the eligibility criteria to be met by the vendors, such as, minimum level of experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction, etc.
- (d) Restrictions relating to qualifications in taking part in tender should conform to policies and be judiciously chosen so as not to suppress competition amongst potential vendors.
- (e) The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time and place of opening of tenders; requirement of earnest money and performance security; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms.
- (f) Tenders should be evaluated in terms of the criteria incorporated in the tender document, based on which tenders have been received. Any new condition, which was not incorporated in the tender document, should not be brought into consideration while evaluating the tenders.
- (g) Sufficient time should be allowed to the vendors to prepare and submit their tenders.

## **General Aspects**

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- (h) Suitable provisions should be kept in the tender document allowing the vendors reasonable opportunity to question the tender conditions, tendering process, and/ or rejection of its tender and the settlement of disputes, if any, emanating from the resultant contract.
- (i) It should be made clear in the tender document that vendors are not permitted to alter or modify their tenders after expiry of the deadline for receipt of tender till the date of validity of tenders and if they do so, their earnest money will be forfeited.
- (j) Negotiations with the vendors must be severely discouraged. However, in exceptional circumstances, where price negotiations are considered unavoidable, the same may be resorted to, but only with the lowest evaluated responsive bidder (L1), and that too with the approval of the competent authority, after duly recording the reasons for such action.
- (k) The name of the successful vendor to whom the contract is awarded should be appropriately notified by the purchase organization for the information of general public, including display at notice board, periodical bulletins, website, etc.

## Chapter 2

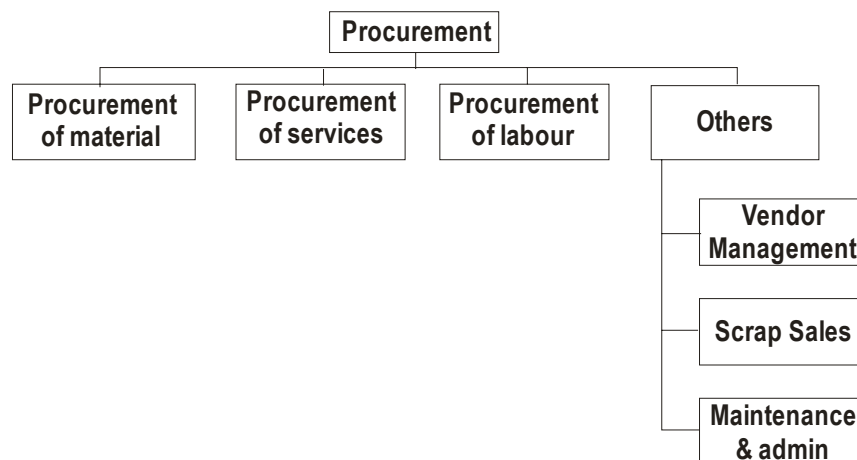
# Tendering – A Form of Procurement

2.1 Procurement (purchase) is the most essential part for any entity, both manufacturing and service concern. It deals with acquisition of goods/ services. It is favorable that the goods/ services are appropriate and that they are procured at the best possible cost to meet the needs of the purchaser in terms of quality and quantity, time, and location. Enterprises define processes intended to promote fair and open competition for their business while minimizing exposure to fraud and collusion.

2.2 Every company should make its procurement plan. A procurement plan refers to the planned approach of cost-effectively purchasing a company's required supplies, taking into consideration several elements and factors, such as, the timeline for procurement, the funding and budget, the projected risks and opportunities, among others.

2.3 Planning for the most effective procurement systems should include looking for suppliers not only on the basis of which would give the cheapest and most inexpensive deals, but also the supplier that would be most reliable and would offer the best quality within a reasonable price range on sustainable basis.

2.4 Procurement can be broadly divided in following types:

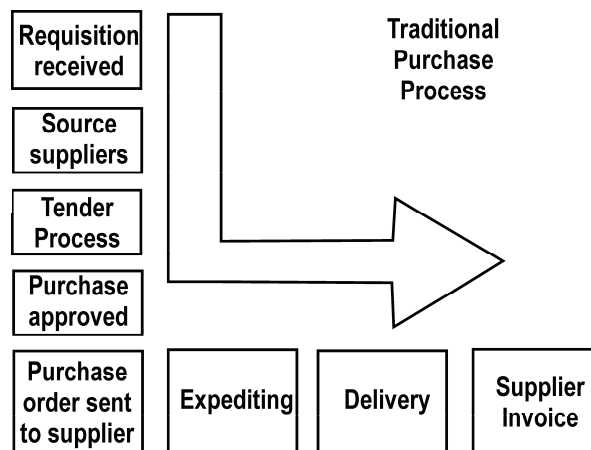


2.5 Depending on the nature of the required goods, the quantity and value involved and the period of supply and frequency of purchase, the

## Tendering – A Form of Procurement

organization decides the appropriate mode of purchase. There are various ways of procuring common in organizations:

- (i) **Purchase without a purchase order.** It is, generally, followed for petty purchases, where procurement value does not exceed a certain predefined limit. The purchase order could be generated in system for regularization. Normally, quotes are not called and negotiated. Orders may be awarded based on previous order and negotiations, if any, may be oral in nature. Materials required on urgency basis (though not petty in value) can also be called categorized under this head. However, care needs to be taken to check the repetitiveness of such purchases.
- (ii) **Purchase with purchase order.** This process starts with receipt of requisition, calling of quotes, raising purchase order and ends with receiving materials. Based on the amount is need to have the quotes are called from number of persons and negotiations are done. There a trail of communication with vendor available. Govt. departments/ agencies, railways, armed forces, PSUs have laid down delegation of authority guidelines and Purchase Orders (POs) are placed following such DOAs only through a tendering process. It is also called traditional purchase process since it might not involve any system intervention.



- (iii) **Rate contracts.** Rate contracts are entered where the quantum of purchase is small and its routine purchase. Normally, they are entered for a fix period of one year and negotiated annually. At time discounts are linked to quantum of purchase, needs to be taken care especially, in rate contracts.

## Technical Guide on Internal Audit of Tendering Process

- (iv) **Tenders.** Tender is followed normally for high value items, though not necessarily, can be routine or not. The costs and time involved in tender process must also be considered while selecting it as method of purchase.

2.6 Following table illustrates the criteria that may be adopted by an enterprise to decide the means of procurement:

Frequency of purchase	Price of goods/services procured		
	Low price & quantum	Medium price	High price
<b>Routine</b>	Purchase without PO, Rate contracts	PO purchase	Tender
<b>Non routine</b>	PO purchase	PO purchase	PO purchase, Tender

The quantum of price what constitutes as low, medium and high is to be decided by the enterprise depending on its size and nature of industry.

2.7 At many organizations, there are monetary limits guiding the demand for goods should not be divided into smaller quantities for making piecemeal purchases for the sole purpose of avoiding the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand.

2.8 Timing of procurement is of utmost importance. It is essential that tenders are finalized and contracts are awarded in a time bound manner within original validity of the tender, without seeking further extension of validity, to prevent cost overruns. Organizations should fix a reasonable time for the bids to remain valid while issuing tender enquiries, keeping in view the complexity of the tender, time required for processing the tender and seeking the approval of the Competent Authority, etc., and to ensure the finalization of tender within the stipulated original validity.

2.9 Delays which are not due to unforeseen circumstances should be viewed seriously and prompt action should be initiated against those found responsible for non-performance. Cases requiring extension of validity should be rare and in the exceptional situations where the validity period is sought to be extended, it should be imperative to bring on record in real time, valid and logical grounds, justifying extension of the said validity.

## CVC Guidelines

2.10 CVC has issued guidelines in its circular no. 007/CRD/008 dated 15/2/2008 regarding measures to curb the menace of counter feit and refurbished IT Products. The relevant extract of the said circular is as follows:

All buyers should insist on a signed undertaking from some authority of the system OEM that would certify that all the components/parts/ assembly/ software used in the Desktops and Servers like Hard disk, Monitors, Memory etc. were original/ new components/ parts/ assembly/ software, and that no refurbished/ duplicate/ second hand components/ parts/ assembly/ software were being used or would be used, so that the buying organizations are not cheated and get the original equipment as ordered by them. Also one could ask for 'Factory Sealed Boxes' with System OEM seal to ensure that the contents have not been changed en route.

Following advisory checkpoints it is hoped shall help identify the fraudulent practices that have come to notice and help guard against spurious and refurbished/ duplicate/ second hand components/ parts/ assembly/ software being received by purchasers and consignees who receive such goods and may not have much technical knowledge.

1. **CPU.** Buyers are cautioned against buying IT Hardware with remarked CPUs that are freely/ readily available in the market today. Entry Level processors get **Remarked/ Over clocked** and sold as high end processors. These CPUs, come disguised as higher clock speed processors (e.g. a Celeron CPU can be remarked as a P4 CPU) while their real clock speed may be lower. Since Operating System is loaded from CD bundled with Motherboard, the CD contains image of configured OS. Hence information as seen in '**My Computer**' – **System Properties**' shall give deceptive information. In other words, a Celeron CPU remarked as a P4 CPU, shall be seen as a P4 CPU only. Buyers should therefore, use various tool/ utilities like the '**CPU-Z**' Utility or the '**sSpecNo.**' for ascertaining the real parameters of the CPU. Utility like CPU-Z (approx. 1.3 MB size) are available free on the web.
2. **Hard Disk.** IT Hardware with refurbished Hard Disks that are actually 2<sup>nd</sup> hand/repaired hard disks are readily available at low cost. In hard disk drives, the factory repaired hard disk drives, which are mainly used in the warranty replacements are substituted in the new



## Technical Guide on Internal Audit of Tendering Process

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machines. Same is the case observed with floppy drive and Optical disk drives many times. Most of the competent hard disk makers use a sticker on such hard disks sold by them that clearly distinguishes such hard disks from the fresh ones. There is **No border** or **Refurbished** label on genuine new HDD. In addition to this, buyers may also use **HDTUNE\_210** Utility. This utility shall return Hard Disk Manufacturers' Serial no. and Date of manufacturing of the Hard Disk. These parameters can be used to cross-verify with the hard disk vendor. Various Hard Disk vendors also put a date code on the hard disk. A mismatch between this date and the one returned by HDTUNE\_210 Utility can also be viewed as tampering with the actual information of the hard disk.

3. **Monitors.** IT Hardware with refurbished Monitors that are actually 2nd hand/repared monitors are given a "new look" by changing the body, with internal components remaining "old/ repaired". These CRT monitors are usually discarded from developed countries like US and Europe. There are also B Grade (New but Low Quality) CRT Monitors used in place of new monitors. Many times these can be distinguished by opening the cabinet body and noticing that the label on the tube does not carry various certifications and there are scratch marks on the tube. While 'Genuine' Picture Tubes have all mandatory Certifications, 'Counterfeit' Picture Tubes would not have these certifications. Certification gives an assurance of Reliability.

In 'B' Grade LCD Monitors, panels used are B grade in which the number of spots may be higher, response time & brightness of lower specs than what is stated. Above monitors are all available at low cost. The "Signed Undertaking" as suggested shall serve as a deterrent and as a safeguard to ensure that bidders are not fleecing them by supplying such monitors.

4. **Operating System.** Purchasers should check the IT Hardware supplied (randomly selected IT Hardware) for Certificate of Authenticity (COA) pasted on the PC for product serial number and OEM's/ Supplier's name to be printed on it. In Operating systems, pirated OS software with fake Certificates of Authenticity is used by some suppliers to cut costs. They look as good as the real ones. In PCs, counterfeiters buy legitimate software and copy the box design and packaging. Using sophisticated and expensive copiers, many copies of illegal CDs are created in a day. Purchasers should guard

against buying IT Hardware with pirated copies of Operating Systems. Such Operating Systems, though, available at low prices, do not have the updated patches and security features that help safeguarding the PC and also improve its lifespan. Purchasers, therefore, may use the standard testing procedures (randomly on randomly selected IT Hardware) available on the following URL for ascertaining the in authenticity of the operating system installed on their PC. <http://www.microsoft.com/resources/howtotell/ww/windows/default.mspx>. microsoft provides an inbuilt tool to diagnose the “Genuineness of its Operating System”. One could go to ‘My Documents’, and ‘Help’, from where one shall get step by step instructions to find out whether the windows installed is genuine. <http://www.microsoft.com/resources/howtotell/ww/windows/default.mspx>

5. **Mechanical Keyboards.** Fake mechanical keyboards that are partially mechanical, with only the key plunger being that of a real mechanical keyboard and rest of the keyboard features remaining the same as those of membrane keyboard are being passed on as true mechanical keyboards. While these keyboards are available at low prices, they do not offer the robustness and long key-stroke life expected of a real mechanical keyboard. Real Mechanical Keyboards are expected to have Keystroke life of 50 Million as against 10 million for Membrane and Semi-Mechanical Keyboards. In case of bulk orders, it is recommended to physically examine a few keyboards for their construct to ascertain the genuineness of their being real mechanical keyboards.
6. **Low Quality Memory Module.** Memory chips are remarked or downgraded wafers are plastic packed under unknown brands or remarked with names of well-known brands. Such memory modules have lower performance levels. It is better to go in for proven reputed brands available in the market.
7. **Fraudulently Marked SMPS.** In power supplies, wrong marking of the wattage is done. The power supplies do not carry all required certifications. While ‘Genuine’ Power supplies carry all mandatory certifications, in counterfeit Power supplies these certifications shall be found missing. Further Short circuit & over voltage protection circuitry could be missing in counterfeit Power Supply to reduce cost.

## Technical Guide on Internal Audit of Tendering Process

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8. **Counterfeited Consumables.** Counterfeited consumables such as printer cartridges etc. are used which are refilled with ink of poor quality leading to poor performance and clogging, smudging in printers etc. It is advisable to buy such consumables from OEM authorized suppliers or distributors to ensure quality and longevity of the printer equipment.

## Chapter 3

# Types of Tender

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### Types of Tender

3.1 Taking into account various factors like technical complexities, availability/ suitability of services/ materials/ products, monetary implications, gestation period, validity period of contracts, distribution of risk, urgency of completion, economy and overall cost of operation etc., the type of tender to be floated is decided. Depending on the nature, complexity, value and scope, a tender may be a single bid, two-bid or even a multi-bid tender. Respondents are screened for eligibility through evaluation of credential and/ or technical bids. Thereafter, financial bids are opened.

3.2 Though nomenclature may vary from industry to industry, tenders may broadly be classified as:

- (i) Global Tender
- (i) Public Tender, Deemed Public Tender
- (ii) Limited, CAPEX/ Regional/Zonal Tender
- (iii) Single Tender or Tender on Nomination Basis
- (iv) Lump sum Turnkey Tender.
- (v) Tender on LOT system
- (vi) Tender on Percentage Basis
- (vii) E-Tender
- (viii) International Competitive Bidding (ICB)/ National Competitive Bidding (NCB)
- (ix) Request for Proposal (RFD)/ Expression of Interest
- (x) Request for Quote (RFQ)
- (xi) Corrigendum
- (xii) Addendum
- (xiii) Open Bid

## **Global Tender**

3.3 A global tender is usually floated when:

- (a) The technology/ service/ product/ material is not available in the country or it makes economic sense to import rather than produce indigenously.
- (b) There are different technology platforms that can be evaluated against the requirements.
- (c) There is a potential of technology transfer.
- (d) The scale of procurement justifies the cost of tendering in terms of expenditure, social/ political/ economical/ security exigencies.

3.4 Such tenders are subject to import and other relevant policies of the government in force. Though most likely an open tender, a global tender in specific circumstances may be limited in nature as well. The tender notice covers all such conditionality and per-requisites.

## **Public Tender (PT), Deemed Public Tender**

3.5 The terminology means that it is a tender open to public for participation subject to the terms and conditions of the tender. The term “public” encompasses individuals and enterprises alike. In Open Tender anyone can participate. The participant has to ensure that they fulfill the minimum pre-qualification criteria specified in the tender document to qualify. If they do not meet the pre-qualification criteria, their bid will be rejected and they will lose the document fees they have paid. It is necessary that Open Tender is advertised in newspaper. The Lowest Bidder (L1), generally, wins the contract.

3.6 Depending on the requirements, a public tender may be a single bid, a two-bid or even a multi-bid tender. For purchasing capital equipment, high value plant, machinery, etc. of complex and technical nature, tender enquiry document, complete in all respects, may be issued as usual. However, the vendors should be asked to bifurcate their quotation in two parts. Such tender notices usually specify eligibility parameters.

3.7 Sometimes from earlier experience, an enterprise may have an adequate data of entities capable of execution. In such cases, instead of floating a fresh public tender, an enterprise may ask for quotations from empanelled entities. It is usually done to economize expenses and time also at same time ensuring transparency, quality and implementation. Enterprises

that resort to deemed public tenders usually have a sound tendering system and procedure in place to take care of charges of favoritism and other legal implications.

### **Limited Tender (LT), CAPEX/ Regional/ Zonal Tender**

3.8 Where there is no time or need to float a public tender or it is not proper to float a single tender and at the same time the enterprise has a pool of tested material/ service providers, a limited tender is called. A deemed public tender is usually floated as a sequel to a PT; it is not to be confused with an LT. An LT is floated for repetitive jobs not involving high technological requirements, usually not of a huge monetary implication but requiring the vendors to have requisite experience of working with/ for the enterprise. An LT may also be floated to vendors short-listed and empanelled. Enterprises should have approved policies and procedures for calling an LT. A minimum number of vendors are usually prescribed for floating an LT. Care needs to be exercised to prevent impersonation in LTs.

3.9 A variant of an LT may be in the form of a CAPEX/ Regional/ Zonal tender. Nomenclature may vary from industry to industry or in enterprises in the same industry. It may be necessary to roll out projects/ facilities involving standard design, technology etc., in different regions/ zones, etc., Capital budgets are usually centrally controlled, allocated and monitored. Job/ material requirements are standardized, vendors/ service providers are short-listed through an internal process of due diligence. Work schedules, departmental estimates are also standardized. In such cases. instead of going through a PT, short-listed vendors are asked to submit their quotes which are evaluated against departmental estimates.

3.10 For the sake of transparency, an enterprise should have a laid down procedure for short-listing of vendors, exclusion from or inclusion in such lists.

### **Single Tender (ST) or Tender on Nomination Basis**

3.11 Obtaining quotation by issuing single tender enquiry to a selected source amounts to purchase without generating competition. Therefore, this mode of purchase should be resorted to only in unavoidable situations. Single Tender, whenever possible should be avoided. However, in cases of emergencies, proprietary/ specialized jobs, absence of other vendors for specialized job/ specific material, jobs of small value/ field offices, locations, etc. a single tender is floated. Concurring and approving authority should be careful with the justification while concurring and/ or approving. Proprietary

## **Technical Guide on Internal Audit of Tendering Process**

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Article Certificate needs to be collected while purchasing on single tender basis. Purchase through STI may be adopted when:

- (i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods. The reason for arriving to this conclusion is to be recorded and approval of the competent authority obtained.
- (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
- (iii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/ equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.

### **Lump Sum Turnkey Tender (LSTT)**

3.12 Large projects, like, construction of dams, highways, airports, etc. involve a long gestation period, synergy of intricate technologies, huge capital expenditure over a period of time while guarding against time and cost overruns. Established service providers with requisite expertise, resources and market standing are invited together to participate in such tenders for execution and delivery on a turnkey basis. LSTKs are usually global or public tenders. In exceptional cases, it may be an LT too. This is a way of outsourcing the different components of deliverables in giant projects. The major service provider chosen at the end of selection process award sub-contracts, co-ordinate all activities, deliver and gets compensated as per the terms and conditions of the contract.

### **Tender on LOT System**

3.13 In some cases, such as, large transportation, building, material procurement contracts, job may have to be awarded to more than one vendor at a time. Geographical spread, capacity constraint, spreading of risk, QC facilities, etc. may be some of the reasons for award of jobs on lot basis. Entities awarding such tenders have their own internal procedures and control system for awarding such tenders.

### **Tender on Percentage Basis**

3.14 At times, tenders on unit rate basis for a number of items are to be floated. Tenders are evaluated by comparing the total of quoted amounts with departmental estimate. These tenders may be PT or LT.

Experience tells that at times rates quoted by vendors may differ significantly. It may so happen that the overall lowest bidder might quote unusually high rates against certain items. In such case, acceptance of such bids becomes tricky, open to audit comments or even vigilance reports.

3.15 To avoid such situation, rates are furnished in the tender on the basis of departmental estimates. Vendors are required to quote in percentage plus or minus with respect to the estimates. Abnormal variations are avoided. Chances of change in status of vendors due to change in quantity of any item becomes less. It makes preparation of comparative statements, work orders, revision, if any, required easier.

### **E – Tender**

3.16 Purchase of goods through electronic mode of interface with vendors and IT enabled management of the entire procurement process (notice inviting tenders, supply of tender documents, receipt of bids, evaluation of bids, award of contract, and execution of contract through systematic enforcement of its various clauses and tracking of claims, counter-claims and payments) is gradually gaining popularity. It helps to cut down transaction costs and improve efficiency and transparency.

3.17 Internal auditor should ensure secure IT platform addressing concerns, like encryption/ decryption of bids, digital signatures, secure payment gateways, date/ time stamp for activities, access control, etc. The system should be secure, capable of maintaining complete confidentiality at appropriate stages of the bidding process.

3.18 However, since all the tendering firms don't have the facility of transmitting their quotations through e-mail, companies allow the receipt of quotations through hard copies as well as by e-mail. The closing date and time for receipt of tenders should be identical for both types of tenders.

3.19 It is, however, to be kept in mind that the entity floating a tender and awarding a tender remains liable and responsible as the principal employer. Hence, scrutiny of the legalities in tenders is crucial and an internal auditor should be aware of his responsibilities in this regard.



## **International Competitive Bidding (ICB)/ National Competitive Bidding (NCB)**

3.20 International Competitive Bidding (ICB) is a bidding in which companies from outside India can also participate. National Competitive Bidding (NCB) which restricts right to participate only to Indian bidders.

### **Request from Proposal/ Expression of Interest**

3.21 In Request from Proposal (RFP), a company is supposed to submit only the Technical proposal. Indicative price bid can also be invited, if so, required by Buyers. Once RFP round is over, RFQ or Request for Quote can be invited from shortlisted Bidders.

3.22 Another purpose of RFQ is to understand the current technology available in the market. For e.g. if a new power plant is to be built, the government can float an RFP stating, that it wants to build a 1000 MW power plant, different Bidder will submit their response stating that they can build either Thermal, Nuclear, Solar, Fuel, Coal based plant. On the basis of response from different bidders, buyer will select either of the technology and then float a fresh tender or just invite bids from pre-qualified bidders.

### **Request for Quote**

3.23 In RFQ, a company has to submit their best offer and on the basis of this decision, the contract is awarded. For example, if someone wants to buy 1 Window AC, only RFQ is floated because no Technical pre-qualification is required as it is a standard product.

### **Corrigendum**

3.24 If any change/ correction is to be made in Tender Notice or Tender Document, the same can be made by issuance of corrigendum. Please note that Corrigendum can only be issued before the due date and time of tender submission expires. Against a tender, any number of corrigenda can be issued. Corrigendum is issued after pre-bid meeting to post clarifications

### **Addendum**

3.25 If any new content is to be incorporated in Tender Document, the same is done by means of issuance of Addendum. However, in many Tenders, it is also done by issuing a corrigendum notice.

### **Open Bid**

3.26 All the tendering vendors would be invited to the e-commerce website at the same time, to post the bid, wherein no other vendor will know the bid of others vendors because of technology. The system itself throws out the specifications as to which tender is chosen based on the price and other parameters.

## **Chapter 4**

# **Stages of Tendering Process**

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- 4.1 The Tendering Process covers following steps:
- (i) Preparation of tender documents
  - (ii) Floating a tender
  - (iii) Issue of tender documents
  - (iv) Pre-bid conference
  - (v) Receipt of bids Tender Quotations
  - (vi) Scaling and making of tender
  - (vii) Opening and tabulating bids
  - (viii) Evaluation of price
  - (ix) Lack of competition
  - (x) Rejection of Tender
  - (xi) Scrutiny of tender documents and attachments
  - (xii) Awarding a Work Order (WO) or a Purchase Order (PO)
  - (xiii) Securities and Co-laterals, Staggered payments and Liquidated Damages
  - (xiv) Final Settlement

### **Pre-Tender Process**

4.2 One of the most important parts of pre-tender process is appointment of selection team. Selection team should consist of independent members from diverse fields concerning the decision. Tendering method is finalized at this stage. All specifications concerning the decision are finalized and key selection criteria are also decided. As part of the preparation work, and before any tender is advertised, the procuring department requires a realistic estimate of the cost of the expected to incur and also check whether the same is within budgeted limits. Decision-making criteria needs to be documented, must be clear, justifiable and objective (with a written record) with no room for discretion at any time, especially, in the evaluation and comparison of the bids.

## Preparation of Tender Documents

4.3 A tender involves expenditure. Now-a-days many of the techno-commercial enterprises are run on RDBMS platforms, like, SAP. Budgetary provision and cash outlay become a pre-requisite to enable a tendering process through the system to be taken forward. Tenders for items of capital nature are usually large and requires sanction in capital budget and adequate provision for cash outlay for the period starting with floating of a tender to conclusion of procurement and final settlement. Tenders for items of revenue nature, need revenue budget approvals and cash outlay for the relevant revenue time frame.

4.4 A tender document is the basic document in the tendering process, defining all the requirements, rights and liabilities, legalities, deliverables, time limit, damages and payment process, etc. Utmost care is to be taken in preparation of tender documents. A tender may comprise of:

- (i) *An administrative section:* An administrative section may *inter alia* include:
  - (a) the exclusion criteria
  - (b) the eligibility criteria again based on
    - compliance of the statutory requirements and production of documentary evidence.
    - the technical and/or professional capacity criteria..
    - the financial, economic capacity criteria.
  - (c) An instruction that all the pages of tender document should be read and understood and require to be signed and stamped to that effect.
  - (d) No white ink is to be used, any correction is to be neatly struck off, clearly re-written and countersigned.

A notification that tenders must be submitted within the time and date specified. Any tender submitted late or in an open envelope will be rejected.

- (ii) *A technical section:* A technical section contains:
  - (a) The technical specifications of the work to be done.
  - (b) The technical specification of the materials to be procured.
  - (c) Documentary proof the technical capability to deliver.

## Technical Guide on Internal Audit of Tendering Process

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- (iii) *A financial section:* The financial section specifies:
  - (a) The financial implication and structure of the tender.
  - (b) Payment schedules.
  - (c) Clauses relating to damages and penalties.
  - (d) Documentary proof required to establish financial capacity.

4.5 A draft tender document should, therefore, be scrutinized by concerned functions and vetted by legal department or counsel. A tender once floated, responded and the offer accepted becomes a contractual obligation between both the parties. Issuing a corrigendum after floating a tender is a sloppy business practice - better avoided.

4.6 A tender document could consist of the following:

- (i) Index of contents with page numbers. There may be different chapters but all the pages should be serially numbered.
- (ii) Notification/ letter inviting the tender.
- (iii) List of pre-qualification criteria.
- (iv) Format of letter requesting issue of tender documents.
- (v) General conditions of work/ service/ purchase requirements.
- (vi) Requirement and format of co-laterals, like, security deposit (SD), earnest money deposit (EMD), bank guarantee (BG), etc.
- (vii) Work schedule, purchase schedule.
- (viii) Technical specifications.
- (ix) Time schedule.
- (x) Clauses related to liquidated damages for delay, defect, non-performance, etc.
- (xi) General and/ or special instruction to the respondent.
- (xii) Agreed terms and conditions (usually in a questionnaire form).
- (xiii) Price/.billing/.payment schedule format.
- (xiv) Any other special conditions.
- (xv) List of Board of Directors or web address link.
- (xvi) A format of declaration by a vendor that he had read and understood the tender requirements and conditions.

*(This is an indicative, not an exhaustive list)*

## **Stages of Tendering Process**

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4.7 Government departments, PSUs, other corporate usually have printed tender documents/ booklets that have been finalized after collective consultation, bear approval of competent authority and have been standardized. Any deviation in content and tendering methodology introduced by related function should be concurred by finance and vetted by legal department or counsel. A tender to be floated should have the approval of the HOD of the related function.

4.8 Concept notes, observations, replies, concurrence, approval must be serially numbered. Each page of the concept note should be signed by the initiator. If a file has separate sections, volumes, these are also to be numbered separately and serially with appropriate prefixes/ suffixes as required. A top sheet called the movement sheet traces the journey of the file. A repeat order proposal should come as a part of the original order.

### **Floating a Tender**

4.9 A notice inviting tenders (NIT) needs to be published in leading daily newspapers, put on the web or given to potential respondents. Depending on the type of tender, the notice may take different forms.

For example, in case of petty office jobs, a notice may be pasted on the office notice board. For a single tender the vendor can be called and handed over the tender papers.

4.10 For an Limited Tender, documents can be sent by registered post to empanelled vendors. Tender papers are to be sent to all nominated vendors through the same medium and at the same time. A register or list is maintained. If tender documents are physically handed over, then signed and stamped acknowledgement is to be taken. A list of authorized signatories of empanelled vendors is required to be maintained. If sent by registered post/ courier, postal/ courier receipts with date and time are usually pasted against the name and address of each addressee. In other words, irrefutable documentary evidence of dispatch of tender documents to each vendor with same time allowance is to be maintained.

4.11 In case of a Public Tender, advertisement has to be given in at least two widely circulated daily newspapers, one of which should be in English and the other should be in the local language. In case of all India Public Tender, advertisements are given in all major newspapers covering the country. Now-a-days, tenders are posted on the department or company website. The process of e-tendering is different from tendering through tender papers.

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Each and all respondent must be, in a visible and documented manner, given equal opportunity to participate.

4.12 A tender notice should specify the following particulars:

- (i) Description of the work to be awarded or the material to be procured.
- (ii) Cost of tender papers payable either in cash or by an account payee banker's cheque/ demand draft.
- (iii) Place, date, time of selling tender papers.
- (iv) Place, date, time for submission of tender papers.
- (v) Amount of earnest money to be deposited along with tender papers.
- (vi) Pre-qualification criteria, if any.
- (vii) List of other documents to be submitted with tender papers. Usually, photocopies of the documents are asked along with originals to verify, at the time of opening of tenders.
- (viii) Office/ authority to whom tender is to be submitted.
- (ix) An instruction that the tender papers along with attachments/ enclosures are to be submitted in a sealed envelope clearly super scribed with tender name, number and date, time of opening of tender. Envelopes are either supplied with tender papers or size, type, etc. of envelopes are specified. Technical and price bids may be required to be submitted in different sealed envelopes and all such envelopes are to put in another sealed envelope.
- (x) Tender notice usually contains a provision of a right to reject any tender or any part thereof so received without assigning any reason. However, except in case of petty tenders, such a disclaimer may not lend any meaningful protection from complaints from unsuccessful vendors. With the introduction of RTI, in particular, it is very much unadvisable to modify, withdraw or scrap tenders once floated and more so after submission.

*(This is an indicative, not an exhaustive list)*

## Tendering Process

4.13 Here the decision is taken about the advertising date, tender validity period, closing, venue, date and time. Tender is advertised and tenders are received. Controls need to be evaluated on process of receipt of tender at the designated office location.

### Issue of Tender Documents

4.14 Tender documents are, generally, issued against a tender fee to be deposited by vendors desirous of participating in a tender either in cash or by an account payee banker's cheque/ demand draft. A cash receipt is to be issued to the payer. A register must be maintained by department concerned listing out the details of the prospective vendors that have been issued tender papers. Some companies exempt Government departments, agencies, PSUs, small scale industries registered with NSIC from tender fees.

### Pre-bid conference

4.15 In case of large and complicated tenders, a pre-bid conference may be held. For Limited Tenders and Single Tenders holding, a pre-bid conference may not be difficult as the details of empanelled vendors are known and they can be called. In case of global tenders, however, it is not easy. So, wherever a need for a pre-bid conference is felt, details of venue, date, time, etc. must be specifically mentioned in the tender documents. Some of the benefits of such a pre-bid conference are as follows:

- (i) All techno-commercial issues can be discussed and clarified.
- (ii) If there is a possibility that vendors may come up with counter conditions either or both on commercial and technical matters, a pre-bid conference helps in sorting out the issues and putting in disclaimer clauses in the bid documents to the effect that any counter condition or deviation will render a quotation to be summarily rejected.
- (iii) Sometimes the entity floating a tender may be aware of its requirements but may not be fully knowledgeable about different and emerging technologies. In such a scenario, it may not be possible to specifically or comprehensively define the technicalities that may leave a scope of ambiguity. It may also be possible that the vendors are more knowledgeable about the emerging or state of the art technologies and processes which may differ from one to another. In such a scenario, it is always advisable to hold a pre-bid conference. On one hand, the entity floating the tender may get a better insight into the technologies best suited for their purpose, may introduce suitable amendments in the tender documents with unanimous agreement in writing of the participants in such a meeting and such



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- an interactive exercise helps in creating a level playing field for all the participants.
- (iv) A reasonable time interval is to be allowed between the last date of sale of tender documents and the pre-bid conference.
  - (v) Minutes of the conference are to be prepared and got signed by all participants with date and time.
  - (vi) If necessary revised date and time of submission and opening of tenders are to be decided and intimated in writing to all participants under acknowledgement.
  - (vii) Vendors absent from such a conference are to be notified in writing or through mail in similar lines.
  - (viii) All vendors are to be categorically advised that except for the deviations, etc. agreed to in the conference no other deviations will be allowed; otherwise bids will get summarily rejected.
  - (ix) No discussion on NIT qualifying clauses is to be held in a pre-bid conference.

### **Receipt of Tender Quotations**

4.16 The Notice Inviting Tender (NIT) must specify the place, date, time limit of the quotations to be submitted. In case of e-tendering, the place is substituted by an email address. However, in case of e-tendering, a specified number of hard copies of quotations and supporting papers are also required to be submitted.

There should be no confusion in receipt of quotations so that nobody can complain of partiality or obstruction.

4.17 A locked and sealed box or trunk with a hatch/ aperture for dropping tenders is kept at a prominent place of the office of the designated officer. If tender papers are too bulky, a separate room with suitably restricted access may be arranged. The empty box/ trunk/ room should be inspected before it is put to use. It is to be clearly marked with the details of the tender concerned. A double locking system requiring simultaneous use of two keys should be used. The keys to the box are kept in a closed and sealed cover with the designated officer till the opening time.

4.18 Tender papers received by post within notified time limit should be immediately acknowledged, date and time of receipt recorded and the tender

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papers dropped in the tender box. The opening/ aperture in the tender box/ room is to be immediately sealed/ closed once the notified time limit is over.

4.19 To avoid confusion, counter claims, tender boxes, tender rooms and tender dropping and opening processes are monitored through CCTVs in certain organizations. The video recordings are preserved till conclusion of tendering process and completion of the project.

4.20 It is the responsibility of the concerned department to build up a tender file starting with departmental/ Head Office/ Corporate Office approval, as the case may be, advertisements in newspapers, proof of dispatch of tender documents, receipt of bids and all other related papers and correspondence.

4.21 There should not be more than ½ an hour time gap between the time limit of submission of tender papers and opening of the tender. A tender opening committee (TOC) is nominated to oversee the tender opening process. A tender box should be inspected by TOC to ensure that the seal/ lock is intact before opening it.

4.22 In case, the designated tender opening day happens to be a closed day, the tender should be opened at the same place and time on the next working day. If possible, a notice/mail to this effect may be given to concerned vendors. Such postponements need to be brought to the notice of competent authority and yet approved by them.

A tender is to be opened in the presence of all the respondents.

### **Sealing and Marking of Tenders**

4.23 The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate, etc.) required to be submitted. The vendor is to seal the original and each copy of the tender in separate envelopes, duly marking the same as “original”, “duplicate” and so on and also putting the address of the purchase office and the tender reference number on the envelopes. Further, the sentence “NOT TO BE OPENED” before (due date and time of tender opening) are also to be put on these envelopes. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed marked, etc. as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, etc. All the above instructions are to be suitably incorporated in the tender documents.

## Evaluation Stage

4.24 Here assessment of tenders is carried out for conformance with tender requirements and reject late or non-conforming tenders. Key selection criteria and agreed weights to conforming tenders are applied to identify the best value tender as the preferred tender.

## Opening and Tabulating Bids

4.25 In government departments and PSUs, by practice, a tender opening committee (TOC) is nominated to open the tenders submitted within the stipulated date and time. Time and date of opening a tender, unless already extended with due notification to all concerned and with approval of competent authority, must be maintained without any exception to avoid complications. Any deviation for any reason whatsoever must be got approved by competent authority and notified to all concerned. TOC usually comprises of an officer from function and one officer from finance.

4.26 Function and responsibility of a TOC may, generally, be described as below:

- (i) To be physically present during the time of closing of the tender to ensure that all tenders submitted within the time limit have been dropped in the tender box and no tender received thereafter was allowed to be dropped in the tender box.
- (ii) Any tender envelope received after the time limit should be clearly marked as either "Late" or "Delayed" and the time and date of receipt should be written on the envelope and tender register. Those tenders that have been posted/ dispatched before the time limit but received after the time limit are called "delayed" tenders. Tenders posted/ dispatched and consequently received after time limit is called "late" tenders. A TOC should acknowledge receipt of such delayed/ late tender's record the time and date in tender register but cannot allow such tenders to participate.
- (iii) Once submission of tenders is closed, TOC must check the lock and opening/ aperture of the tender box/ room to satisfy them that those are intact and not tampered with, and record it in the tender register. Any suspicious circumstances must be immediately noted, reported and tender opening is postponed for further instruction from competent authority.

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- (iv) To verify from the tender register that quotations have been received only from vendors who purchased tender documents.
- (v) The seals of the covers are to be checked for any sign of tampering. Once satisfied, one by one the covers are to be slit open keeping the seals intact. Unsealed covers are liable to be rejected forthwith.
- (vi) The covers are marked with serial numbers. For example 10 quotations have been received. The covers are to be marked as 1/10, 2/10 and so on. All the covers must be signed by each member of TOC with date and time. Covers are to be retained with respective tender papers.
- (vii) Each page of tender must be marked with the same serial number on its cover and jointly signed with date and time by TOC.
- (viii) In case of a two or multiple bid tender, TOC is to fill out the technical particulars in the tender evaluation sheet first.
- (ix) TOC should record whether all the prescribed attachments have been received.
- (x) Wherever necessary TOC is to verify the credentials with the originals like PAN card, NOC from department of environment, explosives, registration with commercial tax authorities, regional provident fund commissioner, trade license etc.
- (xi) Security deposit should be immediately entered in cash book and deposited in bank; a cash receipt is to be prepared and given to vendor. In case of EMD, it can be either en-cashed or the instruments can be held till award of tender and then returned to unsuccessful vendors. Records are to be generated and maintained at each stage.
- (xii) After selection of technically eligible parties in a two or multi-bid tender or at the time of opening in a single bid tender, the rates quoted against each work order or purchase order item are to be filled in the tender evaluation sheet.
- (xiii) TOC is to note and/ or authenticate any difference in rates quoted in words and figures, over-writing, cutting, use of white fluid, missing signature, submission of security deposit, earnest money deposit etc. in the tender papers.
- (xiv) TOC should note and record that each bidder has given a declaration that it has not been put on holiday list.

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- (xv) Total quoted amount in each tender is to be countersigned by all members of TOC.
- (xvi) For each tender, TOC is to populate the evaluation sheet with rates quoted against each item and the total quoted. Each page of the evaluation sheet is to be signed by members of TOC with date and time. In case of a separate price bid cover, it may not be possible for TOC to fill up the rates. But that fact is to be noted by TOC.
- (xvii) In case of two or multi-bid tenders, TOC is to note that the covers of the subsequent bids are not opened. After technical evaluation, when the subsequent covers are to be opened, the same procedure is to be followed.
- (xviii) Safe custody of tender papers is the responsibility of TOC till the entire bunch is handed over to Tender Consideration Committee (TCC).
- (xix) TOC certification of compliance with tender opening and eligibility criteria is of crucial importance. Hence, TOC must pay attention to minute details, record the findings faithfully without any bias, maintain confidentiality and hand over tender papers/ documents received to TCC and receive acknowledgement.

## **Evaluation of Price**

4.27 The broad guidelines for judging the reasonableness of price are as under:

- (i) Last purchase price of same (or, in its absence, similar) goods.
- (ii) Current market price of same (or, in its absence, similar) goods.
- (iii) Price of raw materials, which go into the production of the goods.
- (iv) Receipt of competitive offers from different sources.
- (v) Quantity involved.
- (vi) Terms of delivery.
- (vii) Period of delivery.
- (viii) Cost analysis (material cost, production cost, over-heads, profit margin).

NB: Price paid in an emergency purchase or purchase price of goods offered by a firm through 'distress sale' (i.e., when the firm clears its excess stock at

throw away prices to avoid further inventory carrying cost, etc.) are not accurate guidelines for future use.

### **Lack of Competition**

4.28 Sometimes, the purchase organization may not receive sufficient number of tenders. A situation may also arise where, after analyzing the tenders, the purchase organization ends up with one responsive vendor. In such situations, the purchase organization is first to check whether, while floating/ issuing the tender enquiry, all necessary requirements, like, standard tender enquiry conditions, industry friendly specification, wide publicity, sufficient time for formulation of tenders, etc. were fulfilled. If not, the tender is to be re-issued/ re-floated after rectifying the deficiencies. However, if after scrutiny, it is found that all such aspects were fully taken care of and in spite of that the purchaser ends up with one responsive tender only, then contract may be placed on that vendor provided the quoted price is reasonable. CVC in its Circular no. 4/3/07 has explained on negotiations of contract with L1. It has emphasized that post tender negotiations should be avoided. However, negotiations may be done in case of some exceptional situations relating to procurement of proprietary items, items with limited sources of supply, evidence of cartel formation. However, such reasons for negotiations should be documented. In case of unreasonable rates, re-tendering may be conducted, but since re-tendering will lead to higher time procurement might be done for bare minimum quantity for continuing the operations. Delay in decision making may occur due to Negotiation or re-tendering. Hence, competent authority should exercise due diligence while choosing the alternative.

### **Rejection of Tenders**

4.29 In NIT (Notice Inviting Tender), eligibility criteria are specified. Non-compliance can make a tender invalid and liable to be rejected without assigning further reasons.

A tender may be rejected in following situations:

- (i) It stipulates its own conditions.
- (ii) The validity period of bid is less than or differs from that in tender form.
- (iii) It does not disclose the constitution of the organization. The names, address of offices, directors, partners etc. are not adequately disclosed.

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- (iv) Tender forms are not properly filled. Tender documents, attachments, etc. are not signed on each page, are not certified as required.
- (v) Bidder does not provide evidence of adequate facilities or does not propose to make available sufficient resources.
- (vi) Bidder does not attach acceptable proof of past experience and performance.
- (vii) Bidder does not attach self-certified copies of eligibility certificates like, PAN card, valid income tax clearance certificate, sales tax/ VAT/ excise duty/ custom duty registration details, and registration, deposit details with regional PF commissioner, etc.

4.30 A tender is invalid is rejected outright when:

- (i) Minimum qualification criteria is not met.
- (ii) EMD is not deposited before closing date and time of tender. In case of two bid tenders, EMD is to be submitted with technical or commercial bid.
- (iii) Tender is submitted late.
- (iv) Bidder is on holiday listed or has been blacklisted. This situation can only arise if holiday listing or black listing is done after purchase of tender papers.
- (v) Price bid is incomplete.

4.31 Care is to be taken that no valid tender gets rejected. Justification of rejection of any tender is to be placed on record but is not to be communicated to the invalid bidder. If any fraud or forgery is committed, EMD can be forfeited. If a vendor backs out after award of tender or fails to start work within stipulated time without justification, EMD can be forfeited.

## **Scrutiny of Tender Documents and Attachments**

4.32 A Tender Consideration Committee (TCC) is constituted to scrutinize tender documents and put up a proposal to the competent authority for award of a work order (WO) or a purchase order (PO). A TCC is usually constituted with members from concerned function, engineering or material and finance department.

4.33 In their first sitting at the appointed place, date and time, TCC deliberate and decide on the course of action for finalization of proceedings. Member from engineering or material department ensures that none of the

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bidders is either on the black list or holiday list. TCC may proceed in the following manner:

- (i) Check that the tender evaluation sheet has been completely filled up and verified by all members of TOC together.
- (ii) Compare the tender papers of individual bidders with the entries made in the evaluation sheet.
- (iii) Scrutinize the enclosures and attachments that are required to be submitted with the bid papers. For example, if security deposit is to be received, a valid cash receipt should be attached. Any bank guarantee received should conform to the format and requirement of the organization. BGs should be received directly from the issuing bank.
- (iv) In case of a two-bid or multi-bid tender, TCC should check that the comparative statement relating to the technical bid has been cleared by the concerned function like engineering department, materials department, systems department etc.
- (v) Similarly, the price bid comparative statement should be signed by the related function and checked by finance department.
- (vi) Completeness and correctness of the comparative statements need to be ascertained by TCC.
- (vii) TCC should study and evaluate the experience, technical competence, capacity and financial status of the bidders with reference to evidences produced, submission made etc.
- (viii) If felt necessary TCC may also inspect the facilities of a vendor, cross refer the credentials submitted with the issuing authorities, examine financial statements, order book, comfort letters from customers of a vendor regarding satisfactory performance etc.
- (ix) Ask for clarification from, conduct discussion with vendors with due notice to others to establish facts.
- (x) Conduct inter/ intra-departmental meetings and seek clarifications wherever felt necessary in one go without causing any delay in the tendering calendar.
- (xi) Opaque, piecemeal and intermittent approach to clarification is to be avoided.



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- (xii) Information contrary to the claims and submissions can render a tender to be rejected.
- (xiii) Normally, negotiation on tenders by TCC members is not allowed unless TCC has been given prior approval by competent authority in writing to conduct price negotiations with L-1 bidder. No upward price negotiation or post-tender negotiation is allowed
- (xiv) Once tenders are opened no voluntary/ subsequent rebate/ discount/ reduction in price or quantity discount is to be accepted from any bidder. In case the concerned vendor refuses to withdraw such offers, that bid is to be summarily rejected.
- (xv) If any unforeseen or unusual circumstances makes it necessary to revise price bids, TCC should insist on approval from the competent authority to consider such revision.
- (xvi) Then all the bidders should be simultaneously asked to submit revised price bids. Such deliberations need to be recorded in minutes of TCC meeting. No separate correspondence is to be made.
- (xvii) Such cases are very rare and are not usually entertained by TCC. In case, it becomes unavoidable TCC must establish through records, papers that the sanctity of a price bid has not been compromised by seeking revised price bids.
- (xviii) No new condition from vendor is to be permitted during negotiation.
- (xix) Vendors/ vendors are not to be allowed any time to withdraw any counter conditions. All techno- commercial terms need to be deliberated and settled during pre-price bid opening conference.
- (xx) TCC members are required to prepare and jointly sign the minutes of a meeting on the same day. TCC members are collectively responsible for any recommendations made. So, difference of opinion, if any, must clearly be specified and written down in the proceeds of the meeting.
- (xxi) TCC recommendations are crucial for the competent authority to accord approval for finalization of a tender. Price variations beyond a certain percentage should be critically evaluated by TCC in line with organization policy.
- (xxii) If there is a laid down policy that accommodates deviations from estimates to a certain limit TCC may abide by such policies.

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- (xxiii) If deviations are on the higher side then TCC with intimation to all concerned and preferably with approval from competent authority may go for price negotiations.
- (xxiv) If L-1 bid is lower than the acceptable percentage or it appears to be unworkable TCC may call for clarification from the bidder and insist of indemnity from the bidder to the effect that in case of non-performance the tender can be executed through other vendors at the risk and cost of defaulting L-1. {to attach cvc circular on negotiation with L 1 }

Note: An organization may, in certain circumstances engage consultants for floating and finalization of tenders. Usually, a panel of consultants is prepared by the following process:

- (i) Advertisements are given in newspapers for pre-qualification offers from consultants satisfying the technical, financial, experience qualification parameters.
- (ii) Empowered committee is to scrutinize offers received, prepare a panel and put it up for approval of competent authority.
- (iii) For specific assignments, LT may be invited from such empanelled consultants.
- (iv) Assignment is awarded in line with laid down policy and procedure.
- (v) Security deposit and liquidated damage clauses are to be included in consultancy contract.
- (vi) Apart from technical qualification, a consultant is also required to comply with all statutory registrations, requirements.

4.34 In such cases, the contract with the consultant is to be studied to understand the scope and calendar of work, areas of representation and responsibility, fee structure, payout schedule, any clause for damage, etc. After appropriate discussion and understanding the assignment is to be formally awarded to the consultant. The procedural checklist for tendering through a consultant is as follows:

- (i) Consultant prepares tender enquiry and all tender documents with necessary supporting like work schedule, technical details, rate analysis, drawings etc. and submit to concerned department for correction, amendment, vetting and approval.

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- (ii) After approval consultant will invite PT or LT as advised and in line with the policies and procedures of the organization.
- (iii) Tenders would, however, be received in the tender box, email address of the organization.
- (iv) Consultant will arrange opening of tenders. Authorized representatives of the organization will open the bids in presence of bidders and consultants.
- (v) Consultant scrutinizes tender papers, attachments, enclosures, evaluate technical bids, if required call the bidders to make all the bids at par. He/she will build a comprehensive tender file, prepare a comparative statement of technical bids and submit the final recommendation with complete technical and legal justification for opening of price bids.
- (vi) Recommendation will be reviewed and considered by client organization and clearance is given to the consultant for arranging opening of price bids.
- (vii) Consultant ensures that all eligible bidders are duly notified of place, date and time of opening of price bids.
- (viii) Price bids will be opened by the client's designated officers from related function and finance with the help of the consultant in presence of eligible parties.
- (ix) Consultant prepares comparative statement of price bids with recommendations and submits to client for scrutiny. Any price negotiation is to be done by the client organization and not the consultant.
- (x) With the approval of client, consultant will prepare detailed work/purchase schedule/order, draft LOI and ask for the clearance of the client.
- (xi) Client will scrutinize LOI, work/purchase schedule/ order and award tender.

## **Finalisation of a Tender**

4.35 Before expiry of the tender validity period, the purchase organization shall notify the successful vendor in writing, by suitable foolproof method, that its tender (briefly indicating therein relevant details, like, quantity, specification of the goods ordered, prices, etc.) has been accepted. In the

same communication, the successful vendor is to be instructed to furnish the required Performance Security within a specified period (generally 21 days).

4.36 Promptly after the above notification, the purchase organization is also to issue the contract to the successful vendor asking therein, *inter alia*, to send its unconditional acceptance of the contract within fifteen days. It should also be made known to the successful vendor that, in case, it does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful bidder).

4.37 Tenders are finalized on the basis of TCC recommendations and approval of competent authority. An LOI (letter of intent) is issued to the successful bidder with the offer. Once bidder accepts the offer, it becomes a binding contract.

### **Awarding a Work Order (WO) or a Purchase Order (PO)**

- (i) A WO or a PO is the most important document in the tendering process. A note is initiated for approval of competent authority to issue a WO/PO. All the pages of the note and subsequent observations, noting, concurrence, approval must be serially numbered. It not only specifies the terms of engagement of a vendor but also defines the contractual rights and obligations of both the parties. A WO also contains the names of the personnel who will supervise the project and their authority and responsibility. Business establishments usually have standard agreement forms. Two sets of duly signed WO and agreement form are given to the selected vendor. The original copies are retained. The duplicate copies are signed by the vendor as an acknowledgement of receipt and understanding and are returned.
- (ii) Before work commences it is important to ascertain that the site is physically and legally clear and all required permissions and clearances have been taken by the vendor. Non-compliance may lead to cancellation of tender.
- (iii) Sometimes it is the responsibility of the organization to get a clear title to land and hand it over to the contractor for the work. In hurry or under pressure to meet date lines organizations do not pay due attention to a clear title of land or NOC to start work. Internal audit

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- should verify title deeds of land or premises, NOCs received. A lot of subsequent problems can be avoided if due attention is paid in time.
- (iv) Registers of WOs and POs need to be created and maintained. In SAP there is a provision for creating WO/PO to monitor progress and payment and exercise budgetary/ cash outlay control. It is important that no work starts or no purchase is made without a valid WO/PO. Small work/purchase may, however, be directly charged to revenue. Undue repetition of such expenditure should raise a red flag.
- (v) SAP operates on separate modules like finance (FICO), materials (MM), operations (OPS), supply and distribution (S&D), human resources (HR) etc. All the modules are interlinked. In case payment against purchases are not routed through MM module and payment is made directly against invoices through FICO module, physical and book balance of store items will not tally. There will be open goods received (GR) and investment request (IR) items. Moreover, it will not be possible to monitor re-order level (ROP), re-order quantity (ROQ), purchase requisitions (PR) etc.
- (vi) Each WO or PO should be serially numbered. In SAP serial is auto-generated. The online WO/PO register may be formatted as below:

### **Header:**

- WO/PO number, date, amount, place, description of work/purchase, capital/ revenue, approval reference, approving authority, target date.
- Name and designation of supervisor.
- Details of co-lateral like SD/ EMD/ BG, etc.

### **Table:**

- Serial number of entry
- Running bill number, date, amount
- Supervisor's work completion confirmation
- Adjustment of SD
- Other deductions like TDS (for service component) etc.
- Payment voucher reference
- Signature of paying authority.

## **Securities, Co-laterals, Staggered Payments and Liquidated Damages**

4.38 Security and co-lateral are usually in the form earnest money deposit (EMD), security deposit (SD) or bank guarantee (BG).

4.39 ***Earnest money deposit (EMD)*** is an amount that is to be deposited by vendors at the time submitting quotations as a token of their earnestness to abide by the terms and conditions of the tender and undertake the work, if nominated on the basis of their quotation.

Amount of EMD is determined by the estimated cost of the works/purchase. Certain categories of vendors are usually exempted from EMDs.

- (i) Original equipment manufacturers (OEMs), sole distributors, sole selling agents, authorized dealers, sole importer, etc.
- (ii) PSUs/SMEs registered with NSIC, etc.
- (iii) Consultants providing architectural, taxation, legal services, etc.

Tender for services of consultants, CVC has given guidelines for selection of consultant in Circular no. 08/06/11 which may be selected by private enterprise which is annexed in Appendix 2.

4.40 EMD is refundable to a bidder as and when the bid fails to be selected after opening the technical bid or after the price bid. Refund should be made promptly without waiting for a request from the unsuccessful bidder. Utmost care, however, is to be taken at the time of refund.

- (i) Firstly, the original cash receipt is to be taken in hand. If it is claimed that the original cash receipt has been lost, party is to be asked to furnish an indemnity bond in the prescribed format.
- (ii) Secondly, bank statement should be referred to ensure that bank account was credited with the EMD amount in due course.
- (iii) Thirdly, payment is to be released only the credit of the bank account particulars furnished. Due care should be exercised in case of NEFT/RTGS payments. Accounts department must ensure that there is no outstanding liability against the EMD. The refund should either appear as a debit in bank statement or appear in the list of cheques issued but not presented.

While auditing EMDs look into the ageing of EMDs and ask for the reason of delay in refund,

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4.41 A **Security Deposit (SD)** is asked from the successful bidder. In complex, large amount tenders, work may be awarded to more than one bidder. All such bidders are required to deposit SD for satisfactory performance of contractual obligations and as a security against defect liability for a mutually agreed period after date of work completion.

As such there is no upper limit for SD, but it is usually a percentage of value of work actually done and not on the value of the WO/ PO.

4.42 SD is accepted by banker's cheque/ DD or by way of deductions from running bills. Needless to say a proper cash receipt is to be issued when SD is received against banker's cheque/ DD. Receipt of initial security deposit and/or deduction of SD from running bills are to be recorded in the WO/PO register. SD received/deducted is to appear as an outstanding liability with ageing analysis in the SD schedule. Separate SD schedules for works and purchases are prepared. In case of a BG, the entire amount gets locked up but in case of SD, the vendor either pays a percentage of the work done or in case of running bills continues to get paid for the major portion of his bills. Thus the financial burden on the contractor is reasonable.

In a computerized system, like SAP, correct vendor and financial coding at every step is very crucial.

4.43 SD becomes refundable on expiry of defect liability period. As in case of EMD, due care is to be taken at the time of refund. In case of acquisition and mergers, books of accounts get merged. Mapping of balances either from legacy systems or from the books of merged entities is to be done very carefully. In case, EMD/ SD balances appear without vendor codes appear, these are to be segregated into a sub-ledger and a memorandum account with whatever available pointers like vendors name/ address/ date, etc. is to be maintained. Any refund from such an account must be done after identification of the payer, receipt of indemnity bond and with approval of competent authority.

Ageing of SD is to be audited carefully to detect any non-performance, lapses, etc.

4.44 **Bank Guarantee (BG)** is another type of co-lateral that can be got executed by the vendor or contractor. In many cases, material, like, steel plates, cement is issued to contractors. Sometimes, mobilization advances are given to contractors so that they can commence work. In such cases, BG is taken to cover the cost of materials issued or mobilization advance given. {CVC circular}

## **Stages of Tendering Process**

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4.45 Given the instances of banking irregularities, certain precautions need to be taken while accepting BGs like:

- (i) BG from only a scheduled bank is to be accepted. In a computerized system bank details of vendors are uploaded. Whenever it is seen that a vendor wishes to furnish a BG from another bank, reasons thereof should be sought and recorded.
- (ii) In no case BG is to be received directly from the contractor.
- (iii) The concerned bank branch should directly send the BG.
- (iv) As a precautionary measure a confirmation from the bank that the BG had been indeed issued by that branch is to be taken.
- (v) BG should be in the format prescribed and must contain a clause that on demand bank would allow the BG to be encashed without any demur.
- (vi) A BG is to remain valid till the work is completed and till expiry of defect liability period.
- (vii) A composite BG covers both SD amount and mobilization advance. Once mobilization advance is recovered, the value of the BG, on request of contractor, can be reduced to cover the SD amount only.
- (viii) Arranging a BG is the responsibility of the functional department. Custody of BGs should be with the finance department, preferably with cash section. A BG is a dormant co-lateral in the sense that it does not entail an inflow of cash and does not impact the books. But at the same time it is essential to acknowledge the latent asset and liability against a BG in hand. SAP has designated contra codes for BGs in hand.
- (ix) BGs in hand should be reviewed on a monthly basis by cash section and BGs that need to be renewed should be handed back to function under acknowledgment at least one month before the date of expiry.
- (x) Like cash in hand, BGs in hand should also be verified at required intervals like quarterly, half-yearly and annual closing.
- (xi) Cash section should maintain a BG register in the system. BG register should include the following details.
  - (a) Serial number
  - (b) Name and vendor code of contractor



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- (c) WO/PO reference and a brief description.
- (d) Name and branch of bank issuing the BG.
- (e) Purpose, amount and validity of the BG.
- (f) Date of receipt of BG.
- (g) Date of confirmation received from issuing bank, as received from function
- (h) Date and acknowledgment of return of BG to function for either re-validation or surrender.
- (i) Date and reason of en-cashing a BG.

## Post Tendering Process

4.46 Since at the time of audit entire process is completed for some tenders, completed tenders could be evaluated. While vouching for the process the internal auditor could also see at the proprietary perspective of internal audit. Variations in the terms of tender could be studied. At times, there are clauses in the awarding document requesting bank guarantees, performance guarantees. Internal Auditor should check whether the post selection requirements were complied. Adequate checks and controls needs to be in place to check for compliance with the post selection requirements. Also the vendors not complying with the same could be considered for being blocked and marked as negative list of vendors, which should not be awarded contracts.

## General

4.47 **No response to tenders:** In case, if there is no response to the tender, or when the tenders submitted have been collusive, or not in conformity with the requirements in the tender, than contract may be considered for re-tendering. While awarding to the existing vendor for minimum requirement on condition that the requirements of the initial (previous) tender are not substantially modified in the contract awarded.

4.48 **Foreign currency Tenders:** For tender comparison purpose, quotations in foreign currencies must be converted in Indian rupees. The conversion may be based on the selling rate of the relevant currency quoted by the RBI on the tender closing date.

In order to avoid vendors putting in an unreasonable amount of allowance in their quotations to cover exchange risks for the contract period, departments may allow vendors to quote in foreign currencies.

4.49 **Marking system for tendering:** As a general rule, buyer shall award contracts to vendors complying with the tender specifications, terms and conditions as specified and who are fully capable of undertaking the contracts and whose price quotations, whether for goods or services, are the lowest tenders. However, there are occasions where the quality of the goods or services to be provided is of such importance that separate assessments of the technical and price aspects, with pre-determined relative weighting attached to particular features, would result in a better value-for-money. Circumstances in which procuring departments may consider adopting a marking scheme include, but are not confined to, the following:

- (a) Procurement of high-value, complex equipment where there is rapid technological advancement or products with specific requirements such as improved recyclability, greater durability and less energy consumption; and
- (b) Service contracts which are high-value or involve complex requirements or which are sensitive and call for a high degree of specialization, reliability or co-ordination.

When a marking scheme is used to assess the tenders, departments shall award contracts to vendors who obtain the highest overall score

4.50 **Dispute redressal mechanism and jurisdiction:** The tender document and contract should specify dispute redressal mechanism to be adopted for the contract and in case legal dispute arising out of this tender/ contract, the jurisdiction shall be of which area. Arbitration if followed, it should specify mode of selection of arbitrator. In case of sole arbitrator, the decision of sole arbitrator on the matter in dispute shall be final and binding on the both parties, should be mentioned in contract. Reference to Arbitration and Conciliation Act 1996 may also be drawn.

## Cancellation of a Contract

4.51 Cancellation means termination of the entire agreement by the act of parties/ law. Generally, the contract specifies the conditions on which the contract shall stand cancelled and also the rights and responsibilities of both the parties in case of a cancellation. This clause is required to prevent any unwanted litigations. It is advisable to have a written mutual cancellation agreement. It formalizes the cancellation of contract and safeguards, the interests of the parties.

## Holiday Listing of an Empanelled Party

4.52 Legal meaning of terms like “holiday listing”, “black listing”, “banning”, “removal from approved panel” is same.

A party may be a bidder, licensor, vendor, sub-vendor, contractor, sub-contractor, consultant, and sub-consultant.

4.53 Putting a party on holiday list is a rather unusual step taken under circumstances that marks that party as an undesirable business associate. Reasons for such a strong measure may be:

- (i) Repeated failure of contractual obligations, breach of contract, and abandonment of contract.
- (ii) Refusal to accept LOA, WO or PO in a properly conducted tender.
- (iii) Nominated as L1 after price bid, but thereafter raises or withdraws the bid within the validity period of the tender.
- (iv) Repeated failure to repay loans, advances and other dues.
- (v) Bankruptcy, dissolution of partnership, winding up while within contract period
- (vi) Failure to deliver in time, in proper quantity, specification, quality, etc., defective, faulty work.
- (vii) Submission of fake, forged, false documents, certificates.
- (viii) Malpractices, like fraud, pilferage, corrupt practices, bribery, violent activities, inciting unrest, etc., not necessarily confined to the contractual context.
- (ix) Unauthorized access to and/ or passing on of official/ confidential documents, information, trademarks, patents, etc.
- (x) Deliberate violation or evasion of the law of the land.
- (xi) In case of PSUs, if the concerned administrative ministry puts a party on holiday list, the order becomes applicable in the said PSUs.

4.54 The list of reasons is illustrative, not exhaustive .Holiday listing, however, should be done judiciously. Usually an empowered committee consisting of representatives from related function, finance and legal departments is formed to look into the circumstances. To give the party a fair opportunity, a show cause notice with the approval of competent authority is issued and a reasonable time is allowed for a reply and representation. The committee studies the reply and considers the representation by the party,

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deliberate on the imperatives and overall effect of putting a party on holiday list and submits its recommendation including the period for which the party should remain on holiday list.

4.55 Effects of holiday listing is as follows:

- (i) No enquiry, bid, tender is to be issued to a party already on holiday list.
- (ii) If put on holiday list during a tendering process then no further interaction; if technical bid has been opened, both the opened technical bid and unopened price bid papers along with EMD, BG, etc. are to be returned under acknowledgement.
- (iii) In case price bid has been opened, it will not be considered and all papers and co-laterals are to be returned under acknowledgement. This practice is to be followed even when the party is L1.
- (iv) In emergent cases, however, exceptions may be made with approval of competent authority; it is better avoided.
- (v) All concerned departments, locations, divisions, affiliates are to be notified.

Delisting from holiday list comes into effect on expiry of the holiday period. Review of holiday period is technically possible but is not advisable. After expiry of holiday period usually, the party, requests for re-listing. Otherwise, the concerned party may also be notified.

## Chapter 5

# E-Tendering

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5.1 Internet provides a platform for the collaborative procurement of goods, works and services using electronic methods at every stage of the procurement process. Automating the procurement process using electronic tools/ techniques and enabling opportunities to suppliers fully supports the

objective of non-discrimination, fair and open competition. Agencies world

over face threats to their online e-procurement platforms and the same are addressed by employing a combination of security features and security best practices which result in reduced threat of data loss, leakage or manipulation.

5.2 E-tendering is a process of carrying out entire tendering cycle online with efficiency and economy. Process followed under e-tender is same as conventional tender except it involves working in IT environment.

5.3 All the steps involved starting from inviting the tenders till decision of selection of vendor will be carried out on the system. Monetary limits are defined by organizations; if the expected tender size exceeds the amount then E-tendering would be essential.

5.4 In E-tendering, digital signature plays a vital role. Tender notice will be approved and authorized for publishing by digital signature certificate by approving authority as per delegation of powers. Digital Signature has the same legal recognition and validity as handwritten signature. Digital signature also ensures that no alterations are made to the data once the document has been digitally signed.

5.5 Several roles would be created in the system, viz., publisher, admin, bid opener, evaluator, auditor, etc. Adequate rights assigned to this profiles should be ensured. This ensures that tampering/ editing by unauthorized person is not possible.

5.6 Bidders intending to participate have to register with valid mail id and attaching digital signature. Under E-tendering, generally, application fees are

paid at the time of submission of tender. It has to be ensured that fees have been received for all the bidders participating.

5.7 Under E-tendering, submission of BG is, generally, made by sending the scan copies of the BG alongwith the tender document or physically sending the document to the purchaser. However, physical document shall be presented in case of scan copy on designated date, failing to which the vendor shall not be allowed to part in future tenders.

### **Benefits of E-tendering**

5.8 Benefits to company floating the tender are as follows:

- (i) Completely Automated Process.
- (ii) Shortens Procurement Cycle.
- (iii) Standardized purchasing processes across the organization.
- (iv) Economical and Environment Friendly.
- (v) Greater Transparency.
- (vi) System aided Evaluation process.
- (vii) Minimize Human errors.

Benefits to vendors are as follows:

- (i) Anytime and Anywhere Bidding.
- (ii) Fair participation for vendors.
- (iii) No dependence on Newspaper.
- (iv) Reduced administrative hassles.
- (v) Economical – saving on Traveling cost.
- (vi) Reduces efforts and cost of bidding.
- (vii) No tenders can be missed because of distance.

### **Challenges in E-tendering**

5.9 Challenges in E-tendering are as under:

- (i) Detecting whether document is tampered or not.
- (ii) Identifying a person in the faceless world of Internet.
- (iii) Insufficiently skilled staff.

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- (iv) Document Secrecy.
- (v) Bidding should not be allowed after due date and time.
- (vi) Bids cannot be opened before due date and time.
- (vii) Bids can only be opened by authorized officers.

5.10 At times companies outsource management or infrastructure related facilities to outside companies. Data security risks that arise needs to be justify adequately addressed. SLA monitoring shall ensure that the system is adhering to the agreed upon service related.

## CVC Guidelines

5.11 Assuming that management issues are taken care of the following aspects of Infrastructure and application are essential to have a fairly secure procurement. Security of E-tender system is essentially an amalgamated output of Security of Infrastructure, Application and Management given in detailed in CVC circular no. 29/909 extract is given as under.

### **(A) Security Infrastructure Level:**

- (i) Issues- Best Practices to achieve security considerations.
- (ii) Perimeter Defense - Deployment of routers, Firewalls, IPS/IDS, Remote Access and network segmentation.
- (iii) Authentication- Network authentication through deployment of password policy for accessing the network resources. To minimize unauthorized access to the e procurement system at system level.
- (iv) Monitoring - Deployment of logging at OS/network level and monitoring the same.
- (v) Secure configuration of network host - The security of individual servers & workstations is a critical factor in the defense of any environment, especially when remote access is allowed. Workstations should have safeguards in place to resist common attacks.
- (vi) System patching - As the vulnerability of the system are discovered almost regularly and the system vendors are also releasing the patches. It is expected the host are patched with latest security updates released by the vendors.
- (vii) Control of malware - Suitable control like anti-virus, anti-spyware ext. should be deployed on the host associated with e-procurement system. However, option for running the services at non-privileged

user profile may be looked for. Otherwise, suitable operating system which is immune to virus, Trojan and malware may be deployed.

- (viii) Structured cabling - The availability of the network services is critically dependent on the quality of interconnection between the hosts through structured including termination and marking. It is expected the e-procurement system has implemented structured cabling and other controls related with network and interconnection.

**(B) Security at Application Level: Security during Design**

- (i) Issues - Best Practices to achieve security considerations.
- (ii) Authentication - The authentication mechanism of the e-procurement application should ensure that the credentials are submitted on the pages that are server under SSL.
- (iii) Access Control - The application shall enforce proper access control model to ensure that the parameter available to the user cannot be used for launching any attack.
- (iv) Session management - The design should ensure that the session tokens are adequately protected from guessing during as an authenticated session.
- (v) Error handling - The design should ensure that the application does not present user error messages to the outside world which can be used for attacking the application.
- (vi) Input validation - The application may accept input at multiple points from external sources, such as users, client applications, and data feeds. It should perform validation checks of the syntactic and semantic validity of the input. It should also check that input data does not violate limitations of underlying or dependent components, particularly string length and character set. All users supplied fields should be validated at the serve site.
- (vii) Application logging and monitoring - Logging should be enabled across all applications in the environment. Log file data is important for incident and trend analysis as well as for auditing purposes. The application should log failed and successful authentication attempts, changes to application data including user accounts, serve application errors and failed and successful access to resource. When writing log data, the application should avoid writing sensitive data to log files.



### **(C) Security during Application Deployment and Use**

- (i) Issues -Best Practices to achieve security considerations.
- (ii) Availability Clustering. Load balancing - Depending on the number of expected hits and access the options for clustering of servers and load balancing of the web application shall be implemented.
- (iii) Application and data recovery - Suitable management procedure shall be deployed for regular backup of application and data. The regularity of data backup shall be in commensurate with the nature of transaction/ business translated into the e-procurement system.
- (iv) Integrity of Application - Control of source code. Configuration management - Suitable management control shall be implemented on availability of updated source code and its deployment. Strict configuration control is recommended to ensure that the latest software in the production system.

### **(D) Security in Data Storage and Communication**

- (i) Issues - Best Practices to achieve security considerations.
- (ii) Encryption for data storage - Sensitive data should be encrypted or hashed in the database and file system. The application should differentiate between data that is sensitive to disclosure and must be encrypted, data that is sensitive only to tampering and for which a keyed hash value (HMAC) must be generated, and data that can be irreversibly transformed (hashed) without loss of functionality (such as passwords). The application should store keys used for decryption separately from the encrypted data. Examples of widely accepted strong ciphers are 3DES, AES, RSA, RC4 and Blowfish. Use 128-bit keys (1024 bits for RSA) at a minimum.

### **(E) Data Transfer Security**

- (i) Sensitive data should be encrypted prior to transmission to other components. Verify that intermediate components that handle the data in clear-text form, prior to transmission or subsequent to receipt, do not present an undue threat to the data. The application should take advantage of authentication features available within the transport security mechanism. Specially, encryption methodology like SSL must be deployed while communicating with the payment gateway over public network.

- (ii) **Access control** - Applications should enforce an authorization mechanism that provides access to sensitive data and functionality only to suitably permitted users or clients. Role-based access controls should be enforced at the database level as well as at the application interface. This will protect the database in the event that the client application is exploited. Authorization checks should require prior successful authentication to have occurred. All attempts to obtain access, without proper authorization should be logged. Conduct regular testing of key applications that process sensitive data and of the interfaces available to users from the Internet Include both "black box" informed" testing against the application. Determine if users can gain access to data from other accounts.

5.12 Some of the other good practices for implementers of E-procurements to achieve security considerations are as follows:

- (i) **Common unified platform for all departments:** A single platform to be used by all departments across a State/ Department/ Organizations reduces the threat to security of data. With a centralized implementation, where in the procurement data is preferably hosted and maintained by the State/ Department/ Organizations itself; concerns of security and ownership of data are well addressed. A common platform further facilitates demand aggregation of common items across State/ Department/ Organizations, and result in economies of scale.
- (ii) **Public key Infrastructure (PK) Implementation:** This is of the most critical security features that are required to be implemented in order to establish non-repudiation and to ensure the security of the online system. Under the system, participating contractors and suppliers, as well as the departmental users, are issued a Digital Signature Certificate (DSC) by a licensed Certification Authority.
- (iii) **Third Party Audit:** It is recommended that the implemented solution be audited by a competent third party at least once a year. Through the above mentioned steps, the complete security of the system and the transacted data can be ensured and may be communicated to all concerned agencies.

5.13 Guidelines/ Procedure to be followed in introduction of E-procurement Solution (Source GNCTD Guidelines):

1. **Notice inviting Tender (NIT)/ Tender documents:** The Notice Inviting Tenders (NIT) and Tender documents etc., shall be in the

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Standard formats as applicable to conventional Tenders and will be finalized/ approved by the officers competent as in the case of conventional Tenders.

2. **Publication of NIT:** The officers competent to publish NIT in case of conventional Tenders will host the NIT in the <http://delhi.govtprocurement.com>. Simultaneously, a notification should also be published in the leading newspapers, as per existing rules, in the following format:

Name of the Department: .....

Name of the work: .....

Estimated cost: Rs.....

Date of release of tender through e-procurement solution:

Last date/ Time for receipt of tenders through e-procurement solution:

3. **Registration of Contractors:** The contractor will register with the department. Department will charge an annual enrollment fee from each vendor willing to participate in e-Tender of department.
4. **Digital Certificate:** Digital Certificate is required for issuance, opening, evaluation etc. of the Bids.
5. **Formation of Evaluation Committee:** If required, an evaluation committee can be formed to evaluate the bids as done in the conventional tenders.
6. **Payment of cost of Tender Documents:** The collection of cost of Tender documents is dispensed away with, as there is no physical supply of tender documents and also to have absolute anonymity of the bidders participating in e- procurement solution.
7. **Submission of Bids:** The bidders who are desirous of participating in 'e' procurement shall submit their Technical bids, price bids etc., in the standard formats prescribed in the Tender documents, displayed at <http://delhi.govtprocurement.com>. The bidders should upload the scanned copies of all the relevant certificates, documents etc., and in the <http://delhi.govtprocurement.com> in support of their Technical bids. The bidder shall sign on all the statements, documents, certificates, uploaded by him, owning responsibility for their correctness/ authenticity.
8. **Payment of Bid Security (Earnest Money Deposit):** The EMD shall be in the form of DD/ BG from a bank, as per the guideline. Photo-

copy of the DD/ BG is to be scanned and uploaded along with the Bid, and the original DD/ BG shall be sent to the concerned Dept. so as to reach before the date of closing of the Bids. Failure to furnish the original DD/ BG before the closing of the bid will entail rejection of bid and blacklisting.

9. **Technical Bids/ Price Bids Opening:** Technical bids will be opened online by the concerned officer/officers at the time and date as specified in the tender documents. All the Statements, documents, certificates, DD/ BG etc., uploaded by the Bidder will be verified and downloaded, for technical evaluation. The clarifications, particulars, if any, required from the bidders, will be obtained either online or in the conventional method by addressing the bidders. The technical bids will be evaluated against the specified parameters/ criteria, same as in the case of conventional tenders and the technically qualified bidders will be identified. The result of Technical bid evaluation will be displayed on the <http://delhi.govtprocurement.com> which can be seen by all the bidders who participated in the Tenders. Similarly, at the specified date and time, the price bids of all the technically qualified bidders will be opened online by the concerned officer/officers and the result will be displayed on the <http://delhi.govtprocurement.com> which can be seen by all the bidders who participated in the Tenders. Till the technical bids are opened, the identity of the bidders who participated in the tenders is to be kept confidential. Similarly, till the price bids are opened, the bid - offers are to be kept confidential
10. **Processing of Tenders:** The concerned officer/officers will evaluate and process the tenders as done in the conventional tenders and will communicate the decision to the bidder online.
11. **Payment of Performance Guarantee:** The bidder will submit the Performance Guarantee as done in Conventional Tenders.
12. **Participation of Bidders at the time of Opening of Bids:** Bidders have two options to participate in tendering process at the time of opening of Bids:
  - (i) Bidders can come at the place of opening of bids (electronically) as done in the conventional tender process.
  - (ii) Bidders can track the process online.

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13. **Financial Rules for E-procurement:** The e-procure system would be applicable for purchase of goods, outsourcing of services and execution of work as prescribed in GFRs/PWD manual.
14. **Signing of Agreement:** After the award of the contract, an agreement may be signed as done in Conventional tenders.

## Chapter 6

### About Internal Audit

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6.1 *Preface to the Standards on Internal Audit*, issued by the Institute of Chartered Accountants of India defines the term Internal Audit as follows:

*“Internal Audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity’s strategic risk management and internal control system.”*

6.2 The abovementioned definition highlights the following facets of an internal audit:

- (i) Internal auditor should be independent of the activities they audit. The internal audit function is, generally, considered independent when it can carry out its work freely and objectively. Independence permits internal auditors to render impartial and unbiased judgment essential to the proper conduct of audits.
- (ii) Internal audit is a management function, thus, it has the high-level objective of serving management’s needs through constructive recommendations in areas such as, internal control, risk, utilization of resources, compliance with laws, management information system, etc.
- (iii) Internal auditor’s role should be a dynamic one, continually changing to meet the needs of the organization. There is often a need to change audit plans as circumstances warrant. These changes may include coverage of new areas, assistance to management in solving problems, and the development of new internal audit techniques.
- (iv) An effective internal audit function plays a key role in assisting the board to discharge its governance responsibilities. Thus, it contributes in accomplishment of objectives and goals of the organization through ethical and effective governance.
- (v) Risk management enables management to effectively deal with risk, associated uncertainty and enhancing the capacity to build value to the entity or enterprise and its stakeholders. Internal auditor plays an

important role in providing assurance to management on the effectiveness of risk management.

- (vi) Internal audit function constitutes a separate component of internal control with the objective of determining whether other internal controls are well designed and properly operated.

Thus, the examination and appraisal of controls are normally components, either directly or indirectly, of every type of internal auditing assignment.

## **Factors Contributing to the Evolution of Internal Audit**

6.3 General Guidelines on Internal Audit, issued by the Institute of Chartered Accountants of India, describes the factors contributing the evolution of Internal Audit in India, which are as follows:

### **(i) Increased Size and Complexity of Businesses**

Increased size and business spread dilutes direct management oversight on various functions, necessitating the need for a full time, independent and dedicated team to review and appraise operations.

### **(ii) Enhanced Compliance Requirements**

Increase in the geographical spread of the businesses has also led to crossing of political frontiers by businesses in a bid to tap global capital. This has thrown up compliance with the laws of the home country as well as the laws of that land as a critical factor for existence of businesses abroad.

### **(iii) Focus on Risk Management and Internal Controls to Manage Them**

Internal auditors can carry out their job in a more focused manner by directing their efforts in the areas where there is a greater risk, thereby enhancing the overall efficiency of the process and adding greater value with the same set of resources.

### **(iv) Stringent Norms Mandated by Regulators to Protect Investors**

The regulators are coming up in a big way to protect the interests of the investors. The focus of the latest regulations being ethical conduct of business enhanced corporate governance and financial reporting requirements, etc.

### **(v) Unconventional Business Models**

Businesses today use unconventional models and practices, for example, outsourcing of non-core areas, such as accounting.

### **(vi) Intensive Use of Information Technology**

Information technology (IT) is invariably embedded in all spheres of activities of a modern business enterprise today, from data processing to resource planning to online sales and e-commerce. Use of IT has, however, increased the threat of data thefts or losses on account of systems failure or hacking/espionage, as well as the need to comply with the cyber laws, etc.

### **(vii) An Increasingly Competitive Environment**

Whereas deregulation and globalization have melted the political as well as other barriers to entry in the markets for goods and services, free flow of capital, technology and know-how among the countries as well as strong infrastructure has helped in bringing down the costs of production and better access to the existing and potential consumers. This in turn, has lured more and more players in the existing markets, thereby, stiffening the competition.

## **Methodology for Internal Audit**

### **Standards on Internal Audit**

6.4 The Institute of Chartered Accountants of India has till date issued seventeen Standards on Internal Audit (SIAs), which aim to codify the best practices in the area of internal audit and also serve to provide a benchmark of the performance of the internal audit services. While formulating SIAs, the Board takes into consideration the applicable laws, customs, usages, business environment and generally accepted internal auditing practices in India. The list of Standards on Internal Audit (SIAs) is given below:

- SIA 1 Planning an Internal Audit
- SIA 2 Basic Principles Governing Internal Audit
- SIA 3 Documentation
- SIA 4 Reporting
- SIA 5 Sampling
- SIA 6 Analytical Procedures
- SIA 7 Quality Assurance in Internal Audit



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- SIA 8 Terms of Internal Audit Engagement
- SIA 9 Communication with Management
- SIA 10 Internal Audit Evidence
- SIA 11 Consideration of Fraud in an Internal Audit
- SIA 12 Internal Control Evaluation
- SIA 13 Enterprise Risk Management
- SIA 14 Internal Audit in an Information Technology Environment
- SIA 15 Knowledge of the Entity and its Environment
- SIA 16 Using the Work of an Expert
- SIA 17 Consideration of Laws and Regulations in an Internal Audit

Some important aspects on internal audit have been discussed in the following paragraphs:

### **Planning an Internal Audit**

6.5 The internal audit plan should be comprehensive enough to ensure that it helps in achieving of the above overall objectives of an internal audit. The internal audit plan should, generally, also be consistent with the goals and objectives of the internal audit function as listed out in the internal audit charter as well as the goals and objectives of the organization. Internal audit plan should cover areas such as:

- (i) Obtaining the knowledge of the legal and regulatory framework within which the entity operates.
- (ii) Obtaining the knowledge of the entity's accounting and internal control systems and policies.
- (iii) Determining the effectiveness of the internal control procedures adopted by the entity.
- (iv) Determining the nature, timing and extent of procedures to be performed.
- (v) Identifying the activities warranting special focus based on the materiality and criticality of such activities, and their overall effect on operations of the entity.
- (vi) Identifying and allocating staff to the different activities to be undertaken.

(vii) Setting the time budget for each of the activities.

(viii) Identifying the reporting responsibilities.

The internal auditor may refer Standard on Internal Audit (SIA) 1, *Planning an Internal Audit* for guidance in this regard.

### **Terms of Internal Audit Engagement**

6.6 The client is expected to formally communicate the appointment to the internal auditor. Upon receiving the communication, the internal auditor should send an engagement letter, preferably before the commencement of engagement so as to avoid any misunderstandings. The internal auditor and the client/auditee should record the terms of engagement in the letter or other suitable form of contract and it shall also confirm objective and scope of internal audit with the client.

The engagement letter should, generally, include reference to the following aspects:

- (i) Objective of the internal audit;
- (ii) Management's responsibilities;
- (iii) Scope of internal audit (including reference to the applicable legislation, regulation and various pronouncement of ICAI);
- (iv) Access to records, documents and information required in connection with the internal audit;
- (v) Expectation to receive management's written confirmation in respect to representation made in connection with the audit;
- (vi) Basis on which fees shall be computed and the billing arrangements thereof. Any changes in the terms of the appointment should be communicated in written form. Moreover, the internal audit may be on a continuous basis, monthly, quarterly or even annual. It is important for the internal auditor to ensure that the periodicity of the internal audit is sufficient in the light of overall business condition.

The Internal Auditor may refer Standard on Internal Audit (SIA) 8, *Terms of Internal Audit Engagement* that established Standards and provides guidance in respect of terms of engagement of the internal audit activity whether carried out in house or by an external agency.

## **Knowledge of the Business**

6.7 Prior to commencement of internal audit assignment, the internal auditor should have or obtain the knowledge of the business. The internal auditor should acquire sufficient knowledge to enable him to identify and understand the events, transactions and practices that can have significant effect on the internal audit process. Such knowledge shall be helpful to the internal auditor in assessing the inherent risk and control risk and in determining the nature, timing and extent of the internal audit procedures. Knowledge of the business assists the internal auditor in:

- (i) Assessing the risk and identifying the problems;
- (ii) Planning and performing the internal audit effectively and efficiently;
- (iii) Evaluating audit evidence; and
- (iv) Providing better service to the client.

The internal auditor should prepare the flow of events, transactions, processes and practices within the organization. This will help him in gaining better understanding of the process and the existence of the internal controls. They may refer to Standard on Internal Audit (SIA) 15, *Knowledge of the Entity and its Environment* for detailed guidance on what constitutes knowledge of an entity's business, its importance to various phases of an internal audit engagement and the techniques to be adopted by the internal auditor in acquiring such knowledge about the client others and its environment.

## **Audit Planning, Materiality and Sampling**

6.8 After acquiring the knowledge of business and various laws and regulation applicable to the tendering process the internal auditor should plan out the internal audit activity. Planning helps in achieving the objectives of internal audit function. Adequate planning ensures that:

- (i) Appropriate attention is devoted to significant areas of audit
- (ii) Potential problems are identified
- (iii) Skills and time of the staff are appropriately utilized
- (iv) Work is carried out in accordance with the applicable pronouncements of ICAI
- (v) Work is carried out in conformity with the applicable laws and regulation.

6.9 In preparing an internal audit program, an internal auditor should obtain an understanding of the accounting and internal control system prevalent within the entity, exercise preliminary judgment regarding the critical areas to be considered during the internal audit. It also helps the internal auditor in determining the audit materiality, nature and extent of audit procedures to be adopted. While designing an audit sample the internal auditor should consider the specific audit objectives, materiality, population from which the internal auditor wishes to select the sample, area of audit significance and the sample size. The guidance regarding sampling has been provided in Standard on Internal Audit (SIA) 5, *Sampling*.

## **Internal Control**

6.10 Internal controls are a system consisting of specific policies and procedures designed to provide management with reasonable assurance that the goals and objectives it believes important to the entity will be met.

*“Internal Control System”* means all the policies and procedures (internal controls) adopted by the management of an entity to assist in achieving management’s objective of ensuring, as far as practicable, the orderly and efficient conduct of its business, including adherence to management policies, the safeguarding of assets, the prevention and detection of fraud and error, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information. The internal audit function constitutes a separate component of internal control with the objective of determining whether other internal controls are well designed and properly operated.

6.11 Internal control system consists of following inter-related components:

- (i) Control (Or Operating) Environment
- (ii) Risk Assessment
- (iii) Control Objectivity Setting
- (iv) Event Identification
- (v) Control Activities
- (vi) Information and Communication
- (vii) Monitoring
- (viii) Risk Response.

## **Technical Guide on Internal Audit of Tendering Process**

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6.12 The system of internal control must be under continuous supervision by management to determine that it is functioning as prescribed and is modified, as appropriate, for changes in environment. The internal control system extends beyond those matters which relate directly to the functions of the accounting system.

6.13 The internal auditor should obtain an understanding of the significant processes and internal control systems sufficient to plan the internal audit engagement and develop an effective internal audit approach. The internal auditor should use professional judgment to assess and evaluate the maturity of the entity's internal control. The auditor should obtain an understanding of the control environment sufficient to assess management's attitudes, awareness and actions regarding internal controls and their importance in the entity.

6.14 The internal auditor should examine the continued effectiveness of the internal control system through evaluation and make recommendations, if any, for improving that effectiveness.

The importance of internal controls in a tendering process need not be over-emphasized. Internal audit plays a major role in determining the effectiveness of internal controls and highlights areas for improvement. The Internal auditor may also refer to Standard on Internal Audit (SIA) 12, *Internal Control Evaluation* for a detailed guidance on internal control.

### **Consideration of Fraud in an Internal Audit**

6.15 The primary responsibility for prevention and detection of frauds is that of the management of the entity. The internal auditor should, however, help the management fulfill its responsibilities relating to fraud prevention and detection. The internal auditor should obtain an understanding of the various aspects of the control environment and evaluate the same as to the operating effectiveness. The internal auditor should specifically evaluate the policies and procedures established by the management to identify and assess the risk of frauds, including the possibility of fraudulent financial reporting and misappropriation of assets. The internal auditor should assess the operating effectiveness of the policies and procedures established by the management to enable to make timely and effective decisions and discharge their responsibilities efficiently. The internal auditor should assess whether the controls implemented by the management to ensure that the risks identified are responded to as per the policy or the specific decision of the management, as the case may be, are in fact working effectively and whether

they are effective in prevention or timely detection and correction of the frauds or breach of internal controls. The internal auditor should evaluate the mechanism in place for supervision and assessment of the internal controls to identify instances of any actual or possible breaches therein and to take corrective action on a timely basis. The Standard on Internal Auditor (SIA) 11, *Consideration of Fraud in an Internal Audit* covers this aspect.

### **Internal Audit in an Information Technology Environment**

6.16 Computer Information System (CIS) environment exists when one or more computer(s) of any type or size is (are) involved in the processing of financial information, including quantitative data and the significance in relation to the audit, whether those computers are operated by the entity or third party.

6.17 The overall objective and scope of internal audit does not change in a CIS environment. However, the use of computer changes the processing, storage, retrieval and communication of financial information and may affect the accounting and internal control systems employed by the entity. Moreover, the risks involved in an internal audit may too undergo a change. The internal auditor should have sufficient knowledge of the CIS environment to plan, direct, supervise, control and review the work performed.

6.18 The data in an Entity operating in CIS environment is, generally, voluminous. The CIS automatically generates material transaction or entries and exchanges transaction automatically with other organization as in electronic data interface (EDI) systems. Source documents, computer files and other evidential matter exist only for short period and in machine readable form. The use of the computer Assisted Audit Technique (CAAT) shall increase the efficiency in the performance and enable the internal auditor to economically apply certain procedures to the entire population or accounts transaction.

6.19 The internal auditor should understand the CIS Environment in designing audit procedures to reduce the audit risk to an acceptable low level. The internal auditor should also document the audit plan, the nature, the timing and the extent of audit procedures performed and the conclusions drawn from the evidence obtained which may be in the electronic form. The internal auditor should ensure that such electronic evidence is adequately and safely stored and is retrievable in its entirety, as and when required.

6.20 The internal auditor may refer to Standard on Internal Audit (SIA) 14, *Internal Audit in an Information Technology Environment* for guidance on

procedures to be followed when an audit is conducted in a computer information systems (CIS) environment.

### Overview of Compliance

6.21 Compliance means ensuring conformity and adherence to regulatory acts, rules, procedures, laws, regulation, directives and circulars. Standard on Internal Audit (SIA) 17 issued by the ICAI relating to *Consideration of Laws and Regulations in an Internal Audit* states that when planning and performing audit procedures and in evaluating and reporting the results thereof, the internal auditor should recognize that noncompliance by the entity with laws and regulation may materially affect the financial statements.

However, an audit cannot be expected to detect noncompliance with all laws and regulations. Detection of noncompliance, regardless of materiality, requires consideration of the implications for the integrity of management or employees and the possible effect on the other aspect of the audit.

6.22 Non-compliance with laws and regulations could result in financial consequences for the entity such as, fines, litigation, etc. Internal auditor cannot be expected to detect non-compliance with all laws and regulations; however this argument shall not apply to engagements where the internal auditor is specifically engaged to test and report separately on compliance with specific law and regulations.

6.23 The management is responsible to ensure that the entity's operations are conducted in accordance with laws and regulations. The responsibility for prevention and detection of non-compliance shall be that of the management; however the internal auditor should plan and perform the internal audit recognizing that the internal audit may reveal conditions or events that would lead to questioning whether an entity is complying with laws and regulations.

6.24 The term "Non-compliance" refers to acts of omission or commission by the entity being audited, either intentional or unintentional, which are contrary to the prevailing laws and regulations. Such acts include transactions entered into by, or in name of the entity or on its behalf by the management or employees. However, noncompliance does not include personal misconduct (unrelated to the business activity of the entity) by the entity's management or employees.

### Understanding of Laws and Regulations

6.25 Laws and regulation vary considerably in their relation to the financial statements. Some laws or regulations determine the form or content of an

entity's financial statement or the amounts to be recorded or disclosures to be made in financial statements. Other laws or regulation are to be complied with by management or prescribed by the provisions under which the entity is allowed to conduct its business. Non-compliance with laws and regulation could result in financial consequences for the entity such as, fines, litigation, etc. It also has a potential effect on going concern as an entity.

6.26 The internal auditor should plan and perform the audit recognizing that the audit may reveal conditions or events that would lead to questioning whether an entity is complying with laws and regulations. In order to plan the internal audit, the internal auditor should obtain understanding of the legal and regulatory framework applicable to the entity and how the entity is complying with that framework.

6.27 To obtain this understanding, the internal auditor would particularly recognize that non-compliance of some laws and regulations may have a fundamental effect on the operations of the entity and may even cause the entity to cease operation, or call into question the entity's continuance as going concern. To obtain the understanding of laws and regulations, the internal auditor would ordinarily:

- (i) Use the existing knowledge of the entity's industry and business.
- (ii) Inquire with management as to the laws or regulations that may be expected to have a fundamental effect on the operations of the entity.
- (iii) Inquire with management concerning the entity's policies and procedures regarding compliance with laws and regulations.
- (iv) Discuss with management the policies or procedures adopted for identifying, evaluating and accounting for litigation claims and assessments.

6.28 After obtaining the understanding, the internal auditor should perform procedures to identify instances of non-compliance with those laws and regulations where non-compliance should be considered while preparing financial statements, specifically:

- (i) Inquiring with management as to whether the entity is in compliance with such laws and regulations.
- (ii) Inspecting correspondence with the relevant licensing or regulatory authorities.



***Significance of Compliance***

6.29 The significance of compliance is:

- (a) The benefits to the Industry are:
  - (i) Helps in compliance with legal terms and covenants and thereby reduces penalties and charges
  - (ii) Increased Internal Control
  - (iii) Reduction of internal frauds and losses
  - (iv) More time available for other core activities
  - (v) Increases efficiency in operations
  - (vi) Customer satisfaction.
- (b) The benefits to the stakeholder are:
  - (i) Ensures risk containment and safer market place
  - (ii) Better investor confidence
  - (iii) Uniform practices
  - (iv) Better image, hence, better value for the investor

## Chapter 7

# Risk Based Internal Audit

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7.1 Every organization has certain objectives which it strives to achieve. Organizations now-a-days exists in environment which is very turbulent and constantly changing. So this environment can exert risks which could hamper the organization from achieving the objectives. Risk based internal auditing (RBIA) is the methodology which provides assurance that risks are being managed to within the organization's risk appetite.

7.2 Under risk based audit approach, firstly, a macro level objectives are identified for a particular area or activity in hand. Then risks that may hamper chances to achieve the objectives are identified and documented. Then, the controls that are set taking care of the risks are evaluated by testing the controls.

7.3 The primary objectives of tender procurement are effective and timely supply at reasonable prices and in compliance with laws. There are two elements of risks likelihood and impact. Depending upon the organization, the risk likelihood and impact may vary accordingly.

7.4 Below mentioned table summarizes the Objectives, Risks and Controls for a particular audit under the risk based audit approach:

Objective	Risk	Controls
Effective supply	Not getting the required tender response	Effective advertisement of tender in dailies/ news-papers/ trade magazines. Adequate time gap between date of advertisement and submission of forms.
	Receiving response from related party vendors	Adherence to vendor selection norms. Tender form captures details of persons having controlling and governing interest in vendor enterprise. Purchasing products or services from concern in which

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		employees are interested, follow conflict of interest and disclosure policies.
	Not able to supply when required	Analysis of vendor supply capacity. Reference check. Check on vendors turnover from financial statements
	Provides inadequate material/service	QC checks done at time of receipt of goods. Samples are invited before awarding the tender.
Reasonable price	Awarding tender to costly vendor	Before any tender is advertised, a realistic estimate of the cost is prepared and documented. Review of overall budget, monitoring and reasoning of over shooting documented. Obtained prices/qualities competitive to prices/qualities obtained by other procurement functions/units, comparing obtained or improved value for money. Reasons documented for awarding to other than L1 vendor.
	Payment to vendor without receipt of materials	Advance payments monitored and reason analysis done for long pending advances. Generation of GRN required to process of payment.
Effective use	Tendered materials and services not used	Are purchase orders based on requisitions from authorized signatories Appropriate Quality check done, certificate of

### Risk Based Internal Audit

		<p>installment/completion received.</p> <p>Order for next batch is given only at reorder level of EOQ.</p> <p>Are materials with Expiry date used on FEFO basis (First Expiry First Out)</p>
Others	Compliance risks	Appropriate controls in place to ensure that procurement complies with relevant legislations.
	Human resource constraints	Employees have the necessary skills and experience to carry out procurements efficiently. Periodic training conducted for employees
	Records not available/ Lack of audit trail	Documented record retention policy adhered and mock audited by departmental/ process head.
E-tendering	Basic principles of public procurement compromised	All statutory, regulatory and contractual requirements are explicitly defined, documented, and kept up to date.
Efficient IT system	Spyware & Unauthorized access- Technical vulnerabilities	Detection, prevention, and recovery controls to protect against malicious code and appropriate user awareness procedures implemented.
	Protection against malicious and mobile code	Where the use of mobile code is authorized, the configuration shall ensure that the authorized mobile code operates according to a clearly defined security policy, and

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		unauthorized mobile code shall be prevented from executing
	Inadequate OS Access control	Access to operating systems shall be controlled by a secure log-on Procedure

The controls mentioned herein are suggestive in nature.

7.5 Suggestive ways to identify whether the documents are real or forged:

- (i) Generally, there would be spelling mistakes in commonly used words and spellings.
- (ii) They give only a PO Box number for an address, with no street information. If there is also no phone number or email/ website address it could be suspicious.
- (iii) Editing or modifications in original document may be seen in different ink or writing.
- (iv) Verifying the credentials, such as, PAN No., Service tax No., Sales Tax no. with its numbering logic and, if possible, with the government database.
- (v) In case of physical documents which generally arrive in office in a cover and are folded, if they are without any mark of folding, it could be suspicious, especially, where some pages are folded and some are not.

7.6 Post contract deviations should be closely studied and its impact on overall tender should be evaluated. It should be ensured that major modifications do not wipe out the benefits of tendering process. Such modifications should be avoided and be with approval of seniors along-with documented reasons for the same. Strict adherence should be checked for post tendering requirements and deviations in such requirements should, generally, not be accepted.

## Chapter 8

### Internal Audit Checklist

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8.1 A suggestive checklist to help to conduct internal audit is given below: The checklist may be modified depending upon the tendering process at the organization being audited.

#### General

S.No.	Particulars	Y	N	N/A
1	Adequate records are maintained throughout the procurement process and provide sufficient information to enable an internal audit or independent review.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	There is a documented policy on decision making regarding tender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Entire process of tendering is adequately and completely documented.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Does the policy document stipulate action in case of cancellation of contract.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Whether issues arising on previous internal audit adequately resolved.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Are issues highlighted by whistle - blower relating to tendering are adequately resolved.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Planning the Purchase

S.No.	Particulars	Y	N	N/A
1.	Appropriate approval to purchase has been obtained in accordance with the organizations delegation of justify authority.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Advertisement is floated long before the submission date for tenders.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Appropriate procedures are in place to ensure that respondents submitting tenders are dealt with fairly and equitably during the tender process.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	An estimate of the cost of the goods/ services has been developed and funding/ approved budget is available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	A Procurement Plan has been developed and the most appropriate procurement methodology has been determined.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Market research and consultation has been undertaken.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Specifications have been justify clearly defined.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Specification do not restrict competition, reflect bias to any brand, or act as a barrier to the consideration of any alternatives and addresses value for money considerations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Internal Audit Checklist**

<b>S.No.</b>	<b>Particulars</b>	<b>Y</b>	<b>N</b>	<b>N/A</b>
9.	A tender evaluation and probity plan has been developed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	A specific closing time, date and place of lodgment, has been allocated and communicated.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.	An evaluation committee has been established and members are familiar with procurement processes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12.	Procedures are in place to deal with potential conflicts of interest.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13.	Confidentiality and conflict of interest documents have been obtained from all members of the Evaluation Committee and details of action taken to manage any conflicts of interest are recorded	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.	Evaluation criteria, weightage (preferably in %) and an evaluation methodology have been defined.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15.	Evaluation criteria have been based on the specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16.	Impact on environment/ Climate Change is included in the evaluation criteria (wherever applicable).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17.	A risk assessment and mitigation plan has been developed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18.	A contract management plan has been put in place.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



## Documentation

S.No.	Particulars	Y	N	N/A
1	The RFT documentation provides all the information necessary to enable potential suppliers to prepare appropriate submissions. The RFT contains:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(a) a clear description of the goods and/or services to be procured;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(b) all conditions for participation;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(c) details of the evaluation criteria to be used in the assessment of tenders, the evaluation methodology and any weightage to be used in the assessment;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(d) details of the information/ documentary evidence that should be provided by suppliers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(e) all other relevant terms and conditions of the tender;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(f) details of any applicable government policies and principles;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(g) details of the agency contact information;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(h) details of the specified closing time, date and place of lodgment;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Internal Audit Checklist**

<b>S.No.</b>	<b>Particulars</b>	<b>Y</b>	<b>N</b>	<b>N/A</b>
	(i) advice on the treatment of delayed/ late tenders;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(j) advice on any pre-tender briefing sessions;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(k) pricing requirements (e.g., price to be exclusive of GST) including, if applicable, any requirements in relation to out-of-pocket expenses.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(l) indication as to whether alternative tenders will be considered.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **Inviting Tenders**

<b>S.No.</b>	<b>Particulars</b>	<b>Y</b>	<b>N</b>	<b>N/A</b>
1	The tender has been placed on the designated Tender website or adequately advertised as per documented procedure.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Copies of the Request for Tender documentation have been sent to identified businesses (in addition to the publication of the notice).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Details of businesses issued with the RFT have been recorded.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	RFT documentation has been made available electronically.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Sufficient time has been provided to allow the preparation of tenders.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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S.No.	Particulars	Y	N	N/A
6	If addendum were issued, it was issued to all suppliers who were issued with the RFT documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	All potential suppliers to whom addendum were issued were requested to confirm receipt of the addenda.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	If addendum were issued, sufficient time was provided to allow vendors to amend their tender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Any extension of the time limit for suppliers to respond was applied equally to all suppliers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Receiving Tenders

S.No.	Particulars	Y	N	N/A
1	Fair and impartial procedures were in place in relation to opening of tenders.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(a) A secure facility for the receipt of tenders has been provided at the designated tender submission location.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(b) The tender documentation was not opened until after the notified closing time of the tender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(c) Tenders were opened in the presence of at least three officers, including two senior officers of the Agency.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(d) All tenders received were clearly identified and recorded.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Internal Audit Checklist

S.No.	Particulars	Y	N	N/A
	(e) The vendors signed all tender forms and tender schedule pages in the appropriate manner as required in the RFT.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	The procedures for any delayed/ late tenders have been followed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Check done to ensure fees for application form is received from all vendors participating.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Where potential suppliers have been provided with an opportunity to correct unintentional errors of form between the opening of submissions and any decision, the same opportunity was provided to all participating potential suppliers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Vendors were advised that their submissions were received.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Information provided by persons submitting tenders is treated as confidential.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Documents have been secured.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Evaluating Tenders

S.No.	Particulars	Y	N	N/A
1	Tenders are fairly and equitably evaluated in a manner that is consistent with the Government's procurement principles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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S.No.	Particulars	Y	N	N/A
2	Mandatory tender schedules have been submitted by vendors and checked for compliance.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	The evaluation criteria, weightage, and methodology as set out in the tender documents have been used to evaluate the tenders.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	The recommended vendor is an acceptable legal entity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	The recommended vendor has complied with the conditions of tender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	If a tender is being considered further, any vendor's qualifications, documentation departures, commercial conditions, or comments requiring clarification have been noted for resolution.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	The reasons for not accepting any tender have been documented on file and are clear and justifiable (e.g. tender substantially not conforming; specified QA requirements not met; vendor has insufficient expertise).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	The contract is being awarded to the supplier who:			
	(a) satisfies the conditions for participation; and	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(b) is fully capable of undertaking the contract; and	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Internal Audit Checklist

S.No.	Particulars	Y	N	N/A
	(c) criteria relating to whose submission is determined to be the lowest price, the best value, or the most advantageous in accordance with the essential requirements and evaluation criteria specified in the notice of tender and the RFT documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	A Tender Evaluation Report has been completed, and signed by all members of the Evaluation Committee.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Confirmation has been sought regarding the availability of budget/funds for the actual cost of the goods/ services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Review Committee

8.2 At this stage, the final Evaluation Report, signed by the Evaluation Committee, needs to be endorsed by the Review Committee prior to advice being provided to suppliers on the outcome of the process and before negotiations with the preferred supplier or the contract is awarded

## Accepting Successful Tender, Finalising Contract and Unsuccessful Tenders

S.No.	Particulars	Y	N	N/A
1	A submission was made to the Review Committee, using the appropriate forms, seeking endorsement of the procurement process.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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S.No.	Particulars	Y	N	N/A
2	The Review Committee endorsed the process used in the procurement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	The recommendation of the Evaluation Committee has been approved by the appropriate delegated authority (e.g. Secretary, Deputy Secretary).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	The successful and unsuccessful vendors have been advised of the outcome of the tender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Documents are stored as per record retention policy applicable to the enterprise.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Was actual expenditure in line with the amount of contract entered after tendering.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 9

# Pitfalls in Tendering Process

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

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

9.3 In this case, the original price bid of L1 bidder was checked and it was found that a stamp was put on each page of the price bid, which contained date of opening and signatures of the members of the Tender Opening Committee. However, the column for the number of corrections was kept blank and the number of corrections was not mentioned, thereby giving a chance for manipulation in the price bid at a later stage.

9.4 In another project of a Power Sector PSU, the covering letter of the price bid of one of the bidders to whom the work was finally awarded was having a list of all the documents enclosed in the bid. However, in the same bid, a letter indicating a discount was also enclosed but this letter was not having any mention on the first page of the price bid which was containing



## Technical Guide on Internal Audit of Tendering Process

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the list of all the enclosures. Incidentally, this bidder could become L1 only after considering the discount as per this letter, which leaves enough room for suspicion that the discount letter might have been added at a later stage.

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

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

9.6 Pre-qualification criteria for a power project costing ₹ 220 crores was not made exhaustive. Minimum value of work completed by the bidder in support of their past experience was not stipulated. Five reputed and large firms having experience in power projects were excluded from participation on flimsy ground of executing small value works. Since, no minimum value of work was mentioned, this ground of exclusion of these firms was totally unfair. Out of the two firms qualified, one firm PSU 'B' was having experience of the work costing only ₹ 31.00 crores. If the same yard stick was applied uniformly, other excluded firms also would have qualified.

The second firm 'S' which ultimately became L-1 was qualified on the basis of work in progress against the requirement of completed work. Thus, on one hand eligible firms were disqualified an ineligible firm was qualified on other hand. There appeared to be hardly any competition. The quoted rates of PSU 'B' was unreasonably high (Rs.320Crores) as against the L-1's rates (Rs. 220 crores) clearly indicating its role as a supporting firm only.

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

## **Pitfalls in Tendering Process**

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

9.8 In Road contracts, a condition was stipulated that entire quantity of bitumen to be used in the work shall be brought by the contractor before commencement of work. At the same time, under escalation clause, it was mentioned that the difference between the actual purchase rate and stipulated rate (for issue of Bitumen by the Department) as and when the Bitumen brought by the contractor shall be paid to the contractor. The two stipulations were ambiguous. But the latter was operated to the benefit of contractor to the tune of ₹ 1.5 crores on account of escalation in the price of bitumen.

9.9 In a Railway project, the tender documents were issued to all the applicants without checking the criteria of selection specified in tender notice. This resulted in opening of price bids of ineligible applicants also. Subsequently, the work was awarded to an ineligible contractor on the pretext of being the lowest. The same resulted in inordinate delay and rescission of the contract.

9.10 One Government Department awarded the work to a PSU and the above PSU in turn awarded the work to a contractor (without inviting tender) at 5% lower than the tendered amount accepted by the Govt. Department. In the above illustration, following irregularities were observed – (i) The Govt. Department awarded the work at higher rates; (ii) Govt. Department allowed the PSU to sublet the contract against the provisions in the agreement; and (iii) The PSU awarded the work without call of tenders to a favorite contractor.

9.11 In a hydel work, insurance for flood was not obtained by the contractor even though specific provision exists in the agreement resulting in large saving to the contractor. During execution, flood occurred resulting in huge loss to the department that could not be recovered from the contractor.

9.12 In one of the works being executed by a PSU, no provision was made for issue of machinery to the contractor. On contractor's failure to deploy the required machinery, the machinery was issued by the Department and hire charges were fixed at a much lesser rate than the prevailing market rates resulting in undue advantage to the contractor.

### **Technical Guide on Internal Audit of Tendering Process**

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9.13 In one work, the contract was rescinded due to delay on the part of the contractor in completion of building. The work was awarded to another contractor on single tender basis with additional liability of approx. ₹ 44.0 lakhs. No action was taken by the department to encash the various bank guarantees to recover the additional liability from the defaulting contractor resulting in undue favor to the contractor.

9.14 In one building work, RCC structure was substituted with structural steel and pre-cast slab and the requirement was justified by showing urgency in completion. The extra cost on account of substitution was ₹ 1.00 crore (approx.) but the work could not be completed in the revised period of completion. Thus, the substitution was aimed to favor the contractor.

## Appendix 1

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No. 008/CRD/013  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi-110023.  
Dated: 18/5/09

Circular No. 10/5/09

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

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

Sd/-  
(Shalini Darbari)  
Director

All Chief Vigilance Officers

**NOTE: SECTION 6.02 (i) & 6.02 (ii) OF THE SOP ON INTEGRITY PACT HAS BEEN DELETED WITH CIRCULAR No. 31/08/10 DATED 13.8.10.**

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

#### **1.0 Background**

1.01 The Central Vigilance Commission has been promoting Integrity, transparency, equity and competitiveness in Government/PSU transactions and as a part of vigilance administration and superintendence. Public procurement is a major area of concern for the Central Vigilance Commission and various steps have been taken to put proper systems in place. Leveraging technology, especially wider use of the web sites for disseminating information on tenders, clearly defining the pre qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission. In this context, Integrity Pact (IP), a vigilance tool conceptualized and promoted by the Transparency International, has been found to be useful. The Commission has, through its Office Orders No. 41/12/07 dated 04.12.07 and 43/12/07 dated 28.12.07 and Circulars No. 18/05/08 dated 19.05.08 and 24.08.08 dated 05.08.2008 (copies appended), recommended adoption of Integrity Pact and provided basic guidelines for its implementation in respect of major procurements in the Government Organizations.

#### **2.0 Integrity Pact**

2.01 The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

Promise on the part of the principal not to seek or accept any benefit, which is not legally available;

Principal to treat all bidders with equity and reason;

- Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/IPC Act;

- Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary.
- Bidders to disclose any transgressions with any other company that may impinge on the anti corruption principle.

2.02 Integrity Pact, in respect of a particular contract, would be operative from the stage of invitation of bids till the final completion of the contract. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

### **3.0 Implementation procedure:**

3.01 Adoption of IP is voluntary for any organization, but once adopted, it should cover all tenders /procurements above a specified threshold value.

3.02 The threshold value for the contracts to be covered through IP should be decided after conducting proper ABC analysis and should be fixed so as to cover 90-95% of the total procurements of the organization in monetary terms.

3.03 Apart from all high value contracts, any contract involving complicated or serious issues could be brought within the ambit of IP, after a considered decision of the management

3.04 The Purchase / procurement wing of the organization would be the focal point for the implementation of IP.

3.05 The Vigilance Department would be responsible for review, enforcement, and reporting on all related vigilance issues.

3.06 It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.

3.07 IP should cover all phases of the contract, i.e. from the stage of Notice Inviting Tender (NIT)/pre-bid stage till the conclusion of the contract, i.e. the final payment or the duration of warranty/guarantee.

3.08 IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.

## **Technical Guide on Internal Audit of Tendering Process**

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3.09 Periodical Vendors' meets, as a familiarization and confidence building measure, would be desirable for a wider and realistic compliance of the principles of IP.

3.10 Information relating to tenders in progress and under finalization would need to be shared with the IEMs on monthly basis.

### **4.0 Role/ Functions of IEMs:**

4.01 IEM would have access to all Contract documents, whenever required. Ideally, all IEMs of an organization should meet in two months to take stock of the ongoing tendering processes.

4.02. It would be desirable to have structured meeting of the IEMs with the Chief Executive of the organization on a monthly basis to discuss/review the information on tenders awarded in the previous month.

4.03 The IEMs would examine all complaints received by them and give their recommendations/views to the Chief Executive of the organization, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/administrative action.

4.04 At least one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management

4.05 The recommendations of IEMs would be in the nature of advice and would not be legally binding. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.

4.06 The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him or directed to him by the Commission.

### **5.0 Appointment of IEMs**

5.01 The IEMs appointed should be eminent personalities of high integrity and reputation. The Commission would approve the names of IEMs out of the panel of names, initiated by the organization concerned, in association/consultation with the CVO.

5.02 While forwarding the panel, the organization would enclose detailed bio-data in respect of all names proposed. The details would include postings before superannuation, special achievements, experience, etc., in Government sector. It is desirable that the persons proposed possess domain experience of the PSU activities or the relevant field with which they may be required to deal.

5.03 A maximum of three IEMs would be appointed for Navratna PSUs and up to two IEMs for others.

5.04 Organizations could propose a panel of more than three names for the consideration of the Commission.

5.05 Persons appointed as IEMs in two organizations would not be considered for a third organization.

5.06 For PSUs having a large territorial spread or those having several subsidiaries, there could be more IEMs, but not more than two IEMs would be assigned to one subsidiary.

5.07 Remuneration payable to the IEMs would be equivalent to that admissible to an Independent Director in the organization. This remuneration would be paid by the organization concerned.

5.08 The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. They could be communicated individually to the IEMs concerned.

5.09 The normal term of appointment for an IEM would be 3 years, and it would be subject to renewal by the Commission thereafter.

### **6.0 Review System:**

6.01 An internal assessment of the impact of IP shall be carried out periodically by the CVOs of the organizations and reported to the Commission.

6.02 Two additional reviews are envisaged for each organization in due course.

- (i) Financial impact review, which could be conducted through an independent agency like auditors, and
- (ii) Physical review, which could be done through an NGO of tested credibility in the particular field.

6.03 It is proposed to include the progress in the implementation of IP in the Annual Report of the Commission. CVOs of all organizations would keep the Commission posted with the implementation status through their monthly reports or special reports, wherever necessary.



## Technical Guide on Internal Audit of Tendering Process

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**7.0 All organizations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and carry it to its effective implementation.**

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

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No.007/VGL/033  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A  
GPO complex, INA,  
New Delhi-110023  
Dated the 4<sup>th</sup> December 2007

Office Order No.41/12/07

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

1. Ensuring transparency, equity and competitiveness in public procurement has been a major concern of the Central Vigilance Commission and various steps have been taken by it to bring this about. Leveraging technology specially wider use of the web-sites for disseminating information on tenders, tightly defining the pre-qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission in order to bring about greater transparency and competition in the procurement/award of tender.
2. In this context, Integrity Pact, a vigilance tool first promoted by the Transparency International, has been found to be useful. The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any corrupt influence on any aspect of the contract. Only those vendors/bidders who have entered into such an Integrity Pact with the buyer would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification. The Integrity Pact in respect of a particular contract would be effective from the stage of invitation of bids till the complete execution of the contract.
3. The Integrity Pact envisages a panel of Independent External Monitors (IEMs) approved for the organization. The IEM is to review independently and

## Appendix 1

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

4. The Commission would recommend the Integrity Pact concept and encourage its adoption and implementation in respect of all major procurements of the Govt. organizations. As it is necessary that the Monitors appointed should be of high integrity and reputation, it has been decided that the Commission would approve the names of the persons to be included in the panel. The Government Organizations are, therefore, required to submit a panel of names of eminent persons of high integrity and repute and experience in the relevant field, through their administrative Ministry, for consideration and approval by the Commission as Independent External Monitors. The terms and conditions including the remuneration payable to the Monitors need not be a part of the Integrity Pact and the same could be separately communicated. It has also to be ensured by an appropriate provision in the contract, that the Integrity Pact is deemed as part of the contract in order to ensure that the parties are bound by the recommendation of the IEMs, in case any complaint relating to the contract, is found substantiated.

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

Sd/-

(Vineet Mathur)  
Deputy Secretary

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

## **Technical Guide on Internal Audit of Tendering Process**

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Steel Authority of India Limited (SAIL) hereinafter referred to as "The Principal".

And

hereinafter referred to as "The Bidder/Contractor"

### **Preamble**

The Principal intends to award, under laid down organizational procedures, contract/s for \_\_\_\_\_. The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relations with its Bidder(s) and /or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

### **Section 1: Commitments of the Principal**

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:
  - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b. The Principal will during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the process or the contract execution.
  - c. The Principal will exclude from the process all known prejudiced persons.
2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there is a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

### **Section 2: Commitments of the Bidder(s)/ Contractor(s)**

1. The Bidder(s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

## Appendix 1

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- a. The Bidder(s) / contractor(s) will not, directly or through any other persons or firm, offer promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage or during the execution of the contract.
  - b. The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
  - c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s) /Contractors will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only.
  - e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
2. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Section 3: Disqualification from tender process and exclusion from future contracts**

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such

## **Technical Guide on Internal Audit of Tendering Process**

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as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings".

### **Section 4: Compensation for Damages**

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminated the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

### **Section 5: Previous Transgression**

1. The Bidder declares that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti corruption approach or with any other public sector enterprise in India that could justify his exclusion from the tender process.
2. If the bidder makes incorrect statement on this subject, he can be disqualified from the tender process for action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

### **Section 6: Equal treatment of all Bidders/Contractors/Subcontractors.**

1. The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will enter into agreements with identical conditions as this one with all bidders, contractors and subcontractors.
3. The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

### **Section 7: Criminal charges against violation Bidder(s)/ Contractor(s)/Sub contractor(s).**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has

substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

### **Section 8: Independent External Monitor/Monitors**

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, SAIL.
3. The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.

As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

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

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

If the Monitor has reported to the Chairman SAIL, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman SAIL has not, within the reasonable time taken visible action to proceed against such offence or reported

## Technical Guide on Internal Audit of Tendering Process

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it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

The word 'Monitor' would include both singular and plural.

### Section 9 - Pact Duration

This pact begins when both parties have legally signed it. It expires for the Contractor 10 months after the last payment under the contract, and for all other Bidders & months ---- the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairman of SAIL.

### Section 10 - Other provisions

This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.

Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

\_\_\_\_\_  
(For & on behalf of the Principal)  
(Office Seal)

\_\_\_\_\_  
(For & On behalf of Bidder/ Contractor)  
(Office Seal)

Place -----

Date -----

Witness 1:  
(Name & Address) \_\_\_\_\_

Witness 2:  
(Name & Address) \_\_\_\_\_

## **Appendix 1**

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No.007/VGL/033  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A  
GPO complex, INA,  
New Delhi-110023  
Dated the 28<sup>th</sup> December 2007

### **Office Order No.43/12/07**

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

Reference is invited to Commission's office order no. 41/12/2007 circulated vide letter of even no. dated 4/12/2007 on the aforementioned subject.

2. The Commission vide Para 4 of the aforementioned office order had directed that the organizations were required to forward a panel of names of the eminent persons of high integrity through their administrative ministries for consideration and approval by the Commission as IEMs.

3. The matter has been reconsidered by the Commission and in order to simplify the procedure and avoid delay, it has been decided that the organizations may forward the panel of names of eminent persons for appointment and consideration as IEMs directly to the Commission for approval.

4. Para 4 of the Commission's circular cited above stands amended to this extent.

Sd/-

(Vineet Mathur)  
Deputy Secretary

All Chief Vigilance officers



## **Technical Guide on Internal Audit of Tendering Process**

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No. 008VGL/001  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A  
GPO complex, INA,  
New Delhi-110023  
Dated, the 19<sup>th</sup> May, 2008

### **Circular No.18/05/08**

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

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

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

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

This may be noted for future compliance.

Sd/-  
(Rajiv Verma)  
Under Secretary

All Chief Vigilance Officers

No. 007/VGL/033  
Government of India  
Central Vigilance Commission

Satarkta Bhawan, Block-A  
GPO complex, INA,  
New Delhi-110023  
Dated the 5<sup>th</sup> August 2008

**Circular No.24/8/08**

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

The Commission, vide its Circulars No. 41/12/07, dated 4.12.07 and 18/5/08 dated 19.5.08, has emphasized the necessity to adopt Integrity Pact (IP) in Government organizations in their major procurement activities. The Commission had also directed that in order to oversee the compliance of obligations under the Pact, by the parties concerned, Independent External Monitors (IEMs) should be nominated with the approval of the Commission, out of a panel of names proposed by an Organization.

2. As more and more organizations begin to adopt the Integrity Pact, several queries and operational issues have been raised. The Commission has examined these issues and suggested the following guidelines:

- i. Adoption of Integrity Pact in an organization is voluntary, but once adopted, it should cover all tenders/procurements above a specified threshold value, which should be set by the organization itself.
- ii. IP should cover all phases of the contract i.e., from the stage of Notice Inviting Tender(NIT)/pre-bid stage to the stage of last payment or a still later stage, covered through warranty, guarantee etc.
- iii. IEMs are vital to the implementation of IP and at least one IEM should be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be referred to the full panel of IEMs, who would examine the records, conduct the investigation and submit a report to the management, giving joint findings.
- iv. A maximum of three IEMs would be appointed in Navratna PSUs and upto two IEMs in other Public Sector Undertakings. The organizations may, however, forward a panel of more than three names for the Commission's approval. For the PSUs having a large territorial spread or

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those having several subsidiaries, the Commission may consider approving a large number of IEMs, but not more than two IEMs would be assigned to any one subsidiary.

- v. Remuneration payable to the IEMs may be similar to the Independent Directors in the organization.
  - vi. In view of limited procurement activities in the Public Sector Banks, Insurance Companies and Financial Institution, they are exempted from adopting IP.
3. It needs no reiteration that all organizations must make sustained efforts to realize the spirit and objective of the Integrity Pact. For further clarifications on its implementation or the role of IEMs, all concerned are advised to approach the Commission.

Sd/-  
(Rajiv Verma)  
Under Secretary

All CVOs

## Appendix 2

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सत्यमेव जयते

केन्द्रीय सतर्कता आयोग  
CENTRAL VIGILANCE COMMISSION



सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,  
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011/VGL/063

सं./No.....

दिनांक / Dated... 24<sup>th</sup> June, 2011

Circular No. 08/06/11

### Subject: Selection and employment of Consultants.

The issue of role and professional liability of consultants in government contracts has been under consideration in the Commission for quite some time. The Commission has decided that following guidelines, be kept in view while finalising the contracts for engaging consultants.

**1. Conflict of Interest.** The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting or other activities that conflict with the interest of the employer under the contract.

The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with following requirements:-

(a) The consultants shall provide professional, objective, and impartial advice and at all times hold the employer's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own interests. Consultants shall not be hired for any assignment that would 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. Without limitation on the generality of the foregoing, 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 to provide goods, works, or non-consulting services for a project, or any affiliate that 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 to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from subsequently providing 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 does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and build contract.

(ii) **Conflict among consulting assignments** – Neither consultants (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of

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the consultants. As an example, consultants assisting a employer in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.


(iii) **Relationship with Employer's staff** – Consultants (including their experts and other personnel, and sub-consultants) that have a close business or family relationship with a professional staff of the Employer (or of the project implementing agency) 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, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Employer throughout the selection process and the execution of the contract.

(iv) **A consultant shall submit only one proposal**, either individually or as a joint venture partner in another proposal. If a consultant, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member, in more than one proposal when circumstances justify and if permitted by the RFP.

(b) **Unfair Competitive Advantage** - Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Employer shall make available to all the short listed consultants, together with the request for proposals, all information that would in that respect give a consultant a competitive advantage.

**2. Professional Liability** - The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the Employer will be governed by the applicable law, the contract need not deal with this matter. The client (purchaser) may, however, prescribe other liabilities depending on the requirement in each case without any restriction on the Consultant's liability as per the applicable law.

The Commission desires that the above guidelines be brought into the notice of all concerned.

  
(J Vinod Kumar)  
Officer on Special Duty

To

1. All Chief Vigilance Officers of Ministries / Departments / PSUs / Banks / Insurance Companies / Autonomous Organizations / Societies / UTs.
2. All Secretaries to the Government of India.
3. All CEOs / Heads of Organizations of PSUs / Banks / Insurance Companies etc.