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from CVO's Desk.....

'Vigilance', in organisation's context, is an essential and integral part of management function. When viewed from this perspective, being vigilant in the matters concerning organization can be seen to be the responsibility of each and every employee, more so, of those carrying out managerial functions in the organisation.

The theme of Vigilance Awareness Week to be observed from 31-10-2011 to 05-11-2011 has been announced by the CVC as "Participative Vigilance", calling for active participation from every employee and stakeholder in the initiatives to spread awareness against corruption, thereby, nurture effective functioning of organisation through ethical, fair and transparent procedures.

Let us, therefore, rededicate ourselves to honest and effective implementation of vigilant procedures to keep our company vibrant and excellent, and continue to render significant contributions to the economic and social development of the nation.

S. S. Galgali.
(Shreenivas Galgali)

VIGILANCE AWARENESS WEEK - 2011

The Central Vigilance Commission has decided that this year, the Vigilance Awareness Week would be observed by all the organizations, falling within the advisory jurisdiction of the Commission from 31st October to 5th November, 2011. Accordingly, the observance of the Vigilance Awareness Week would commence with the Pledge on 31st October, 2011 at 11.00 a.m.

The theme selected for observance of Vigilance Awareness Week this year is "Participative vigilance". The Commission has suggested Participative vigilance through all stakeholders' involvement for system improvements and

laying down transparent policies for good governance in all areas of public administration and effectively implementing them, and it has been further suggested that the Week should be used to disseminate awareness against corruption, involving all the stakeholders, Government / Organisations / PSUs etc. and members of civil society to fight corruption.

The Commission in its circular dated 12/09/2011 has suggested several other initiatives to disseminate awareness against corruption, which interalia include:

- ❖ Displaying of banners, posters etc, at prime locations in offices;
 - ❖ Organizing seminars/workshops inviting prominent faculty;
 - ❖ Organizing competitive debates/lectures on anti corruption topics amongst the employees and the students in the colleges/schools and to distribute prizes;
 - ❖ Bringing out special issue of journals during the period; etc.
- (For the complete Circular No. 09/07/11 dated 12th September 2011, please visit <http://www.cvc.nic.in>)

**TOLL FREE NUMBER FOR LODGING COMPLAINTS WITH VIGILANCE DEPT.,
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PROBLEM AREAS OF CORRUPTION IN CONSTRUCTION

Chief Technical Examiner's organisation of Central Vigilance Commission (CTE of CVC) had released a booklet on "Problem Areas of Corruption in Construction" in Aug 2002. The third part of the same was reproduced for information and guidance of our readers in Spandana (April - June, 2011). This is the **fourth part** and subsequent issues of Spandana will carry the remaining parts of the booklet.

7. INVITING AND OPENING OF TENDERS

7.1 PROBLEMS

7.1.1 Adequate time for publicity not given

Adequate time is not given to restrict the competition in tendering so that the work can be awarded to a favoured contractor at exorbitant rates.

ILLN* : The period between the date fixed for opening and the date of publication in newspaper was only 7 days instead of normal period of 21 days, resulting in restricted tendering and the work was awarded at rates higher than the rates of other accepted contracts of similar nature during the period.

7.1.2 Wide publicity not given

It was observed in many cases that the tenders were published in newspapers having hardly any circulation. Publicity through websites are to be encouraged as far as possible. Also tender notices are not sent to the Building Association. It has come to the notice that wide publicity is not given or restricted tenders are invited by some corrupt officers due to the following:

- (i) To favour a few contractors who normally executes the works for such organizations.
- (ii) To award works to the above contractors in turn by having understanding among the contractors and the corrupt officials.
- (iii) "Bribe Money" for awarding the works is extracted by the corrupt officials well in advance at various stages. In certain cases, the bribe money is paid well before invitation of tenders for the works since the prospective contractors are decided much before the invitation of tenders. Hence wide publicity is a must.

7.1.3 Tenders issued to ineligible applicants:

The prequalification criteria specified in tender notice is not

being checked before issue of tenders resulting in award of works to ineligible contractors.

ILLN : 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.

7.1.4 Tender Sale and opening registers not maintained

7.1.5 Opening tenders in the absence of tenderers

For fair and transparent system of tendering, the tenders should be opened at the prescribed time and place in the presence of bidders who choose to be present at that time. The rates quoted by various tenderers are read by the tender opening officer.

ILLN : Tenders were opened in the absence of the intending tenderers in one work. Finally the rates were tampered and, the work was awarded to the 'L-2'

7.1.6 Corrections, omissions etc. in tender not numbered and attested by the tender opening officers.

It is a must that all corrections, omissions and insertions etc. are proper numbered and attested by the tender opening officers to avoid possibility of tampering of documents.

ILLN: A work was awarded with the corrected rates. The corrections were not numbered and attested by the officer who opened the tenders. It was found that the rates of 'L-3' were reduced to make him 'L-1' and the work was awarded to 'L-3'.

7.1.7 Rate not quoted in figures by Tenderers

The rates for various items are to be quoted in words also. The tender document should have provision of quoting rates in figures and words by the tenderer. In case the tenderer

fails, the rate in words must be written by the tender opening officer.

ILLN: In one of the works executed by a PSU, the rate of an item was increased by L-1 after adding 'O', in connivance with the officials resulting in increase of rates by ten times, after ensuring that he remains L-1 even after this change. The above had happened because the 'L-1' had not quoted in words for the above item.

7.1.8 Tender invited without availability of site and approval of local body.

Award of works without obtaining possession of site and approval of the scheme by local body is not proper as it results in non-utilization of assets created and huge escalation payment to the contractor due to delay in commencement and completion of the works.

ILLN: In case of airport extension, part land between the existing runway and proposed extension of runway was made available to the contractor. The extension of runway was done leaving a portion for which possession of land was not available. Thus, Rs. 8.00 crores spend for extension of runway could not yield any benefit and the assets created could not be utilized.

7.1.9 Limited tenders invited as emergency work but later either work delayed or not put to immediate use on completion :

It was observed that limited tenders were invited on grounds of emergency but later either the completion was abnormally delayed or assets were not put to use on completion. The above is done to avoid competitive bidding and mainly to award the work to favourite contractors at higher rates.

ILLN1: In one of the embankment work, the limited tenders were called on the pretext of emergency and work awarded at rates higher than justified rates. The work of four months could not be completed even after 2 years.

ILLN2: Another work executed by a Petroleum PSU was awarded to a contractor on single tender basis without call of tenders at exorbitant/high rates showing urgency in construction. The above work took about 1½ years for completing the same against the stipulated time of 4 months. The asset created was also not put to use for a long time after completion of the work.

7.1.10 Tenders received late considered for evaluation/award

Tenders received after due date and time of receipt are not to be considered to maintain the sanctity of tender system and to avoid malpractices.

8. TENDER SCRUTINY AND AWARD OF WORKS

8.1 PROBLEMS

8.1.1 Certificates for satisfactory completion of work executed for private organizations accepted without TDS certificate.

The certificates produced by the contractors for having executed works for private organizations are accepted without ascertaining the TDS details as a proof for completion of work of required magnitude. The same is not proper and may result in award of work to the ineligible contractors. Therefore, TDS certificate in addition to the certificate issued by the Organisation shall form the basis for considering experience of work executed for private organisation.

ILLN: In many works awarded for Jetty construction, reclamation etc. by Port authorities, T.D.S. certificate are not cross-checked before considering works of private Organisation for prequalification resulting in prequalification of ineligible contractors.

8.1.2 Non-evaluation of conditions quoted by the tenderers and accepting undue conditions during negotiations to give undue benefits to the contractor.

Financial implications of the conditions given at the time of submission of the tenders are generally not worked out to decide the relative position of the tenderers. Due to the above, the work is not awarded to the actual 'L-1' During negotiations certain additional conditions are accepted regarding supply of non-specified material/machinery, interest free mobilization/equipment advance; and increase in rates of few items etc. The same is not proper and results in extending undue advantage to certain contractors.

ILLN: In a bridge work, contractor put forth the conditions of reimbursement of difference in rates of cement, steel, liner etc. prevalent at time of procurement and at time of submitting tender. The financial implication of above conditions was not evaluated at time of scrutiny of tender. This resulted in additional payment to the tune Rs. 1 crore to the Contractor apart from changing the position of the lowest tenderer.

8.1.3 Non-finalisation of tenders within validity period

The acceptance of tenders is delayed without any justification. This results not only in time and cost over run but also a major source of corruption.

ILLN: In a hydel project, the validity of period of a tender was six months. The validity period was got extended several times. Ultimately L-1 backed out to extend the validity due to increase in price of material and labour since the delay was two years. The tenders were reinvited and the work was awarded at exorbitantly higher rates.

8.1.4 L-1 ignored pointing out non-satisfactory performance or on other flimsy ground:

L-1 contractor, though prequalified based on the criteria stipulated in tender documents, at times is ignored on flimsy grounds or on unsatisfactory performance. The same is done as the favoured contractor has quoted higher rates and the work cannot be awarded to him unless L-1 is ignored.

ILLN.1: In a hydel project, only three firms were qualified by the Department. The L-1 was rejected on the pretext of rates quoted as unworkable. The work was awarded during second call to another contractor at higher rates.

ILLN.2: In a highway project, tender for L-1 prequalified contractor was rejected on the plea that the firm has failed to complete on earlier awarded work. The work was subsequently awarded to L-2 at much higher rates.

8.1.5 Comparative statement not prepared and checked

It is observed that comparative statement of rates quoted by the tenderers was not prepared, checked and signed by the officials. The same can result in award of work to agency other than L-1.

8.1.6 Market rate justification not prepared to assess the reasonability of quoted rates before acceptance

The rates at which works are to be awarded, shall be reasonable considering the prevailing market rates of material and labour and other factors pertaining to the work. At times, the quoted amount is compared with the inflated estimates of consultants, which were prepared without any basis, resulting in award of work at higher rates.

8.1.7 Justification statement prepared wrongly to justify higher rates

ILLN: As per a Departments' works manual, the work, which is not of urgent nature, can be awarded to a contractor if quoted amount is within 5% of justified cost. In a work executed by the above department, to bring the percentage of market rate justification within 5%, contingencies were added to the estimated cost and work was awarded of an amount more than 5% of the justified cost.

8.1.8 Tenders accepted on higher rates during second call

The tenders during first call, at times, are not accepted on flimsy grounds if the favoured contractor is not the lowest. To avoid the work, to predetermined / favoured contractor, the tenders are reinvited and works awarded at higher rates / amount than first call, either with the same or changed condition.

ILLN1: In a road work, the tenders of part schedule were not accepted by the Department, on the plea that the same may result in subcontracting the work to one contractor. The tenders were reinvited with changed conditions of issue of machinery. Earlier machinery was to be issued on hire charges, which was modified to free of hire charges during the second call. The tender during the 2nd call was accepted on rates higher than the earlier quoted rates, even though the condition for the hire charges was relaxed in favour of the contractor.

ILLN2: In a tender of renovation of a building, the rates quoted by L-1 in first call was Rs.1.39 crores. The same was rejected and the work awarded during 2nd call for Rs.1.82 crores. Thus, resulting in additional liability/favour to the tune of Rs.0.43 crores.

8.1.9 Items deleted after opening price bid to make the favoured contractor as the lowest tenderer(L-1)

8.1.10 Work awarded without proper verification of papers furnished by the tenderer.

It is often observed that the works are awarded to the contractor without proper verification of documents furnished by the tenderers. Sometimes, E.M.D. is submitted in mode other than the prescribed one or false proof of completed work is considered or work awarded to the

contractor not having valid income-tax clearance certificate or sales-tax registration.

ILLN: In a tender of residential building, incomplete works were considered for issue of tender document to a contractor, which eventually become L-1, resulting in award of work to ineligible contractor. This further resulted in delay in completion of work as the contractor was not technically capable of executing the work.

8.1.11 Similar/Identical contracts awarded at the same time with different rate for major items

The rates quoted by the tenderer are not being compared with the rates of similar/identical works and work is awarded at higher rates.

ILLN : In one of the airport works, overall position of tender considering common civil items was compared with other similar work awarded at the same time. Difference in rates was found to the extent of 28% in two similar contracts, i.e., the contract was awarded at much higher rates.

8.1.12 Contract at risk and cost of contractor

Tender document for the left out work of a rescinded contract is to be executed at the risk and cost of defaulting contractor. The specifications and condition of contract are also not to be altered.

8.1.13 Back to back contracts by PSUs

Some PSUs undertaking construction works participate in the tender for works by having pretender tieup with one contractor. In the above tieup, the contractor agrees to execute the works of certain percentage less than the tender amount awarded to the PSU. This is irregular since the competition in awarding the work by the PSUs (undertaking construction works) is missing in addition to award of works to favorite contractors.

ILLN : 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 favourite contractor.

9. WORKS AGREEMENT

9.1 PROBLEMS

9.1.1 Unwanted papers in the agreement

Most often, it is observed that contract documents are not drawn in complete and detailed manner, i.e. either lot of unwanted papers are kept or vital papers e.g. original price bid, letters of negotiations etc. are kept in loose file. Therefore, the contract document should be precise, definite and complete.

ILLN : In one agreement of a Govt, Undertaking, the following irrelevant documents were made part of the agreement :

- Protocol between the Govt. of India and a foreign country;
- Approval accorded by the Lt. Governor with respect to protocol;
- Same proposal submitted by the organization during various stages etc.

On final scrutiny, it was difficult to work out the exact requirement/provision made in the agreement

9.1.2 Important papers such as negotiation letters missing.

Important papers such as negotiation letter, copies of amendments subsequent to issue of tender documents etc. shall be made part of contract agreement to avoid contractual complications.

ILLN : In one of the works executed by a Bank, negotiations were conducted twice with the contractor. Second negotiation letter was not found in the agreement and payments were made to the contractor based on first negotiation, resulting in overpayment to the contractor.

9.1.3 Performance guarantee obtained late

It has been observed that the performance guarantee is being obtained later than stipulated in the tender document. Late submission of performance guarantee amounts to giving undue advantage to the contractor by way of saving bank charges.

9.1.4 Insurance not taken as per conditions

Contract documents of most of PSUs stipulate, furnishing of insurance policies such as Contractor's all risks policy, workmen compensation, third party policy and policy of machinery/T&P by the contractor. The contractors either do not submit these policies or submit policies for less

period. The same can result in large commitments due to mishap during execution. The contractor also gets benefit by saving the insurance policy charges.

ILLN : 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

9.1.5 Bank Guarantee not verified through issuing bank

In many cases, it has been observed that the bank guarantees are not verified from the issuing banks. In one of the cases, on verification of BG, subsequent to intensive examination, the BG was found to be fake.

9.1.6 Labour Licence not obtained

As per the agreement and the relevant Act, labour licence from appropriate authority is to be obtained by the agency before commencement of work. But this aspect is not taken care of and work is allowed to proceed without labour licence.

9.1.7 Technical staff not employed by the contractor.

It has been observed that the technical staff required as per the terms and conditions of contract are not employed by the contractor resulting in execution of bad quality work due to lack of supervision as well as undue financial benefit to the contractor.

9.1.8 Safety precautions not taken at site.

A number of provisions regarding safety precautions to be taken at site during execution, such as providing barricading, red flags, night lamps, road diversion boards and double steel scaffolding etc. are made in the agreement. But it has been observed that no importance is given to such an important aspect, which can result in fatal accidents and also contractors are benefited by not complying with the contract provisions.

9.1.9 Issue of material/machinery not stipulated in the contract agreement.

Material/machinery for which no provision is made in the agreement is being issued to the contractor on meager charges, resulting in financial benefit to the contractor.

ILLN: 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.

9.1.10 Stipulations regarding approval of sample not adhered to/work not executed as per the approved sample.

In most of the cases, it has been observed that the samples of material to be incorporated in works are not approved by the competent authority. In works where samples are approved, the work is not executed as per the approved samples and contractor is benefited by using substandard materials.

ILLN: In one hospital work, flooring and dado in the building was of marble stone. The quality of the marble used in the work was inferior to the quality of sample approved by the competent authority.

9.1.11 Price escalation paid though not stipulated.

It has been observed in a few cases that price escalation was paid to the contractor though there was no provision for the same in the agreement resulting in undue benefit to the contractor.

ILLN: In one work executed by a Petroleum PSU, the quoted priced were fixed and no escalation was to be paid to the contractor. The completion of work was delayed and escalation to the contractor was paid by the Department.

9.1.12 Risk and cost action not taken and balance work awarded at high rates.

On failure of the contractor to provide the desired services, the contract agreement is rescinded by the Department. The left over work is awarded at the risk and cost of the original contractor.

ILLN : 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. Rs.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 favour to the contractor.

*ILLN - Illustration

- to be continued

CIRCULARS

Recoveries arising out of intensive examination conducted by Chief Technical Examiner Organisation (CTEO) of the Commission (Circular No. 11/09/11 dated 12th September 2011):

Instances have come to notice that some organizations while notifying/effecting recoveries from the contractors' bills indicate that the recoveries are consequent to the observations made by the CTEO.

In this connection, it may be noted that the contracts are primarily between the executing agency and the contractor.

Any endorsements that the recoveries are being made at the instance of a third party could weaken the department's case during arbitration or court proceedings.

Further, the observations/advice of the Commission are required to be considered by the executing agencies in terms of the contract and recoveries are to be enforced as admissible as per the conditions of the contract.

The organizations are advised that justification/reasons for recoveries in line with contract clauses should be recorded while notifying/effecting recoveries from the contractors.

It is requested that these instructions may be notified to all concerned.

SYSTEM / CASE STUDIES

1. Irregularities in non-returnable Gate Passes entry challan - Checking of Bills

During routine checking of running account bills and final bills, it was found that the prevailing procedure for the materials brought by the Contractors through Plant Gates is that CISF should make entry in the register indicating the serial number, date, time and mode of transport for record and future reference.

In one case, a Contractor brought certain materials against series of Non-returnable Challans used for entry of Contractors equipment/materials and the same were recorded in the register maintained by CISF. As per contract, at no stage the Contractors or the Engineer-in-charge are required to reconcile the material actually incorporated at site vis-a-vis the materials brought to site. On the basis of certified joint measurements, Engineer-in-charge prepares and passes bills for payments to the Contractors.

Random checks conducted by Vigilance dept. at site revealed that the thickness of material was less than the thickness required as per contract but payment to the Contractor in the bills was done as if the work was done as per specification. Further, the vehicle numbers mentioned in some of the non-returnable Challans, on verification with registration authorities proved to be vehicles of much less capacity, of the order of less than a MT, as against around 10MT material shown to be brought in each challan / entry record. These deviations were brought to the notice of the department concerned.

Sequel to the above, the department concerned proposed for recovery of Rs. 6 lakhs (approx.) from the contractors, initiated administrative actions against the officers concerned and issued circular for bringing about systematic improvement in the procedure for preparation of bills, specification etc.

2. Study of Pre-Qualification Criteria

Vigilance Department carried out investigation into a complaint against the Pre-Qualification Criteria (PQC) specified against 'nature of single work order experience' in NIT of one tender. It was observed that the PQC adopted is restrictive as previous experience in the relevant field was sought against single work order experience in the NIT, while the nature of work is such that any contractor with prior experience in labour oriented works/jobs could have participated. It was also observed that, on one hand, department stated that the work is mostly unskilled and on the other hand, they have insisted the similar experience.

By this, the tender received poor response and competition, as a large number of contractors registered against general maintenance jobs could not participate due to the restriction.

Based on the above observations, Vigilance suggested that the single work order experience sought under PQC should be framed in such way that all the agencies which can execute the work should be able to participate in the tender process. Otherwise, few agencies which have executed the subject work only will get qualified repeatedly.

Based on above suggestions, department modified the PQC and issued fresh NIT to get fair competition.

NEWS AND EVENTS

1. CTEs team consisting Sri S K Srivastava, Technical Examiner and Sri B M Dhawan, Jr. Technical Examiner, visited RINL on 25.07.2011 and conducted an Intensive Examination of Civil Works of Special Bar Mill.
2. Two officers from Bird Group of Companies visited RINL, Vigilance on 22.08.2011, for interaction and study of the activities and systems being followed in the department.
3. Two officers from KIOCL have visited RINL, Vigilance on 13.09.2011, for interaction and study the activities and system being followed in the department.
4. In pursuance of the instructions issued by the Central Vigilance Commission, Vigilance Awareness Week (VAW) - 2011 will be observed in RINL, Visakhapatnam Steel Plant from the 31st October to 5th November, 2011. The main focus of observing Vigilance Awareness Week is spreading awareness about corruption through Participative Vigilance. Various competitions are being organised for school children (Elocution, Skit) and employees and their dependents (Slogan competition) on the occasion. All are invited to participate actively and make the observance of Vigilance Awareness Week meaningful and successful.

CHECKS CARRIED OUT BY VIGILANCE DEPT., DURING JULY - SEPTEMBER, 2011

1. Surveillance / checks	33
2. Road/Rail ReWeighments	18
3. Quality checks	06
Total	57

Editorial Board: **Raju Isaac, DGM (Vig.), PSN Murty, AGM(Vig.) and GY Ramamohana Rao, Mgr (Vig.)**

Please visit <http://comatvsp.vspsite.org/vigilance/Spandana/tabid/70/Default.aspx> to read Spandana online.

Feedback for improvement is welcome and may be sent to spandana@vizagsteel.com