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From the desk of GM (Vigilance) I/c

All would agree that Vigilance is an important managerial function which is broadly Preventive & Proactive. Preventive Vigilance calls for frequent & continual review of Rules, Procedures & Practices to facilitate a Work - environment of Openness, Transparency, upholding high Ethical standards aiming towards greater heights of Integrity. These are the prime movers to build a corruption-free Organization and aim towards the achievement of good Corporate Governance.

It is always said that "today's problems are due to yesterday's shortsighted solutions". Good Governance denotes that the organization is willing to deal with various challenging circumstances in a competitive business environment and results in greater confidence & practice of business ethics. The route to Good Corporate Governance lies in providing efficient methods of plugging loop-holes, arresting leakages of various resources be it Men, Material, Money and through Leveraging of Technology. The initiative in realizing and laying a strong foundation for Good Governance rests with everyone in the Organization which is the dream conceived by our Forefathers of this great Nation.

LONG LIVE THE REPUBLIC

(S Jaganathan)

HONOURING THE HEROES IN THE FIGHT AGAINST CORRUPTION

Transparency International Integrity Awards honour the bravery of individuals and organisations around the globe whose efforts are making a distinct difference in curbing corruption. The goal of the Awards is to give greater recognition to the efforts of journalists, civil society activists and whistleblowers who work to investigate and unmask corruption, often at great personal risk.

The Integrity Award winners were honoured at a ceremony held on 2nd December 2016 during the International Anti-Corruption conference in Panama City.



The Carwash Operation began as a local money laundering investigation and has grown into the largest investigation to date uncovering cases of state capture and corruption in Brazil.

The state prosecutors from the Carwash Task Force have been on the front line of investigations in Brazil since April 2014. Dealing with one of the world's biggest corruption scandals, the Petrobras case, they have investigated, prosecuted, and obtained heavy sentences against some of the most powerful members of Brazil's economic and political elites. To date, there have been more than 240 criminal charges and 118 convictions totalling 1,256 years of jail time, including high-level politicians and business people previously considered untouchable.

With their national campaign "10 Measures against Corruption", they pushed for legislative reforms to enhance the capacity of public administrators to prevent and detect corruption, and law enforcers to investigate, prosecute and sanction it. The ongoing Carwash Operation has triggered additional criminal investigations and proceedings in other sectors and is recognised as a landmark for white-collar criminal prosecution and defence in Brazil. The investigations have gained traction and huge popular support on both national and international levels.

Toll free number for lodging complaints with Vigilance Department **1800 425 8878**

(available from 09.00 - 17.30 on all working days)

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विशाखपट्टणम इस्पात संयंत्र



Rashtriya Ispat Nigam Limited
Visakhapatnam Steel Plant

DOCTRINE OF SUBSTANTIAL COMPLIANCE/RESPONSIVENESS

(An article by Shri Mukesh Saxena, Technical Examiner, CVC, published in Vigeye Vani, a quarterly News Letter of CVC)

The doctrine of substantial compliance is primarily a judicial invention designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but faulted in some minor or inconsequential aspects which cannot be described as the essence of the requirements.

The doctrine is equally applicable in processing/evaluation/assessment of bids. The procuring entity should prefer inclusion of an offer despite immaterial non-compliance/non-responsiveness, rather than its rejection on strict literal compliance. The immaterial irregularities of little or no significance should be waived off in a transparent/equitable manner and not to insist upon the exact compliance of ancillary and subsidiary conditions.

The Hon'ble Supreme Court vide judgement dated 06.05.1991, in a case of Poddar Steel Corporation vs Ganesh Engineering Works, allowed the procuring entity / the authority issuing the tender to deviate from and not to insist upon the strict literal compliance of the conditions which are merely ancillary or subsidiary to the main objective to be achieved by the tender conditions.

It does not mean that if a bid is not substantially responsive to the requirements of the bidding document, it may subsequently be made responsive by correction of the material deviation, reservation, or omission. Nevertheless, if a bid is substantially responsive, the bidder may be requested to submit the necessary information or document, within a reasonable period of time, to rectify non-material non-conformities in the bid. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid. Similarly, in case of quantifiable non-material ambiguities related to the price bid, e.g. mismatch in the rate quoted in figures and words, typographical errors and other errors, the same may be corrected for comparison purposes only, to reflect the price of a missing item or component. The adjustment may be made as per the methodology stipulated in the tender.

Non-compliance may be considered as an 'immaterial non-compliance' if it does not

- i) dilute, in any substantial way eligibility/ qualification criteria; and/or
- ii) affect, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract; and/or
- iii) limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the bidder's obligations under the contract; and/or
- iv) if rectified, would unfairly and materially affect the competitive position of other responsive bidders; and/or
- v) extend undue benefit to the bidder over other bidders in unfair & inequitable manner.

Following are the illustrative examples substantial compliances -

- a) Earnest Money Deposit (EMD) validity specified in a tender as three months and a bidder submits EMD with a validity of 90 days (which falls short of three calendar months by one or two days), then although as per strict literal and legalistic interpretation, this is a non-compliant bid, yet it is acceptable since it meets the criteria of immaterial non-compliance above.
- b) Similarly if the past experience criteria lays down that the firm must have supplied and commissioned the machine in question during last 3 years ending March' 2016, and the bidder has supplied and commissioned in relevant time-frame that machine as part of a turnkey project, where the full turnkey project was completed and commissioned in April 2016.

For the purpose of identifying nature of non-compliances, major deviations and minor deviations need to be mentioned upfront in the tender viz.

- Major deviations will refer to those instances of non-compliance which are otherwise material to the eligibility of the bidder. Failure to meet the same appropriately would result in disqualification. All such deviations are non-negotiable.

- Minor deviations will be the ones where non-conformities/missing links can be cured at post tendering stage, in time bound manner as per the 'terms & conditions' and 'instructions to the bidders' of the tender.

In order to ensure a thorough check of the substantive responsiveness of all bidders, a table of substantive responsiveness covering all major technical and commercial terms and requirements should be prepared. The responsiveness of each bid received should then be checked by registering conformance/partial conformance/non-conformance against each of the requirement mentioned in the table. Bids which fail to conform to any of the major conditions should normally be considered nonresponsive and should be rejected while other bids can be considered responsive/ substantial responsive.

If this doctrine of substantial compliance is included in the tender documents/ prequalification criteria in clear and unambiguous terms, it would not only result in saving of lot of infructuous efforts of procuring entity but would also ensure transparency, competition and fairness in the procurement process. The doctrine, if implemented equitably and consistently, by way of mentioning it upfront, in all the tenders than it would eliminate arbitrariness in the procurement process.

VIGILANCE CASE STUDIES

(Outcome of the Studies conducted by RINL – Vigilance are reproduced for the benefit of readers)

A Case Study on Execution of Contract awarded for "Hiring of Mini Trucks"

1. In course of inspection, a study was made on the execution of the contract of "Hiring of Mini Trucks of 2.5 / 3.0 Tons capacity". The period of contract was for 3 years.
2. **Salient features / Specifications of the Contract :**
 - ❖ The contractor has to supply 25 Nos. of Mini-trucks with a capacity of 2.5 / 3.0 Tons for a period of 6 months.
 - ❖ The Model of the vehicles should be of 2002 or later.
 - ❖ The tenderer should possess minimum 03 (three) vehicles on his own name, for remaining vehicles, he has to make an arrangement with other owners for the same Model of vehicles, ply under his control by way of irrevocable power of attorney duly notarized.
 - ❖ Rate per utilization of mini-truck for a shift of 8 Hrs. including all fuels, lubricants, driver, etc., complete with free run of 1000 Kms. per month per truck.
 - ❖ Rate per each extra hour of retention time beyond 8 Hrs. of work on the day of reporting.
 - ❖ Rate per each extra Km. beyond initial free run of 1000 Km. on monthly basis.
 - ❖ Deductions will be made for running of lesser Km. below the stipulated free run of 1000 Km.
 - ❖ Minimum 24 days of work is to be guaranteed in a calendar month of 30 / 31 days. This will be 22 days for a month of 28 / 29 days.

- ❖ Any variation in HSD rates per liter will be to the account of the Principal and variation shall be calculated as per the formula given in the Contract.
- ❖ The Contract can be terminated by the Organisation by giving prior written notice of 15 days, in case of non-availability of trucks, either by late coming, early going, break-down, rejection by user of refusal by driver to overstay and a penalty of double the awarded hourly charge will be deducted per hour on non-availability of the truck (from RA Bill).
- ❖ The Contractor is required to exhibit "HIRED TO RINL-VSP" on the trucks.
- ❖ The Contractor shall ensure that a supervisor / his representative must be available at the contract executing department

As per the terms of the contract, the contractor has to supply/deploy mini trucks with 2.5 / 3 Tons capacity of specific model or later to the user departments. Log-books are to be maintained by the user departments, to record the usage of the vehicles. Based on the certifications made by the user departments, the Engineer-in-charge has to process the bills for payment to the contractor.

The responsibility of ensuring deployment of specified type & model of the vehicle to the user departments and taking a feedback from the concerned departments and verifying the respective log-books lies with the Engineer-in-charge. Invoking the penal provisions wherever there is a violation of the terms of the contract also lies with the Engineer-in-charge.

3. Checks Carried out by Vigilance:

During surprise checks of Vigilance on the operation of contract, the following discrepancies were noticed against the condition for deployment of 2.5 / 3 Tons capacity Mini Trucks of specific Model or later to the different user departments as envisaged in the agreement:

- Deployed a passenger carrying Jeep.
- Deployed a truck with carrying capacity of 0.865 Tons
- Deployed Mahindra make Maxx Pickup JUNITOR-2 of carrying capacity of 0.900 Tons
- Deployed a Mahindra & Mahindra make mini-truck of a Model much before the year specified in the Contract and with a carrying capacity of 2.54 Tons.

But, the Engineer-in-charge had certified and processed the bills based on the details of the vehicles as provided by the Agency in the beginning of the contract instead of certifications made by the user departments.

On further enquiry with the user departments, it was learnt that at an initial stage of contract, the contractor had deployed vehicles as per the contract specifications. After a small duration of contract, the performance of vehicles deployed had comedown drastically. At this point of complexity, the contractor had replaced existing vehicle fleet with different vehicles such as jeeps, trucks of less carrying capacity and older model.

All these vehicles supplied by the agency to the four departments were found not to be inline with the terms of the Contract. Hence, these deviations attracted penal provisions but no penalty clauses were invoked by the Engineer-in-charge.

Further scrutiny of Registration Certificates (RC) of the vehicles deployed revealed that none of the vehicles belonged to the contractor. This is a clear deviation to the provisions of the contract that a minimum of 03 vehicles should be owned by the contractor.

Some user departments have not maintained Log-books but still the Engineer-in-charge had certified and processed the bills for payment to the contractor.

4. Observations:

- ❖ "HIRED to RINLVSP" caption sticker was not seen on the vehicles.
- ❖ The meters showing the running hours of the vehicles got struck up. As seen from the daily Log-sheets of vehicles, some of the user departments have not recorded running hours of vehicles deployed.
- ❖ The LOA was not forwarded to the some of the user departments due to which some of the user departments were not aware of contractual conditions and specifications of the vehicles to be deployed.
- ❖ Clause No.2 of Scope of Work envisages that the Contractor should have minimum 03(three) vehicles on his own name and remaining vehicles have to be arranged with other owners for the same model of vehicles as prescribed, ply under his control by way of irrevocable Power of Attorney duly notarized. On examination of vehicle records, it was found that none of the Registration Certificates indicate that the vehicles are in Contractor's name.
- ❖ Discrete enquiry revealed that the vehicles were parked inside the Plant after duty hours.
- ❖ Random check of Trip-sheets available at user departments revealed that some columns viz., Month, Department and Vehicle No. were found unfilled. Whilst so, as seen from the bill-file record maintained by the Engineer-in-charge, it was found that the Trip-sheets were completely filled with all details.
- ❖ Random check usage of vehicles revealed that the Trip-sheet of Vehicle No. A was certified by Department-1 but was found to be actually deployed to and used by Department-2 for the same month.
- ❖ As seen from the contract files pertaining to Department-1, it was found that passenger carrying Jeeps were deployed in place of specified trucks. However, Engineer-in-charge has processed the bills of the contractor without taking into cognizance of the actual position of supply at the user department.
- ❖ On enquiry with the Department-2, it was learnt that they were using a mini-goods-van of capacity less than 2.5 / 3.0 Tons, in place of specified trucks, since long time. Further, it was also observed that there is a difference in the Vehicle number mentioned in the bills and the vehicle number of the Vehicle which was actually used and indicated by the user department. However, Engineer-in-charge has processed the bills of the contractor without taking into cognizance of the actual position of supply at the user department.
- ❖ On enquiry with the Department-3, it was learnt that the passenger carrying Jeeps were deployed by the contractor in place of specified trucks, since long. Further, it was also observed that there is a difference in the Vehicle number mentioned in the bill and the Vehicle number actually being used and indicated by the user department. However, Engineer-in-charge has processed the contractor's bills without taking into cognizance of the actual record/data indicated by the user department.
- ❖ From the contract files pertaining to Department-4, it was found that the department is using older model of Vehicle than the stipulated make Vehicle. However, Engineer-in-charge has processed the Contractor's Bill as based on the original record which he had obtained at the time of commencement of the Contract and not based on the certification of the user department.

5. Recommendations:

- ❖ Engineer-in-charge to circulate LOA specifications of the vehicle, important payment & penalty terms, and Frequently Asked Questions (FAQ) & Answers in duplicate to all the user departments. One copy should be signed and kept by the Head of the User Department and the second copy should be sent to the Engineer-in-charge after initial.

- ❖ Engineer-in-charge should maintain duly certified Register of checks carried out by him while the contract is in operation.
- ❖ To impose the penalties on the contractor for violation of the contractual obligations.
- ❖ To initiate RDA Major against Engineer-in-charge for the subject contract.

6. **Actions taken by the department:**

- ❖ LOA, Specifications/Provisions of the Contract, Trip-sheet format and Frequently Asked Questions (FAQ) with Answers were provided to all the user departments. A new Check-Register was introduced for recording the physical verification of the vehicles by the Engineer-in-charge.
- ❖ An amount of Rs.4, 87,749/- was recovered from the bills of the contractor.
- ❖ After getting the inquiry conducted, Disciplinary Authority had imposed a Major penalty of "Reduction to lower stage in the time scale without cumulative effect for a period of one year" on Engineer-in-charge for the subject contract.

EVALUATION OF BIDS WHILE PURCHASING MACHINERY

(An article by Shri SP Gautam, Technical Examiner, CVC, published in Vigeye Vani, a quarterly News Letter of Central Vigilance Commission)

Introduction:

This Article is based on the Intensive Examination of one of the works, carried out by CTEO, in one of the PSUs. Article deals with the concept of Life-Cycle cost (LCC) of any machinery, for deciding the comparative position of various firms in a bidding process. It also deals with various precautions while evaluating the bids in any tender, with evaluation based on Life-Cycle cost (LCC).The purpose of this Article is to introduce, to various stake-holders, with procedure of evaluation of bids, considering LCC.

What is LCC?

Evaluation of bids on basis of Life Cycle Cost (LCC) of any machinery is a new trend being seen in some of the organizations. Following are the factors being considered for calculating life time repair cost of any machinery:

- Quoted Cost (C)
- Cost of Energy Consumption by machine during service life of machine (E)
- Maintenance cost to be spent on machine during service life of machine (M)
- Scrap value of machine less administrative cost for disposal procedure (S)

Thus $LCC = (C+E+M-S)$

It is better way of evaluating the bids, as it is considering LCC rather than simply quoted value of machine. But it has got one limitation, i.e. energy consumption of machines and maintenance cost, as claimed by different bidders is difficult to be ascertained. Any firm may claim these figures to be manipulated that these may favour its bid positively, helping it to arrive at L-1 position. There is no way to verify these figures as provided by bidders. Only solution to this problem is to seek the report from earlier users of these machines supplied by these bidders.

Some precautions in case of LCC:

A) This methodology should be declared upfront in the NIT.

B) Net saving should be positive e.g.

LCC cost of bidder-X= LCC 1

LCC cost of bidder-Y = LCC2

Say $LCC < LCC2$

Thus Saving on LCC cost = $S1 = (LCC2 - LCC1)$

Quoted cost of bidder-X= C1

Quoted cost of bidder-Y= C2

Say $C1 > C2$

Thus saving on quoted cost= $S2 = (C1 - C2)$

Net saving=NS= $(S1 - S2)$

Before deciding the successful bidder, whether X or Y, it is necessary to consider NS. The work can be awarded to Bidder-X on the basis of its LCC cost being lesser than LCC cost of another Bidder-Y only if net saving i.e. $NS > 0$. If bids are more than two, then quotes of all bidders are arranged in increasing order of NS.

Similarly one more way of deciding bidders position is to arrange the bidders in order of net saving to saving on quoted cost i.e. $NS / S2$. All the bids can be arranged in increasing order of this ratio and the bidder with highest ratio can be awarded the work.

Some of the organization also takes into consideration the production capacities of machines offered by various bidders. Say the machine offered by Bidder-X has capacity of producing 26% more than that given by machine offered by Bidder-Y. In this situation, evaluators simply multiply the rates quoted by Bidder-Y by a factor of 1.26, so as to normalize the rates of two bidders. However it is necessary to take following precautions in this regard.

- Whether the higher production capacity offered by machine of any bidder is really required or not, especially keeping in mind the limitation of any other machine for which product of subject machine is a raw material? There may be a case when higher production claimed by the machine under question is of no use because machine which is after this machine in line production is having lesser production than this.
- Even if production is really required, percentage of higher production offered by any machine can't be directly used to derive multiplication factor, say 1.26 in above example. This higher production first need to be converted into money value and by that factor rate quoted for higher producing machine should be reduced.

LCC method is thus likely to prove useful in evaluation of bids provided it is used with proper precautions as mentioned above.

CVC CIRCULARS

Circulars issued by CVC during the period 01.04.2017 to 30.06.2017

S.No	Subject	Circular No. & Date
01	Pendency with the Ministries/Departments/Organisations	Circular No 05/05/2017 & No. 017/MS/002 dated 23.05.2017
02	Submission of APARs of CVOs on time for acceptance by the CVC	017-ACR-012 dated 31.05.2017
03	Reporting of fraud cases to Police/State CIDs/Economic Offences Wing of State Police by Public Sector Banks	Circular No 06/06/2017 & No. 007/VGL/050 dated 14.06.2017
04	Suggestions on adoption and implementation of Preventive Vigilance	017/MS/023 dated 30.06.2017

For complete text of the Circulars, please visit www.cvc.nic.in

NEWS AND EVENTS

FAREWELL CORNER



Shri PS Naidu, Manager(Staff) and Shri K Gurayya, Addl. Technician superannuated on 30.06.2017. Shri S Jaganathan, GM(Vig) & Dr. VR Bapa Rao, DGM(Vig) bid adieu to superannuating employees of Vigilance Department during the function held on 30.06.2017.



Vigilance collective bidding farewell to Shri PS Naidu, Manager(Staff) and Shri K Gurayya, Addl. Technician. We wish them a very happy retired life.

ELEVATIONS

'Spandana' congratulates the following employees of Vigilance Department on their recent promotions and wishes them all success in their future career:

01. Dr. V R Bapa Rao	DGM(Vig)	to	General Manager (Vig)
02. Shri M Sudhakar	AGM(Vig)	to	DGM (Vig)
03. Smt PSSB Kamakshamma	Dy. Manager (Staff)	to	Manager (Staff)
04. Shri D Narasa Raju	Dy. Manager (Vig)	to	Manager (Vig)

CHECKS CARRIED OUT BY VIGILANCE DEPARTMENT DURING APRIL - JUNE 2017

Activity	Numbers
1.0 Surveillance / checks	65
2.0 Road/Rail Re-Weighments	16
3.0 Quality checks	10
Total	91

Editorial Board: Dr. V R Bapa Rao, DGM(Vig) & TA to CVO; S Mohapatra, DGM(Vig); GY Rama Mohana Rao, AGM (Vig) and D Ramakrishna, Dy.Mgr(Vig)

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

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

Views and opinions published in this newsletter do not necessarily reflect the management's thinking and policy