

CANONS OF FINANCIAL PROPRIETY

Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following:-

- (i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- (ii) The expenditure should not be prima facie more than the occasion demands.
- (iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- (iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -
 - (a) a claim for the amount could be enforced in a Court of Law, or
 - (b) the expenditure is in pursuance of a recognized policy or custom.
- (v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.

PREAMBLE FOR PUBLIC PROCUREMENT

Transparency, Competition, Fairness and Elimination of Arbitrariness Public buying should be conducted in a transparent manner to bring competition, fairness and elimination of arbitrariness in the system. This will enable the prospective tenderers to formulate competitive tenders with confidence. The following are some important measures to achieve the same and, thus, secure best value for money:

(a) The text of the tender document should be user-friendly, self-contained, comprehensive, unambiguous, and relevant to the objective of the purchase. 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 tenderers or increase the cost of purchase nor too sketchy 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 known to the industry.

(c) The tender document should clearly mention the eligibility criteria to be met by the tenderers such as minimum level of experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction etc.

(d) Restrictions on who is qualified to tender should conform to extant Government policies and be judiciously chosen so as not to stifle competition amongst potential tenderers.

(e) The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time & place of public opening of tenders; requirement of earnest money and performance security; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for full or partial 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 already 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 tenderers to prepare and submit their tenders.

(h) Suitable provisions should be kept in the tender document allowing the tenderers 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 tenderers 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 tenderers 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 tenderer, and that too with the approval of the competent authority, after duly recording the reasons for such action.

(k) The name of the successful tenderer to whom the supply 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.

Efficiency, Economy and Accountability:

Public procurement procedures must conform to exemplary norms of best practices to ensure efficiency, economy and accountability in the system. To achieve this objective, the following key areas should be taken care of:

(i) To reduce delays, each Ministry / Department should prescribe appropriate time frame for each stage of procurement; delineate the responsibility of different officials and agencies involved in the purchase process and delegate, wherever necessary, appropriate purchase powers to the lower functionaries with due approval of the competent authority.

(ii) Each Ministry / Department should ensure conclusion of contract within the original validity of the tenders. Extension of tender validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances with the approval of the competent authority after duly recording the reasons for such extension.

(iii) The Central Purchase Organizations should bring into the rate contract system more and more common user items, which are frequently needed in bulk by various Ministries / Departments. The Central Purchase Organizations should also ensure that the rate contracts remain available without any break.

Guidelines for Public Procurement

At the apex of the legal framework governing public procurement is Article 299 of the Constitution, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There is no law exclusively governing public procurement of goods. However, comprehensive rules and directives in this regard are available in the General Financial Rules (GFR), 2005, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding price or purchase preference or other facilities to sellers in the Handloom Sector, Cottage and Small Scale Industries and to Central Public Sector Undertakings etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement. These provide the regulatory framework for the public procurement system.

COMMON TERMINOLOGY AND ABBREVIATIONS USED IN CONTRACTING PROCEDURES

TERMINOLOGY

- i) Tender, Bid, Quotation. (Meaning: offer received from a supplier)
- ii) Tenderer, Bidder. (Meaning: an entity who seeks to supply goods by sending tender/bid)
- iii) Tender Enquiry Document, Tender Document, Bidding Document. (Meaning: a detailed document issued by the purchaser specifying his needs and the requirements that a potential tenderer/bidder must meet).
- iv) Notice Inviting Tenders, Invitation for Bids (Meaning: advertisement containing brief details of the requirement).
- v) Earnest Money Deposit, Bid Security. (Meaning: monetary guarantee furnished by a tenderer along with its tender)
- vi) Security Deposit, Performance Security. [Meaning: monetary guarantee furnished by the successful tenderer for due performance of the contract concluded with it.]

ABBREVIATIONS

ACASH	-	Association of Corporations and APEX Societies of Handlooms
A/T	-	Acceptance of Tender
ATI	-	Advertised Tender Enquiry
BG	-	Bank Guarantee
BL	-	Bill of Lading
CD	-	Custom Duty
CIF	-	Cost, Insurance & Freight
CIP	-	Carriage and Insurance Paid
CPSU	-	Central Public Sector Undertaking
DGS&D	-	Directorate General of Supplies & Disposals
DP	-	Delivery Period
ED	-	Excise Duty
EMD	-	Earnest Money Deposit
FAS	-	Free Alongside Ship
FM	-	Force Majeure
FOB	-	Free On Board

FOR	-	Free On Rail
INCOTERMS-		International Commercial Terms
KVIC	-	Khadi Village Industries Commission
LC	-	Letter of Credit
LD	-	Liquidated Damages
LPP	-	Last Purchase Price
LSI	-	Large Scale Industries
LTl	-	Limited Tender Enquiry
NSIC	-	National Small Scale Industries Corporation
NTH	-	National Test House
PAC	-	Proprietary Article Certificate
PO	-	Purchase Order
PSU	-	Public Sector Undertaking
RFP	-	Request for Proposals
RC	-	Rate Contract
RR	-	Railway Receipt
SO	-	Supply Order
SSI	-	Small Scale Industries
ST	-	Sales Tax
STI	-	Single Tender Inquiry
TPC	-	Tender Purchase Committee
VAT	-	Value Added Tax
WDO	-	Women's Development Organization

CHECK POINTS FOR PREPARATION OF TENDER ENQUIRY

Ensure that,

- 1) Standard and correct forms are used for tender enquiry and all amendments authorized to these forms from time to time are carried out before issue.
- 2) Time and date for receipt and opening of tenders are indicated as per the guidelines.
- 3) The prescribed time has been allowed to the tenderers to submit their quotations, depending on the type of enquiry being issued.
- 4) The period for which the tenders are to be kept open for acceptance been indicated realistically keeping in view the nature of the store and the time lag likely to be involved where consultation with the indenter on the suitability of offers received would become necessary.
- 5) The amount to be furnished by unregistered firms as EMD been calculated correctly and indicated if the enquiry is for purchase against adhoc indent?
- 6) Description of stores including specifications/drawing is correctly indicated in the schedule.
- 7) The source from where the specification/drawing can be obtained are indicated.
- 8) If stores are required as per BIS specification a clause for giving Purchase Preference to ISI Marked stores is included.
- 9) If the store is required to non-standard specification/drawing required number of copies of drawings/specifications are available.
- 10) Where tender sample is required to be furnished authority to whom it should be sent for testing and the time within which the sample should be submitted are indicated correctly in the enquiry
- 11) If the store is reserved item for purchase from any particular sector of industry a clear indication is given to that effect.
- 12) Inspecting Authority is correctly indicated

- 13) The instructions to invitation to tender and conditions of contract applicable have been correctly indicated in the enquiry.
- 14) Contract clauses contained in the standard forms used for issues of tender enquiry and the General and Special conditions of contract are not reproduced in the tender enquiry
- 15) The appropriate price variation clauses in the enquiry where such a provision is necessary has been given along with base price on which firms should offer their prices
- 16) Delivery requires is correctly given. Where purchase of large quantities of stores are involved delivery may be specified in installment particularly in respect of cases where contract are likely to be concluded on variable price bases.
- 17) Insertion of standard pre-estimated Liquidated Damages Clause in Tender Enquiry for claim against delay in supplies.
- 18) Insertion of modified clause for cancellation of contract and effecting repurchase
- 19) In case of purchase of imported stores the appropriate shipping clauses are incorporated. Other special conditions viz. payment terms for FOB/FAS contracts etc. should also be indicated in the enquiry.
- 20) That all other special conditions as per existing orders are incorporated in the Tender Enquiry.
- 21) Period of validity of performance guarantee whether to cover warranty period also.

CONTRACTS : IMPORTANT CLAUSES AND LEGAL ASPECTS¹

Introduction

“All contracts are agreements. But all agreements are not contracts.” This statement is supported by the definition of a contract which is “Agreement enforceable in law.” Only those Agreements are enforceable in law which fulfil the following criteria:

- a) Competency to contract
- b) Free consent of contracting parties
- c) Lawful Consideration
- d) Lawful Object
- e) Not declared to be void

2. Two Routes to a Contract :

- a) GCC/SCC route – The principal specifies in advance the scope and specifications, the general conditions of contract (GCC) and special conditions of contract (SCC) which are acceptable to him. This route is resorted to where the response to an invitation to tender is expected to be large (e.g. works contracts) and facilitates the evaluation within a short period of time to bring all the offers at par, leading ultimately to the expeditious finalization of the award. The contract is itself in one page but to it are attached the scope and technical specifications, general conditions of contract and special conditions of contract, the bid submitted by the supplier/contractor and Buyer's/ Principal's notification of award. The process is transparent and the task of bringing all bids at par become easy.

The disadvantage is that the contract document becomes voluminous rendering reference somewhat difficult, during implementation.

- b) Self contained Contract Route: As the name itself suggests, the entire contract is in one document, with each clause self contained and standing on

¹ Shri B.S. Ramaswamy, Consultant, NIFM.

its own. Each clause is complete in all respects, with remedies incorporated to the logical end. This route is preferred where large values are involved and the number of prospective tenderers is expected to be very small. If however, the number of offers is very large, each quoting his own terms and conditions, the task bringing all the offers on par before deciding which is the lowest, becomes difficult and time consuming.

3. Structure of a Contract :

Irrespective of the route followed, the basic structure of a contract is the same and the following clauses form part of most of the contracts : Preamble; Definitions; Scope and Technical specifications; Price; Mode and Terms of Payment; Price Variation Clause: Taxes and Duties: Scheduled Delivery Date: Force Majeure: Defaults and Liquidated Damages; Warranties: inspection and trials; Shipment; Termination; Resolution of Disputes: Applicable Laws and Effective Date.

4. Important Clauses : Principles and Concepts

4.1. Price:

- a) While incorporating the price in a contract, the price basis (FoR, FoB, C&F, CIF etc.) should be mentioned. The price basis will indicate the point of delivery, thereby indicating the point up to which the expenses have to be borne by the supplier and beyond which point the Buyer has to bear the expenses. It also indicates at which point the ownership and the risk pass to the Buyer.
- b) In addition to the price basis the price base should also be spelt out. The base is mentioned as the month and year on the basis of the price levels in which the cost inputs have been computed, for quoting the price. The base has to be mentioned in all cases where the contract includes a Price Variation Clause.
- c) Where the price has several components such as training, documentation, technical Assistance etc., the break up of the price against each component should be specified in the contract.

4.2. Terms of Payment :

The mode and the point(s) of time of discharge of the obligation of payment of price are described in the clause on “Terms of Payment” in a contract. The payments may consist of an advance payment, stage payments and a pay final payment. Advance payments are invariably required to be secured by the supplier furnishing a Bank guarantee. Stage payments are also many times required to be secured by Bank Guarantees. A Bank Guarantee is a guarantee given by the supplier’s Bank to the Buyer, promising to pay the Buyer, on demand and without demur, a certain sum of money mentioned in the guarantee, if the guarantee is invoked by the Buyer on or before the date of expiry of the guarantee mentioned in the instrument .

The law about Bank Guarantees is well-established in our country and in U.K. according to which when a Bank Guarantee is given by a Bank to the buyer, a contract comes into being between the bank and the Buyer, which flows out of the main contract between the Buyer and the supplier. Courts rarely intervene when a Bank guarantee is invoked, even if there is a dispute between the Buyer and the Supplier.

Payment can be made by direct remittance through Banking channels or by establishing Letters of Credit in favour of the supplier, at a Bank nominated by him. A Letter of Credit is also a guarantee given by the Buyer’s Bank to the Supplier promising him to pay the amount mentioned in the Letter of Credit, on production of specified documents evidencing delivery an invoice etc., provided the delivery had been completed on or before the date mentioned in the Letter of Credit and the documents are presented for negotiation before the last date for negotiation also mentioned in the Letter of Credit. Letters and Credit are irrevocable and courts have treated Letters of Credit in the same way as Bank Guarantees.

There is no payment involved at the time of opening of a Letter of Credit. The payment is made by the Supplier’s Bank only against the documents mentioned in the Letter of Credit. The Supplier’s Bank then debit the Buyer’s Bank with the amount paid and passes on the documents presented by the supplier, as stipulated in the Letter of Credit. The Buyer’s Bank thereafter debits the Buyer’s account and passes on the documents to the latter to enable him to clear the consignment.

In view of the legal position, Banks have to safeguard their interests to the extent possible. Whenever they furnish Bank guarantees of open Letters of Credit on behalf of their customers. This they do by fixing limits upto which they will be prepared to furnish Bank guarantees and open Letters of Credit on behalf of their customers. The limits will be based on the financial position, the relationship between the Bank and Customer and the confidence the Bank has, in recovering the moneys paid by it on behalf of its customer. The Banks may also fix margins and require the

customers to deposit in Fixed Deposit with the Bank, percentage of the value of Bank guarantee/Letter of Credit, as Security. The percentage may vary from 10 percent to 100 percent depending on the Financial position of the customer and the confidence the Bank has in him. They are commonly referred to as 'Margin Money'. In addition, Banks will invariably obtain counter guarantees from the customer as a further safeguard.

4.3 Price Variation :

In contracts involving long delivery periods, it is customary to provide a price variation clause instead of including a firm and fixed price. The inputs get incorporated into such products over a long period of time. As Economic conditions and price levels do not remain static and stationary, the input costs tend to vary upwards or downwards in the long term. Recognising this, a formula based Price Variation clause is evolved, through which changes in input costs from time to time, over those prevailing at the Base period, are compensated. As material and Labour inputs are the main cost inputs for any product, the formula has basically these two elements, with values assigned to each element, to represent the actual proportions of those in the total cost. Overheads are normally included as part of these two elements. There is however a fixed element also included in the formula to cover fixed overheads and profits. The value assigned to the fixed element will rarely exceed 10 to 15%. The percentage of the price attached to the fixed element, will not be subject to price variation. For computation of price variation against the Labour and material elements, price indices on the base date and the corresponding indices from time to time up to the delivery date are made use of. As calculating the price variation merely based on indices at the base date and the delivery date would lead to a serious distortion of the principles and concepts involved, safeguards to the buyers against such distortion are built into the contract. These are cut off dates for material and labour elements, beyond which price variation will not be applicable, non-applications of price variation in respect of intermediate payments made, price variation linked to the progress of work (input percentages monthly or quarterly) for each of the elements over the period of delivery, identified and reflected in charts annexed to the contract) and finally ceilings on escalation.

4.4 Defaults and Liquidated damages:

Law recognizes that whenever there is a breach of contract by one of the parties, the other party suffers inconvenience and damage, and is entitled to get the monetary compensation from the party who broke the contract. As a general rule, this

compensation must be commensurate with the loss sustained arising naturally from the breach. It follows that the quantum of damages has to be proved, by the party who suffered the loss, while preferring a claim for compensation from the party who committed the breach. If there is a dispute between the two parties whether a Breach has occurred or if a breach has been committed what is the compensation that the other party is entitled to, the dispute will have to be resolved by resorting to litigation through court of Law. As civil suits involve long delays and also involve appeals to higher courts, those engaged in trade and commerce look to remedies which are quicker and may not lead to litigation. In commercial contracts, defaults mainly occur in adherence to the scheduled delivery dates by the suppliers, and the parties to a contract mutually predetermine the damages that the Buyer will suffer, and provide its levy by the Buyer, if he is prepared to accept deliveries beyond the scheduled delivery date. The clause in the contract enable the defaulter to liquidate the damages suffered by the Buyer. By agreeing before hand to a quantum of liquidated damages which is considered reasonable by both the parties, there is a remedy available to the aggrieved party to accept performance beyond the scheduled delivery date, provided that the party is in a position to tolerate the delay.

Liquidated damages are usually specified as a percentage of the price per week or per month of delay subject to a ceiling. There is thus a link between the period up to which the Buyer is prepared to tolerate delays and the ceiling fixed for liquidated damages. If the supplier fails to deliver the items even after that period is reached, the remedy to the buyer built in the contract is a right to terminate the contract. The consequences of such termination are also covered in the clause. While levy of liquidated damages is the remedy available for delays in delivery (within limits), the remedy of risk purchase for failure to supply is also normally built in this clause.

Normally courts will not interfere with the levy of liquidated damages as specified in the contract. In practice however, contractors/suppliers do not accept that there have been delays on their part and raise disputes which then attract scrutiny by courts or Arbitrators. As part of that scrutiny, the courts examine the reasonableness of the quantum of damages specified in the contract.

4.5 Resolution of Disputes-Arbitration

The normal remedy for resolution of disputes arising between two parties is to approach Courts of Law by the aggrieved party. Invariably, these law suits take long periods of time to be decided as both the parties have recourse to appeals to the higher courts, till they reach the supreme court. Parties to commercial contracts prefer that such disputes are settled as early as possible, so that their business relationship can parties to resort to arbitration instead of approaching the courts, for resolving disputes that may arise during the course of implementation of contracts.

Arbitration is an alternative mechanism for resolving disputes might arise during implementation of a contract, either in interpreting the clauses or in assessing the effects of events which may occur during the implementation of a contract. The essence of arbitration is that it takes the place of a Court of law and decides the disputes between parties.

The following are the advantages of choosing the route of arbitration instead of Courts of law for resolving disputes :

- a) Avoidance of Payment of Court fee upfront, based on the value of the dispute/claim. It is therefore less costly.
- b) Speedy settlement – The process itself is speedier and the arbitration awards are normally final and binding;
- c) Resorting to arbitration will not disrupt the normal business relationship, whereas resorting to the Courts of law may affect that relationship, particularly when the process is prolonged.
- d) Maintenance of confidentiality

The law about arbitration in India is presently governed by the Indian Arbitration and Conciliation Act 1996, which replaced the Arbitration Act 1940. The following are the significant differences between the two Acts :

- i. Concept of conciliation
- ii. Presiding Arbitrator Vs. Umpire
- iii. Speaking Award

iv. Direct enforcement of award

v. International Arbitration and Foreign Awards

Law is also well established that were an arbitration clause exists in a contract, the parties have to necessarily follow that route for resolution of disputes. Conversely, where there is no arbitration agreement of arbitration clause in a contract, arbitration cannot be forced by one of the parties against the other.

COMMON IRREGULARITIES /LAPSES OBSERVED IN STORES/PURCHASE CONTRACTS AND GUIDELINES FOR IMPROVEMENT IN THE PROCUREMENT SYSTEM

1.0 Purchase Manual

The cardinal principle of any public buying is to procure the materials/services of the 'specified' quality, at the most competitive prices and, in a fair, just and transparent manner. To achieve this end, it is essential to have uniform and well documented policy guidelines in the organization so that this vital activity is executed in a well-coordinated manner with least time and cost overruns. In some of the organizations, the purchase manual is either not at all there or has not been updated for years together. Thus the system of procurement is quite adhoc and arbitrary.

- A codified purchase manual containing the detailed purchase procedures, guidelines and also proper delegation of powers, wherever required needs to be made by all the organizations so that there is systematic and uniform approach in the decision-making. Such an integrated approach is likely to put a cap on the corruption and would also ensure smoother and faster decision-making.

2.0 Filing System

The filing system adopted in most of the organizations is not satisfactory. Even the files are not being paginated. The part files are opened as and when new action is initiated and these part files are not merged with the main file, which inter-alia results in break in continuity and arbitrariness in decisionmaking. The decisions / deliberations of the individuals or the Tender Committees are not properly documented or recorded which dilutes the accountability of the officers and may result in the 'interested' officers going scot free, even if serious lapses are established against them.

- The procurement files are very important and sensitive documents and thus there is a need to have a single file system with proper page numbering. In case of urgency, if opening of the part files is unavoidable, the same should thereafter be merged with the main file. The decisions and deliberations of the individuals or the Tender Committees also need to be properly recorded and well documented.

3.0 Provisioning

3.1 It has been noticed that in certain cases excessive, fraudulent and infructuous purchases were made without taking into consideration the important aspects like available stocks, outstanding dues / supplies, past consumption pattern and average life of the equipments / items etc. These excessive /infructuous purchases were at times made in collusion with the firms. This resulted in not only the material lying unutilized for years together with no residual life but also a lot of extra expenditure was incurred on the inventory carrying cost. One of the organizations took double procurement action for purchase of tyres against the same liability. Even the factors like shelf life of 5 years and the past consumption pattern were ignored while placing the orders. As no action was taken to dispose off the surplus tyres, the department is incurring inventory carrying cost of about 20-25% per year for the last 10 years and the salvage value of the quantity held in stocks is likely to be 'Nil' due to expiry of the shelf life. In few cases, it was noticed that though the demand for the stores was simultaneously received from different wings / field units but, they were not clubbed together and were rather processed individually against the established principle of bulk buying.

- The provisioning of the stores needs to be done with utmost care taking into account the available stock, outstanding dues / supplies, the past consumption pattern, average life of the equipment / spares. The requirements also need to be properly clubbed so as to get the most competitive and best prices. The requirements should not be intentionally bifurcated / split so as to avoid approval from higher authorities.

3.2 In a case for purchase of 1,000 KVA D.G. sets, the tender enquiry was originally issued by the Organization for supply of D.G sets with four stroke engine. However, on the request of one of the bidders, the type of the engine was later changed from four stroke to two stroke and contract was awarded. During investigation, it was found that the engine manufacturer had given a release that the two stroke engine shall be phased out in two years. Surprisingly the existing DG Sets were with four-stroke engine.

In yet another case instead of buying DG sets for their energy needs, a shipyard hired DG sets from a firm in an ad hoc manner, without following competitive bidding. On investigation, it was revealed that the energy cost/ unit worked, in excess of Rs.40/-.

- One time purchase for projects or capital equipments / spares should be properly

justified depending on the actual requirement usage, rate of return etc. Further, the obsolescence factor should also be taken into account i.e. the equipment to be purchased should conform to the latest specifications and technology available in the market.

4.0 Appointment of Consultants

Some of the organizations appoint consultants due to lack of in-house expertise in technical matters. It has invariably been noticed that the appointment of consultants is not being done in a transparent manner and their working is also not properly supervised.

- i. The appointment of consultants is often made in an arbitrary manner without inviting tenders and without collecting adequate data about their performance, capability and experience. In some of the cases, the consultants were appointed after holding direct discussions with only one firm without establishing the reasonableness of consultation fee payable to them. In some cases the terms were modified to the financial advantage of the consultant, even after award of the contract. In one of the cases, the organization continued with a consultant for about 30 years and for all types of contracts. In yet another case, the Organization invited offers from 8 enlisted consultants but, awarded the contract to the highest bidder on the plea that they are Padam Shree awardees. Extra amount on account of travel expenses was also sanctioned after award of the contract.
- ii. The payment terms to the consultants are allowed quite liberally. In one of the cases, the consultant fee was paid on quarterly basis without linking the same with the progress of the project. Even full payments had been authorized before the completion of the project.
- iii. Quite a few organizations especially in the Banking Sector seem to abdicate their responsibility completely and do not oversee the working of the consultants resulting in the latter exploiting the circumstances and at times in collusion with the suppliers, give biased recommendations in favour of a particular supplier. It has also been noticed that the consultants recommend acceptance of inferior items /equipments and also give undue benefit to the suppliers like

nonrecovery of penalties, for the delayed supplies and corresponding reduction in the excise duty / custom duty, if announced after award of the contract.

- The consultants need to be appointed only when it is felt absolutely essential. The appointment of consultants needs to be done in a transparent manner and after following the competitive tendering system. The consultant's role should be well-defined. The consultant is meant to assist the departmental officers because of lack of expertise and, it should not mean that they takeover all the functions. The responsibilities relating to award of contract and execution of contract after appointment of consultant should not be abdicated completely by the organizations. Rather appropriate checks should be exercised at all stages of the execution of the contract. Penal clauses for deficiency in service should invariably be stipulated in the contracts/MOUs with the consultants.

5.0 Estimated Rates

It was observed that the estimated rates are being worked out in an unprofessional and perfunctory manner, at times by extrapolating the price of the lowest capacity equipment or by applying a uniform yearly compounded escalation over the prices of similar equipment purchased few years ago. Consequently, the inflated estimated rates prepared by the Organizations resulted in acceptance and payment of higher prices to the firms.

- As the estimated rate is a vital element in establishing the reasonableness of prices, it is important that the same is worked out in a realistic and objective manner on the basis of prevailing market rates, last purchase prices, economic indices for the raw material/labour, other input costs, IEEMA formula, wherever applicable and assessment based on intrinsic value etc.

6.0 Notice Inviting Tender

6.1 Against the most preferred and transparent mode of Global tender enquiry/Advertised tender enquiry, some of the Organizations are generally issuing limited tender inquiry to select vendors, irrespective of the value of purchase. Further, the credentials of the firms and the criteria adopted for selection of such vendors, in most of the cases, are not put on record. This not only results in lack of competition but also favoritism to the select vendors. It has been noticed that even in cases where Advertised/Global tender inquiries were issued,

the same were published in the local dailies and not in any National Newspaper and particularly in Indian Trade Journal, Calcutta, which is a Government publication and is regarded as the standard medium for advertising tender notices in India. The main purpose of issuing Advertised/Global tender inquiry is to give wide publicity. It has been noticed that the Organizations do not forward the copies of the tender notices to the registered/past/likely suppliers and while in case of imported stores, the copies of the tender notices are not being forwarded to Indian Missions/Embassies of major trading countries.

- In order to give wide publicity, generate enough competition and to avoid favoritism, as far as possible, issue of Advertised/Global tender inquiries should be resorted to and published in ITJ and select National Newspapers. The copies of the tender notices should be sent to all the registered/past/likely suppliers by UPC and also to the Indian Missions /Embassies of major trading countries in case of imported stores.

6.2 It has also been noticed that for Advertised/Global tenders, against a normal time of four - six weeks, there are instances wherein time for tender opening of only 12 - 15 days was given. Similarly, in case of limited tenders, against a normal time of 21 - 30 days, there are cases where tenders were opened in a short period of only 7 days. The tender opening in such a short duration is normally resorted to in case of recorded emergencies, where in the purchaser sends the tender inquiries by faster means like fax/speed post. However, in most of such cases, neither urgency nor the proof of having sent the inquiries by fax/speed post could be established. In few cases, it was also noticed that though short term tenders were invited, expressing urgency of the requirement, however, the cases were processed in a very routine and casual manner without any consideration for urgency. On the other hand, in some cases, it was noticed that with the short time available, only 2 - 3 vendors who probably knew about the system, submitted their bids and, thereby forming a cartel and circumventing the system. In some of the cases of Global tenders, it was observed that though the Organizations had given a time of 6 - 8 weeks for tender opening but the tender sale was closed 2 - 4 weeks in advance of tender opening, thereby effectively giving only one month time to bidders for purchase of tender documents. The very purpose of floating Global tender which is to give wide publicity and sufficient time to bidders to get the bidding documents and submit their offers, in such cases seems to have been defeated.

- With a view to have wider, fair and adequate competition, it is important that

sufficient time of say 4 - 6 weeks in case of Advertised/Global tenders and 3 -4 weeks in case of limited tenders is allowed, except, in cases of recorded emergencies, wherein also, a reasonable time should be permitted and tenders should be sent by faster means like speed post /fax. The tenders should preferably be kept open for sale till the date of tender opening or just one day prior to the date of tender opening. With the widespread use of Information Technology, the tender notices should also be put on the website and e-mail address of the organization should be indicated in the tender notice.

6.3 In case of proprietary purchases, the detailed justification for purchase from a single vendor is not being placed on record. As by issuing single tender, the competition is totally eliminated and the possibility of paying higher prices cannot be ruled out.

- It is imperative that the purchase on Single tender basis be made with the detailed justification in its support and with the approval of Competent Authority, including associated finance.

7.0 Tender/ Bid Document

7.1 The terms and conditions being stipulated in the bid documents by some of the Organizations are quite insufficient and sketchy. Sometimes, the bid document contain obsolete, unwanted matter and conflicting and vague provisions, resulting in wrong interpretation, disputes and time & cost overruns.

Even the time/date for receipt and opening of tenders is not being incorporated in the documents.

The important clauses relating to Earnest money, Delivery Schedule, Payment terms, Performance/Warrantee Bank Guarantee, Pre-despatch inspection, Arbitration, Liquidated Damages/Penalty for the delayed supplies and Risk- purchase etc. are not being incorporated in the bid documents. All these clauses are important for safeguarding the interest of the purchaser and also have indirect financial implications in the evaluation of offers and execution of the contracts.

- All the important clauses as brought out above need to be incorporated in the bidding documents so as to fully safeguard the interest of the Govt. and, for evaluation of bids on equitable and fair basis and in a transparent manner.

7.2 In some cases, it was noticed that the amount of Earnest Money Deposit stipulated in the tender document was grossly insufficient to protect the Govt. interest in case of breach committed by the bidder. Some of the organizations instead of ignoring the bids not accompanied with earnest money deposit along with the tenders as per bids requirements, asked the bidders to submit EMD, after tender opening.

- The primary objective of submission of Earnest Money Deposit is to establish the earnestness of the bidder so that he does not withdraw, impair or modify the offer within the validity of the bid. It also helps in restricting if not eliminating 'speculative', 'frivolous' or 'wait and see' bids. Since any relaxation regarding submission of Earnest Money Deposit has financial implications besides giving encouragement to the bidders to submit frivolous bids as indicated above; the terms & conditions should clearly stipulate that the offers without Earnest Money Deposit would be considered as unresponsive and rejected.

7.3 In case of tenders invited in Two-bid system, some of the Organizations stipulate Earnest Money Deposit as percentage of the tender cost instead of fixed amount. In the Two-bid system, if EMD is taken on the basis of some stated percentage of tender value and with the announcement of the amount of EMD submitted by the bidders at the time of tender opening, the same will give every bidder a good indication of the prices quoted by the competitors by making back calculations. A bidder can use this information to the disadvantage of his competitor, if prices are subsequently modified.

- The Earnest Money Deposit in case of Two-bid system needs to be incorporated as a fixed and reasonable amount on the basis of estimated value of the purchase.

7.4 Some of the organizations incorporate a specific delivery schedule inter- alia mentioning that bids offering delivery beyond stipulated date will be treated as non-responsive and will be summarily rejected. However, after opening of the tenders, the bid by one of the organizations with slightly longer delivery period was not rejected as per the bid guidelines, rather that offer was also considered and evaluation was made after loading the offer by applying some unilateral loading criteria. The same resulted in inter se change of ranking position.

- In order to meet the project requirement, it would be prudent to incorporate an acceptable range of delivery period with the stipulation that no credit will be

given for earlier deliveries and offers with delivery beyond the acceptable range will be treated as unresponsive. Within this acceptable range, for the purpose of evaluation, an adjustment per month say @ 2% could be added to the quoted prices of bidders offering deliveries later than the earliest delivery period specified in the bid documents.

7.5 The Evaluation/Loading criteria on account of acceptable range of deviations in the commercial terms and conditions viz. Payment Terms, Delivery period, Performance Bank Guarantee etc. is not being incorporated in the bidding documents. The evaluation of the offers is being made simply on the price quoted which is not in order. The comparative assessment of offers in true sense would be complete only if it is made on equal footing taking into account the financial implications for the deviations in terms and conditions, in line with unequivocal evaluation criteria specified in the bidding documents.

In one of the cases, it was noticed that due to non-stipulation of payment terms in the tender documents, the bidders quoted prices based on varying advance payment. The offers were evaluated by the Organization simply on the quoted prices, even though L-1 bidder had asked for much higher advance payment in comparison to the L-2 bidder. As such, the evaluation done by the Organization was not on equitable basis as the payment of higher advance, evidently had, financial implications.

- The Evaluation / Loading criteria with respect to the important terms. Like Payment terms, Delivery period, Performance Bank Guarantee etc. having financial implications need to be specified in unambiguous terms in the bid documents so that the evaluation of bids after tender opening could be made in a transparent manner without any subjectivity.

7.6 Some of the Organizations incorporate only broad technical details instead of generic specifications with complete details of performance parameters and the technical evaluation criteria. At times the technical evaluation matrix is decided after opening of tenders and is kept confidential. In absence of the detailed specifications/technical evaluation criteria, the evaluation of offers on equitable basis and in a transparent manner would not be possible and would rather be prone to subjectivity in the decision-making. In one of the cases of hiring of coolers, the requirement was bifurcated into two categories viz. 'new cooler' and 'as good as new coolers'. Neither the quantitative requirement of each category of

coolers nor the specifications had been indicated for the category of 'as good as new coolers'. Thus the description given was quite vague and susceptible to manipulation as it gave full leverage to the bidders to supply coolers of any vintage.

- The detailed generic technical specifications including performance parameters and the technical evaluation criteria, if any need to be specified in the bidding documents in unequivocal terms.

7.7 The exemptions/reservation of a particular item which normally apply to SSI units are not being specified in the tender notice / bid documents. The applicable purchase preference to public sector enterprises as per the guidelines circulated by Department of Public Enterprises is also not being incorporated in the bid documents leading to lot of complaints from SSI/PS Units.

- The Government instructions on reservation of items and price preference to SSI Units and purchase preference to PSUs need to be incorporated in bid documents.

7.8 It has been noticed that some tenderers offer conditional discounts for coverage within a shorter period, for early inspection/ payment etc. and, such discounts are being considered, at the time of evaluation of tenders by the organizations.

- It needs to be ensured that the evaluation of tenders should not be based on such conditional discounts and suitable clause should be included in the bidding documents.

8.0 Receipt of Tenders

Some of the organizations do not have proper arrangement for receipt of tenders. There is no tender box for receipt of tenders at scheduled date and time fixed for tender opening. Instead the trade representatives leave the tenders with the receptionist or the concerned Purchase Officer(s). This procedure is highly objectionable as the possibility of tampering and interpolation of offers cannot be ruled out.

- A proper arrangement for receipt of tenders at scheduled date and time through tender box needs to be adopted.

9.0 Postponement of Tender Opening

Wherever extension in the tender opening is done due to reasons like change in the specifications or on the basis of request of the vendors, it has been noticed that firstly, sufficient time to submit the bids as per the revised specifications and secondly, the intimation of tender opening extension is not being sent to all the bidders who had purchased the bidding' documents. Also such notice of extension is also not being published in newspapers / ITJ.

- In order to give equal opportunity to all the bidders and to maintain sanctity of tendering system, it is of paramount importance that any change in the tender terms & conditions, specifications and tender opening date etc. be notified to all the bidders, sufficiently in advance of the revised tender opening date.

10.0 Opening of Tenders

Some of the organizations are not opening the tenders in public i.e. in presence of the trade representatives. The system of not opening the tenders in public is against the sanctity of tender system, and is a non-transparent method of handling tenders. There could be a possibility of tampering and interpolation of offers in such cases. The rates at times are not quoted in figures and words, cuttings / over-writings are not attested by bidders. Some of the organizations justify such opaqueness in tendering system by making a reference to their manuals. This is not acceptable.

- The opening of tenders in presence of trade representatives needs to be scrupulously followed. While, opening the tenders by the tender opening officer / committee, each tender should be numbered serially, initialed and dated on the first page. Each page of the tender should also be initialed with date and particularly, the prices, important terms & conditions etc. should be encircled and initialed in red ink by the tender opening officer / committee. Alterations in tenders, if any, made by the firms, should be initialed legibly to make it perfectly clear that such alterations were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should be encircled and initialed and the fact that such erasing / cutting of the original entry was present on the tender at the time of opening be also recorded. The tender opening officer / committee should also prepare 'on the spot statement' giving details of the quotations received and other particulars like the prices, taxes, duties and EMD etc. as read out during the opening of the tenders. Further, in case of

'Two bid' system, it has been noticed that after opening of the technical bids, the price bids, which are to be opened subsequently, are kept as loose envelopes. In such cases, the possibility of change of bids prior to tender opening cannot be ruled out. In order to make the system fool proof, it needs to be ensured that not only the tender opening officer / committee should sign on the envelopes but the signatures of two trade representatives should also be obtained on all the envelopes containing the price bids. Thereafter, all the envelopes should be put in a bigger envelope / box and the same should be properly sealed duly signed by the tender opening officer committee and trade representatives.

11.0 Post Tender Negotiations

As per CVC guidelines circulated vide letter No. 8 (1) (h) / 98 (1) dtd.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 tenderer)". In continuation to these instructions, following further clarifications were issued vide letter No. 98 / Ord. / 1 dtd. 15.03.99 : -

- i. The Govt. of India has a purchase preference policy so far as the public sector enterprises are concerned. It is clarified that the ban on the post tender negotiations does not mean that the policy of the Govt. of India for purchase preference for public sector should not be implemented.
 - ii. Incidentally, some organizations have been using the public sector as a shield or a conduit for getting costly inputs or for improper purchases. This also should be avoided.
 - iii. Another issue that has been raised is that many a time the quantity to be ordered is much more than L-1 alone can supply. In such cases, the quantity order may be distributed in such a manner that the purchase is done in a fair, transparent and equitable manner.
- Despite the above instructions, it has been noticed that still repeated negotiations with the select / all the vendors are being carried out by some of the organizations in gross violation of the above instructions. The instructions / guidelines circulated by CVC on post tender negotiations only with L-1 need to be

strictly followed.

12.0 Technical Evaluation of Tenders

Apart from the deficiencies already brought out in supra para 7.9, it has been noticed that though the offers of some firms fully conform to the specifications laid down in the bid documents, however, based on certain additional features which were never part of the specifications, the offers were graded as 'good', 'better' and 'best' for award of contract.

- Once it has been established that the offers meet the laid down specifications, the question of 'grading' as well as any 'pick and choose' should not arise. The contract needs to be awarded to the lowest bidder meeting the laid down specifications.

13.0 Purchase Preference to Public Sector Enterprises

The Department of Public enterprises, Ministry of Industry vide OM No. DPE/ 13 (19) / 91-Fin. Dtd. 13.01.92, 15.03.95, 31.10.97, 10.02.98 and 14.09.2000 have circulated the policy of granting purchase preference to Central Govt. Public Sector Enterprises when they compete with Private large scale units. It has been laid down that where the quoted prices of Public Sector Enterprises or Joint Ventures with PSEs with a minimum value added content of over 20% by the latter, subject to purchase in excess of Rs. 1 crore, is within 10% of the lowest price, other things being equal, purchase preference will be granted to the Public Sector Enterprises or Joint Venture concerned at the lowest acceptable price. It has been noticed that some of the organizations are not following these instructions and accordingly, undue favour is being given to the Private firms.

- The instructions / guidelines circulated by Department of Public Enterprises for granting purchase preference to the Central Govt., Public Sector Enterprises / Joint Ventures need to be scrupulously followed as also brought out by CVC in the instructions circulated vide letter No. 98 / Ord. / 1 dtd. 15.03.99.

14.0 Consideration of Indian Agents

It has been noticed that some of the organizations entertained the offers of Indian Agents and also place the contracts on them without bothering to examine the following aspects :-

- i. Foreign Principal's proforma invoice indicating the Commission payable to the Indian Agent, nature of after sales service to be rendered by the Indian Agent.
 - ii. Copy of the agency agreement with the foreign principal and the precise relationship between them and their mutual interest in the business.
 - iii. The enlistment of the Indian Agent with Director General of Supplies & Disposals under the Compulsory Registration Scheme of Ministry of Finance.
- The above aspects are important one to examine the genuineness of the prices quoted by the Indian Agent, the nature of services which would be available from Indian Agent and compliance of Tax Laws by the Indian Agent and, to prevent leakage of foreign exchange.

15.0 Reasonableness of Prices

It has been noticed that the purchases are being made by some of the organizations in an adhoc and arbitrary manner without satisfying the prime requirement of establishing the reasonableness of rates in relation to the estimated rates, last purchase prices or the prevailing market rates. Some of the instances are as under: -

- i. An organization placed an order for spares on a trader at an abnormally high price of about 40 times the OEM's price. In yet another case, in a span of 10 days, the order was placed on the same firm for the same item at rates almost 10 times of the previous order.
- ii. In another case for procurement of an ore crusher, out of 6 offers received by the organization, 5 offers were rejected mainly on the basis of unspecified technical requirement, presumptions and conjectures. Therefore, the competition was killed. The prices of single left out offer were justified by extrapolating the prices of a lower capacity crusher (which were worked out by taking 5% compounded annual escalation over 10 years old prices) in proportion to the crushing force.

iii. In yet another case for hiring of coolers, orders were placed for ambiguous categories of items like 'new' and 'as good as new' coolers. An order was placed on a firm for the category for which the firm had not quoted in their original offer but had subsequently quoted, after they were invited for negotiations. Despite the firm lacking in technical and financial capability and there being cartel formation, still the order was placed at exorbitant prices in comparison to earlier prices for a period of 3 years. Knowing well the cartel of firms and exorbitant prices, the department did not consider placement of order only for one year as for next two years, fresh tenders could have been invited to break the cartel and get better prices.

- It is very important to establish the reasonableness of prices on the basis of estimated rates, prevailing market rates, last purchase prices, economic indices of the raw material / labour, other input costs and intrinsic value etc., before award of the contract.

16.0 Advance Payment & Bank Guarantees

- (i) As per CVC guidelines circulated vide Office Memorandum No. NU/POL/19 dtd. 08.12.97, it has been brought out that payment of mobilization advance should be made only in cases of select works and that the advance should be interest bearing so that the contractor does not draw undue benefit. However, it has been noticed that some of the organizations are quite liberal in allowing the advance payments even to the extent of 30-40% and that too, totally interest free. In some organizations the payment of advance is being stipulated in the bid document itself. The payment of interest free advance is in contravention of the guidelines issued by CVC.
- (ii) It has been observed that in some cases, despite provision in the contracts for releasing advance payment against Bank Guarantee, the advance payments were released without taking any Bank Guarantee. Unfortunately, in some of the cases, the suppliers failed to discharge their contractual obligations and huge advances are still outstanding for the last several years. It would be suicidal, if the advance payment is released without the Bank Guarantee for an equivalent amount.
- (iii) In some cases, it has been observed that though the prospects of supply were

bleak, still timely action for revalidation / encashment of the Bank Guarantee for the advance payment was not taken and the Bank Guarantees were allowed to lapse, jeopardizing the Govt. interest.

In one of the cases, though the initial advance payment of 20% was released against the Bank Guarantee, however, further 65% progressive payments were also made simply against certification of Internal Auditors that the amount claimed does not exceed the progressive expenditure. The payments were made in a span of hardly 2 months much before the bulk production clearance and without safeguards like Bank Guarantee etc. The Bank Guarantee for 20% initial advance payment was also allowed to lapse.

Thereafter, the firm did not make any supplies and was declared sick and huge Govt. claim towards the advances made without protecting the Govt. interest remain un-recovered.

- (iv) The Bank Guarantees accepted were at times defective/ conditional and did not safeguard the interest of the purchaser. Normally, the BGs permitting encashment without any demur - merely on a demand from the purchaser are accepted. However, in some cases, though the Bank Guarantees submitted by the suppliers were conditional, stipulating “the encashment only if it is established the supplier had failed to comply with his contractual obligations,” but, the same were accepted. In one of the cases for procurement of high value equipment, it was observed that though for release of initial advance payment of 30%, submission of a Bank Guarantee was stipulated but, surprisingly for further progressive payments upto 50%, which were also in the form of advances (without receipt of the equipment), the reimbursement of payment simply on the basis of a ‘Certificate of Assignment’ and without any BG was authorized. After release of first 30% progressive payment, BG taken for 30% advance payment had automatically expired as per terms of the BG. Evidently in this case, the BG was not examined properly before acceptance and the defective BG having conditions deterrent to the Govt. interest was accepted.
- (v) In some cases, it was noticed that the effective date of contract was linked with the date of receipt of Bank Guarantee for advance payment. This is detrimental to the purchaser’s interest as in the absence of a specific date for submission of Bank Guarantee, it would not be possible to establish specific date of breach to enforce the contractual remedies. In such cases, the

supplier will get full opportunity to wriggle out of the contract, if he so desires without fulfilling contractual obligations.

- The advance payments need to be generally discouraged except in specific cases. Wherever payment of advance is considered unavoidable, the same should be interest bearing as per CVC guidelines and be allowed after getting an acceptable Bank Guarantee for an equivalent amount with sufficient validity so as to fully protect the Govt. interest. Some reasonable time should be stipulated for submission of Bank Guarantee so that contractual remedies could be enforced, if required. The Bank Guarantees need to be properly examined with respect to the acceptable format and any conditions deterrent to the Govt. interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation / encashment of the Bank Guarantees also need to be taken so as to protect the Govt. interest.

17.0 Performance Bank Guarantee

Most of the organizations are not stipulating the requirement of Performance Bank Guarantee while others are stipulating different amount of Security deposit / Performance Bond. In some cases, it has been noted that the amount of PBG is too low in comparison to the contract value. The validity of Bank Guarantees is also not being scrupulously monitored and the extension in the Bank Guarantees commensurate with the delivery period extensions is not being sought resulting in loss to the Govt. in the event of nonperformance of the contract.

- In order to safeguard the Govt. interest, it would be appropriate to take reasonable amount of Performance Bank Guarantee valid upto warranty period for due performance of the contract. The validity of the Bank Guarantees needs to be carefully monitored and whenever extension in the delivery period is granted, the validity of Bank Guarantee should also be appropriately extended so as to protect the Govt. interest. The genuineness of the BGs should be checked from the issuing bank.

18.0 Stipulation of delivery period in the contract

Delivery period is the essence of any contract. It has been observed that in some of the cases, specific delivery period with reference to the terms of delivery is not being incorporated as mentioned below: -

- i. Only the date of offering the equipment for Pre-despatch inspection is stipulated as the delivery period, though the terms of delivery are on CIF basis/ FOR destination basis.
 - ii. Only the date of completion of supply of the equipment is stipulated as the delivery period even though the installation & commissioning of the equipment is also to be carried out by the supplier. For installation & commissioning, no specific date is stipulated. In absence of any contractual binding in this regard, the suppliers claim the full payment for supplies of equipments and then tend to behave in an irresponsible manner and do not bother to take up timely installation / commissioning resulting in the equipment remaining uninstalled for months / years together.
- The specific delivery period for supply as per the terms of delivery such as FOR station of despatch / destination and for completion of installation with the necessary provision for Liquidated damages / Penalty clause in the event of delay in supplies/ installation needs to be incorporated in the contract.

19.0 Guarantee / Warranty Terms

The guarantee / warranty clause incorporated by some of the organizations is quite sketchy. The modalities for enforcing the warranty obligations are not being incorporated. Due to incomplete guarantee / warranty terms, the suppliers take full leverage and do not bother to honour the guarantee / warranty obligations resulting in the equipment remaining defective and unutilized and thereby causing loss to the Govt. It has been observed that in cases where the installation of the equipment is also included in the scope of contracts but the standard guarantee / warranty clause of 15 months from the date of shipment / despatch or 12 months from the date of delivery, whichever is earlier is being incorporated. With the result due to delay in installation of the equipment, the guarantee / warranty expires even before the installation of the equipment or sometimes a very short period of guarantee / warranty is available.

- Detailed guarantee/warranty clause embodying all the safeguards be incorporated in the tender enquiry and the resultant contract. It also needs to be ensured that in installation/commissioning contracts, the guarantee/ warranty should reckon only from the date of installation/commissioning.

20.0 Post-contract Management

20.1 Modification of contract terms / specifications

After award of the contract, amendments/modifications having financial implications are authorized in the contract terms/specifications giving undue benefit to the suppliers. Some of these are enumerated below:-

- i. The specifications are diluted e.g. though specific makes/models of an equipment are specified in the contract as per firm's tender, however, subsequently supply of some more alternative makes/models of the equipment are authorized without taking into account the financial implications thereof. It has been observed that generally lower priced alternative makes/models are being included subsequently in the contract giving undue benefit to the supplier.
 - ii. The payment terms are amended favourable to the supplier e.g. advance payments are authorized even when there was no provision in the contract for making advance payments. At times higher advance payments than stipulated in the contract are authorized.
 - iii. The Pre-despatch inspection though was incorporated in the contracts but, the same was subsequently waived without any reasons, thus jeopardizing the quality aspects as per contractual requirement.
 - iv. The submission of Performance Bank Guarantee was waived.
 - v. Even though the contracts were placed on FOR destination, the locations of the consignees were changed nearer to the supplier's premises without taking into account the benefit of freight charges.
- After conclusion of the contract, any relaxation in the contract terms / specifications should be severely discouraged. However, in exceptional cases where the modifications/amendments are considered to be absolutely essential, the same should be allowed after taking into account the financial implications for the

same.

20.2 Post-contract Monitoring

- i. The post contract monitoring is being handled in a very casual and lackadaisical manner. It has been noticed that due to lack of coordination and diversified approach followed by various agencies in the implementation of the projects the same resulted in time and cost over-runs.
 - ii. It has been noticed that in some cases even after expiry of delivery schedule stipulated in the contract and without extension of time granted by the purchaser, the consignees keep on exchanging correspondence with the suppliers and thereby keep the contract alive. This may result in serious legal complications if it is intended to cancel the contract. It has also been noticed that even the materials are being accepted and payments are released as and when the supplier makes the supplies. There is utter disregard to the contracting norms relating to delivery period, which is the essence of the contract.
 - iii. Generally, the purchaser extends the delivery period of the contracts. However, in some cases it was recorded that the 'Supplier' has extended the delivery period of the contract.
 - iv. Some of the organizations do not incorporate Liquidated damages / Penalty clause for imposing the penalty in case of failure of the suppliers to deliver the equipment within the stipulated schedule. The suppliers quote short delivery period and in absence of deterrent conditions in the contract, manage repeated extensions. In some of the cases, it has been observed that Liquidated damages for delay in supplies are not being levied and recovered from the suppliers.
 - v. It has also been noticed that although there had been delay attributable on the part of the supplier in making the timely supplies, however, the organizations are extending the letter of credit with the proviso that the L/C extension charges shall be borne by the organization, thereby giving undue benefit to the suppliers.
- It is essential to accord priority to the post contract follow up. The delivery period should be extended on bonafide request and not in a routine and casual manner. After expiry of delivery period, the consignees should be refrained from exchanging correspondence with the supplier. In case of delay in supplies by the

supplier, the liquidated damages to the extent possible need to be recovered. Also in case of delay attributable on the part of the supplier, the L/ C extension charges should be to supplier's account. In nutshell, there is a need to discipline the suppliers so that the non-performers could be weeded out and the suppliers which can be relied upon with consistent performance, in terms of quality and delivery schedule are encouraged.

E-PROCUREMENT FOR GOVERNMENT : OPPORTUNITIES AND CHALLENGES

Introduction

The advent of the Internet, digital connectivity, the explosion and use of e-commerce and e-business models in the private sector are pressuring the public sector to rethink hierarchical, bureaucratic organizational models. Customers, citizens and businesses are faced every day with new innovative e-business and e-commerce models implemented by the private sector and made possible by ICT (Information and Communication Technologies) tools and applications, are requiring the same from governmental organizations. Citizens are referred as customers for governments, since governments need to empower rather than serve, to shift from hierarchy to teamwork and participation, to be mission oriented and customer focused, and to focus on prevention rather than cure. Governments worldwide are faced with the challenge of transformation and the need to modernize administrative practices and management systems. Recently, the public sector has begun to recognize the potential opportunities offered by ICT and e-business models to fit with citizens' demands, to offer better services to citizens and to increase efficiency by streamlining internal processes. ICT causes a "paradigm shift" introducing "the age of network intelligence", reinventing businesses, governments and individuals. Paradigm shifts prevail in the public sector too. The traditional bureaucratic paradigm, characterized by internal productive efficiency, functional rationality, departmentalization, hierarchical control and rule-based management is being replaced by competitive, knowledge based economy requirements, such as: flexibility, network organization, vertical/horizontal integration, innovative entrepreneurship, organization learning, speed up in service delivery, and a customer driven strategy towards procurement functions. These new paradigms thrust the shift toward e-Procurement paradigm, which emphasizes coordinated network building, external collaboration and customer services.

E-Procurement in Government

The e-Procurement process is unique to government. While corporate purchasing has become supplier management and driven by business partnerships, government procurement remains dedicated to leveling the playing field between competitors by use of the sealed competitive bidding and awarding bids to the lowest bidder meeting specification. Government records are open and the prices revealed in the public arena. Thus, under public scrutiny, public purchasers must attempt to conserve the taxpayer's money in an open arena. Fortune 500 companies boast of maintaining a key supplier base of 10-15 first and secondary suppliers which is miniscule to what a Government has as registered vendors and many more that bid, but never make it to the vendor list. Given

this divergence, a Government has to adopt e-procurement solutions that take into account the above factors. Government must forge its own model of e-procurement and, by doing so, encourage the competition so heartily sought. The deluge of requests via the Internet from companies seeking to compete will have to be managed. Government must create a model that pays for itself, thus maximizing the taxpayer contribution without damaging small and emerging businesses.

Government must implement a solution that weakens the procurement cycle without paralyzing other functions. This e-procurement process recommendation should improve the procurement cycle without upsetting the government policies and procedures necessary to the successful governance of the populace and businesses.

Government to Business consists of the electronic interactions between Government agencies and private businesses. It allows e-transaction initiatives such as e-Procurement and the development of an electronic marketplace for government. Companies everywhere are conducting business-to-business e-commerce in order to lower their costs and improve inventory control. The opportunity to conduct online transactions with government reduces red tape and simplifies regulatory processes, therefore helping businesses to become more competitive. The delivery of integrated, single-source public services creates opportunities for businesses and government to partner together for establishing a web presence faster and cheaper.

Challenges

One of the main challenges for an e-Procurement project is the establishment of an appropriate and context tailored strategy. Every project or initiative needs to be rooted in a very careful, analytical and dynamic strategy. This seems to be a very difficult task, requiring a focus on many aspects and processes, a holistic vision, long-term focus and objectives. Many public institutions limit their activities to a simple transfer of their information and services online without taking into consideration the re-engineering process needed to grasp the full benefits. The government must have a clear strategy to overcome the barriers to change. Part of the strategy is to engage in a rigorous assessment of the current situation, the reality on the ground and the inventory of projects, articulate costs, impacts and benefits of programme as well as continuously monitor and evaluate the project upgrading. Borrowing a lesson from the private sector, e-Procurement must be customer-driven and service oriented. This means that a vision of e-Procurement implies providing greater access to information as well as better, more equal services and procedures for public and businesses.

In a typical large PSU and Government, procurement runs into hundreds of crores and complexity is inherent in the procurement process. What is required to be procured is

wholly dependent on the nature of its business, and therefore varies from enterprise to enterprise. In today's scenario, adopting an effective cost saving mechanism is integral to any company's continued existence. Companies across different sectors of industry have been trying to simplify this extremely crucial aspect of their business, in extracting optimal quality, and timely, speedy transactions at the minimum possible cost.

Another important aspect that the Government and PSU's need to look into is driving organizational compliance with negotiated contracts. This would enable Governments to keep and sustain their savings.

Opportunity

E-procurement, a new avenue for buying direct and indirect goods and services, is an effective procurement system, making waves in purchasing circles. The service provider plays a crucial role in offering sourcing and procuring solutions that satisfy customer needs and provide ample value addition to the service provided.

In the past, traditional methods of procurement offered little transparency and lesser satisfaction of negotiation with suppliers. E-procurement offers the benefits of greater transparency, wider geographical reach and lesser time of transaction and better pricing. Also sustained savings can be achieved through automated, easy-to-use purchasing, invoice management, and supplier enablement capabilities. E Procurement Solution would help Government capture and settle all spend and readily obtain global user and supplier adoption. This improves process efficiency, increases compliance, and garners sustainable savings across the enterprise.

All said and done, is this a trend that is catching up in the Indian scenario or would it also face the same fate as the dotcom with not much of response after a couple of years? Unlike the dotcom boom, e-Procurement has a compelling business proposition, which is cost savings and this affects the bottom line directly. Hence it is a sustainable business model and the trend is expected to be on the rise in the future. Trend is catching up within the industry as requirements for transparency, be it in the Government or the PSU sector, are catching up.

But the flip side to it is that if it has to sustain itself, it not only has to have enough to pamper the existing clientele, but newer additions of products and an expansion of supplier base would need to be carried out. There is no point in expecting higher revenues every year from the same existing lines of business or the panel. They have to diversify and bring in newer products as also larger number of clients. Also contract compliances have to be ensured.

Conclusions

What the Government needs to do ?

For a successful implementation of an e-Procurement initiative the government must ensure that the following parameters are taken care of, in the solution which they intend to implement:

1. Analyze

Accurate, thorough analysis provides:

- Spend visibility: Businesses know which suppliers are used for the most spend and what departments generate demand across all spend categories.
- Opportunity identification: Companies can readily determine key areas for spend improvement and supplier management to fully understand total cost of ownership.
- Spend and supplier management strategy: Comprehensive data on supply-side market microeconomics, supplier performance, and contract compliance enables companies to develop a cohesive, effective strategy.

2. Source

Efficient, in-depth sourcing provides:

- Supplier management: Knowledge about existing supplier performance and compliance—and access to qualified new suppliers—allows companies to drive spend towards the best suppliers.
- Spend leverage: Businesses can actively source most or all of their spend to improve spend practices and negotiate better deals
- Win-win contract collaboration: Detailed information exchange enhances relationships between buyers and suppliers; buyers can assess supplier bids on multiple attributes in addition to price.

3. Contract

Effective contracting delivers:

- Centralized contract management: Creating a central repository for all enterprise

contracts gives even large, fragmented companies better spend visibility and the chance to aggregate spend across divisions.

- Improved compliance: A centralized, accessible location for all contracts and catalogs along with rapid workflow and approval capabilities enhance both end user and supplier compliance.
- Higher accuracy and control: Electronic support of contractual terms reduces errors and ensures that negotiated pricing, discounts, and terms are delivered.

4. Procure

Efficient procurement provides:

- Streamlined purchasing: Automating procurement enables companies to eliminate paper driven processes and expedite workflow and approvals for all purchases.
- Better supplier access and communication: Online access to a large pool of global suppliers allows businesses to locate and effectively interact with the suppliers best qualified to meet their needs.
- High end-user and supplier compliance: Automated requisition and purchase order management capabilities for all participants and commodities increase enterprise-wide compliance and boost savings.

5. Settle

Effective settlement offers companies:

- Shorter cycle times and fewer errors: Automating invoice creation, submission, and reconciliation improves speed and accuracy and minimizes problems.
- Early payment discounts: Faster bill settlement through accurate invoicing procedures allows businesses to qualify for extra savings from early payment discounts.
- Improved buyer-supplier relationships: Fewer invoicing disputes and rapid, correct payments improve cash flows and enhance relationships between buyers and suppliers.