



KOCHI METRO RAIL LIMITED

(A joint venture of Govt. of India and Govt. of Kerala)

VIGILANCE MANUAL

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1.1 CHAIRMAN'S MESSAGE

Vigilance Manual is an important document to bring in transparency in operations and functions as well as between employees, management and all other stakeholders of the organisation. The subject of Vigilance Administration is an important aspect and integral part of the organisation which not only facilitates and helps the management in preventing corruption but ensures that every person in the organisation discharges his/her duties in a fair, transparent and vigilant manner, leading to effectiveness in achieving the organisation goals and creating good governance.

Vigilance can not be considered an activity merely to prevent corruption. Considered holistically it can acquire a more meaningful role. In fact vigilance has to be seen as a part of overall risk management mechanism of an organisation whereby systems are structured, and procedures established to improve organisational efficiency.

It is expected that this Vigilance Manual will fulfil the objective of creating better awareness among all officers and staff of Kochi Metro Rail Limited relating to vigilance administration.

I would like to congratulate MD and other officers of KMRL for developing this Manual.

Best wishes,

Durga Shanker Mishra IAS,
Chairman, KMRL
Secretary, MoHUA

1.2 FOREWORD

There is an increasing concern about corruption eroding the basic values of life. It has a negative effect on social dynamics and value system in the country. It is important that the younger generation, who has to play a pivotal role in development of the country, is educated on the urgency to fight against such unethical practices.

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Vigilance awareness means awareness about the rights and duties of an individual in curbing corruption, both social and economic. The first step to eliminate corruption is by being aware about it. Now the question arises as to why we should be aware about corruption. Because corruption is found to be one of the most damaging consequences of a poor governance system. It is characterized by lack of both transparency and accountability. Corruption lowers investment, hinders economic growth and human development. It is one of the factors responsible for poverty. That is why we have to be vigilant. If not nip in the bud, it might lead to big scam.

Preventive vigilance is the modern tool of effective management, whereby frauds and scams are prevented before actually happening. In order to maintain high degree of responsibility and integrity in entire gamut of operations, it is important to have a reference to vigilance manual, dealing with all vigilance matters.

The Manual under its present form, comprises of ---- Modules and an attempt has been made to fulfil all the need and requirements of vigilance administration. It is hoped that the Manual would serve as a guiding document in performing vigilance duties in an efficient and transparent manner.

I would welcome valuable suggestions for improvements in the Manual towards achieving a corruption free environment and culture in KMRL.

Alkesh Kumar Sharma, IAS
Managing Director

MODULE – I

INTRODUCTION

1.1 INTRODUCTION

Corruption is not a new phenomenon. It appeared as soon as human beings came into existence. There is a mention of corruption in Kautilya's "Arthashastra" dating back to Fourth Century BC. Like today's vigilance, they used to have a group of trusted people to keep watch on the corrupt and to catch them red-handed.

Evolution of today's vigilance organisation: Considering the gravity of the problem, the Government established the Special Police Establishment (SPE) in terms of the Delhi SPE Act, 1946. However, this organisation could not become very effective due to resistance from various ministries. Accordingly, an organisation in the Ministry of Home Affairs was formed and named as 'Administrative Vigilance Division' which began functioning in August, 1955.

The public perception did not improve much and while replying to the debate on 6th June 1962, Shri Lal Bahadur Shastri, Minister for Home Affairs, proposed establishment of a committee of MPs and Government officials to review the problem of corruption and thus the "Committee on Prevention of Corruption" was born under the Chairmanship of Shri K. Santhanam, Hon'ble MP. This committee made several far-reaching recommendations, the foremost of which was the establishment of the Central Vigilance Commission (CVC). The CVC came into being in February 1964 as the apex agency to advise and guide Central Government agencies in the field of vigilance.

1.2 VIGILANCE IN PUBLIC SECTOR UNDERTAKING

In the Oxford Dictionary, 'Vigilance' has been defined as 'watchfulness against danger or any action on the part of others alertness or closeness of observation'. 'Vigilance' in brief implies "A state of remaining watchful or alert and is relevant everywhere, at all time". Though the concept of organised or institutionalised vigilance is of recent origin, it has been in existence since time immemorial in some form or the other. In ancient times, rulers used to

roam around in disguise, sometimes during night, to collect intelligence about ongoing activities in the kingdom so that effective steps could be taken to avert any untoward incident and maintain law and order, which is essential for peace and prosperity.

- (a) The vigilance administration of a PSU follows two broad approaches, viz. the Preventive and Punitive approaches. A recent approach introduced by the CVC, deviating from the conventional Preventive and Punitive vigilance is to focus on Predictive vigilance, whereby the attempt is to pre-empt deviant behaviour. For a PSU, it is necessary to ensure that public funds are properly used and that any sort of misuse/misappropriation is avoided. Preventive vigilance is primarily concerned with checking any undesirable or corrupt practice among employees. Preventive vigilance relates to a positive and prognostic approach by taking steps for checking any possible loss to the organisation. It involves identification of the source of corruption and taking necessary preventive and constructive steps to plug existing loopholes in the systems, procedures, methods of working etc. Vigilance related action is not restricted to a few employees working in the vigilance setup. Rather, it requires involvement of all employees for preventing all types of corruption, malpractice and misconduct. This in turn requires each and every employee to take due care in his own sphere of duty/activity. This, in fact, forms the fundamental tenets of vigilance in a PSU.
- (b) While study and development of suitable systems for checking any irregular activity is important, taking appropriate deterrent action against the employees responsible for negligence in duty, causing wrongful loss is equally important. This is known as Punitive Vigilance and is essential for promoting a culture of honesty and punishing the black sheep.
- (c) With a view to safeguard interest of the employees and avoid any prejudice/bias on part of the employer, certain protections have been provided to 'public servant' under Article 311 of the Constitution of India – viz. the members of the Civil Services of the Union or All India

Services or Civil Services of the States. These Constitutional safeguards cover two specific areas viz.:

- (1) No person shall be dismissed or removed by an authority subordinate to that by which he is appointed.
- (2) No such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.
- (d) Employees of PSUs, including KMRL, are entitled to similar safeguards as per the decision of the Supreme Court. These Constitutional safeguards require observance of certain rules and procedures while taking any punitive/departmental action against any employee of the PSU. Persons dealing with such punitive action are required to be fully acquainted with the said procedures.

1.3 VIGILANCE ANGLE

1.3.1 In vigilance administration, existence of Vigilance Angle has a critical importance. CVC vide Office Order No. 23/04/04 (read with amendment vide Office Order No. 74/12/05) has defined Vigilance Angle. Vigilance Angle is obvious in the following acts:

- a) Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.
- b) Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or is likely to have official dealings or his subordinates have official dealings or where he can exert influence.
- c) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.
- d) Possession of assets disproportionate to his known sources of income.
- e) Cases of misappropriation, forgery or cheating or other similar criminal offences.

1.3.2 However, other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt. Gross or wilful negligence, recklessness in decision making, blatant violations of systems and procedures, exercise of discretion in excess, where no ostensible/public interest is evident, failure to keep the controlling authority/superiors informed in time. There are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

1.3.3 Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of Vigilance Angle in a case.

1.3.4 The intention of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. Commercial risk taking forms part of business. Therefore, every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. Thus, whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interest of the organisation is one possible criteria for determining the bona fides of the case. A positive response to this question may indicate the existence of bona fides. A negative reply, on the other hand, might indicate their absence.

1.3.5 Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. All such lapses not attracting vigilance angle would indeed have to be dealt with appropriately as per the disciplinary procedure under the service rules.

1.4 MOTTO OF VIGILANCE

Motto of Vigilance can be broadly classified as below:

- (a) Integrity in governance

- (b) Combating corruption
- (c) Professionalism
- (d) Transparency
- (e) Promptness
- (f) Impartiality

1.5 CORRUPTION

1.5.1 DEFINITION OF CORRUPTION

Every organization aspires to grow in a corruption free atmosphere. The Santhanam Committee attempted to define corruption as “improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life.”

As per Transparency International’ corruption is defined as the "abuse of entrusted power for private gain. Corruption if not controlled can become a monster which is difficult to handle." Corruption should therefore be controlled by everybody. Vigilance alone can't be successful without the active support from the executives. As per Prevention of Corruption Act- 1988, “Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain gratification whatever, other than legal remuneration as a motive or a reward for doing or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions favour or disfavour to any person with the Central or State Government or Parliament or Legislature of any State or with any public servant as such”. World Bank defines “Corruption” as the abuse of public office for private gain. Corruption is also described as the acquisition of forbidden benefits by officials or employees, so bringing into question their loyalty to their employers. Corruption is the misuse of public office for private gain and is said to be a function of both the opportunity to request/receive bribes and the risk of detection. Monopolies and discretion are corruption facilitators, while accountability and morality are inhibiting factors, best expressed in the formula *Corruption = Monopoly + Discretion – Accountability – Morality*. A key tool in the fight against corruption, therefore, is access to information and transparency.

1.5.2 CAUSES FOR CORRUPTION

Important causes of corruption in India are poor regulatory framework, exclusivist process of decision-making, aggravated by discretion and official secrecy, rigid bureaucratic structures and processes; and absence of effective internal control mechanism. Social acceptability and tolerance for corruption and absence of a formal system of inculcating the values of ethics and integrity further propagates corruption.

1.5.3 IMPACT OF CORRUPTION

Corruption is a serious economic issue as it adversely affects the country's economic development and achievement of developmental goals. It promotes inefficiencies in utilisation of resources, distorts the markets, compromises quality, destroys the environment and of late has become a serious threat to national security.

1.6 OTHER DEFINITIONS

a) PUBLIC SERVANT

A public servant is a person who is appointed or elected to a public office.

b) FRAUD

Fraud is deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. The purpose of fraud may be monetary gain or other benefits.

c) BRIBE

Bribe is an amount received by a public servant other than his legal remuneration for the performance of his official duties.

d) MISCONDUCT

Misconduct is an act of violation of conduct rules of an organisation, which is more fully described in the Conduct, Discipline and Appeal Rules of KMRL.

e) MISAPPROPRIATION

A public servant who has appropriated property which does not belong to him for his own benefit or for the benefit of someone else is termed as misappropriation.

f) WRONGFUL GAIN

Wrongful gain is the gain of property by unlawful means to which the person or agency gaining is not legally entitled.

g) WRONGFUL LOSS

Wrongful loss is the loss of property by unlawful means to which the person or agency losing is entitled.

h) DISPROPORTIONATE ASSETS

The assets acquired by the executive of the organisation are said to be disproportionate if the total value of such assets is more than the difference between his income from all known sources and the expenditure incurred during the same period.

i) PRINCIPLES OF NATURAL JUSTICE

As per Article 311(2) of the Constitution, “no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence produced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty imposed, provided further that this clause shall not apply to:

- (a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

- (b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.
- (c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry”.

1.7 GOVERNMENTAL INSTITUTIONS FOR EFFECTIVE VIGILANCE ADMINISTRATION

1.7.1 CENTRAL VIGILANCE COMMISSION

The Central Vigilance Commission (CVC) was set up as an apex body in 1964 by Govt. of India Resolution in pursuance of the recommendations of Santhanam Committee for exercising general superintendence and control over vigilance matters in administration and probity in public life. The Committee reviewed the then existing arrangements for checking corruption in Central Services and suggested suitable measures for producing a social climate in which corruption would not flourish.

The functions and powers of the Commission, as defined in the CVC Act, are as under:

- (a) To exercise superintendence over the functioning of Delhi Special Police Establishment [DSPE] insofar as it relates to investigation of offences alleged to have been committed under the PC Act or an offence with which a public servant belonging a particular category [i.e. a member of All India Services serving in connection with the affairs of the Union; or Group ‘A’ officer of the Central Government; or an officer of the Central Public Sector enterprise/autonomous organisation etc.] may be charged under the Code of Criminal Procedure at the same trial.
- (b) To give directions to the DSPE for the purpose of discharging the responsibility of superintendence. The Commission, however, shall not exercise powers in such a manner so as to require the DSPE to investigate or dispose of any case in a particular manner.

- (c) To inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the PC Act; or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial.
- (d) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to the following categories of officials, wherein it is alleged that he has committed an offence under the PC Act:
 - (i) Members of All India Services serving in connection with the affairs of the Union.
 - (ii) Group 'A' Officers of the Central Government.
 - (iii) Officers of Scale-V and above of public sector banks.
 - (iv) Such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf, provided that till such time a notification is issued, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in this clause.
- (e) To review the progress of applications pending with the competent authorities for sanction of prosecution under the PC Act.
- (f) To review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act.
- (g) To tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, the said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise; and To exercise

superintendence over the vigilance administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

1.7.2 APPOINTMENT OF CVOS

The Commission would convey approval for appointment of CVOs in terms of para 6 of the Resolution, which laid down that the Chief Vigilance Officers will be appointed in consultation with the Commission and no person whose appointment as the CVO is objected to by the Commission will be so appointed. DoPT, under their O.M. No.372/7/2016-AVD-III dated 28.04.2017, has issued a revised procedure for appointment of CVOs in Central Public Sector Undertakings and other organisations under Central Ministries/Departments.

1.7.3 COMMISSION'S ADVICE IN PROSECUTION CASES

In cases in which the CBI considers that a prosecution should be launched and the sanction for such prosecution is required under any law to be issued in the name of the President, the Commission will tender advice, after considering the comments received from the concerned Ministry/Department/Undertaking, as to whether or not prosecution should be sanctioned.

1.7.4 ADVISING ON PROCEDURAL ASPECTS

If it appears that the procedure or practice is such as affords scope or facilities for corruption or misconduct, the Commission may advise that such procedure or practice be appropriately changed, or changed in a particular manner.

1.7.5 REVIEW OF PROCEDURES AND PRACTICES

The Commission may initiate at such intervals as it considers suitable review of procedures and practices of administration insofar as they relate to maintenance of integrity in administration.

1.7.6 COLLECTING INFORMATION

The Commission may collect such statistics and other information as may be necessary, including information about action taken on its recommendations.

1.7.7 ANNUAL REPORT

The Commission is required to present annual report to the President as to the work done by it within six months of the close of the year under report. The report would contain a separate part on the superintendence by the Commission on the functioning of Delhi Special Police Establishment. The President shall cause the same to be laid before each House of Parliament.

1.7.8 ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS

The Commission may take initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

Clause 8(1)(g) of the CVC Act requires the Commission to tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise. Thus, the types of cases to be referred to the Commission for advice, and also the status of officers against whom the cases would be referred to the Commission, may require a notification by the Government in the rules to be framed under the Act or through administrative instructions on the recommendation made by the Commission. However, till such time the instructions are notified, the Commission would continue to advice on vigilance cases against following categories of employees:

- (a) Group 'A' officers of the Central Government.
- (b) Members of All India Services if misconduct was committed while serving in connection with the Affairs of the Union; or if the State Govt. proposes to impose a penalty of dismissal, removal or compulsory

retirement for the misconduct committed by him while serving in connection with the affairs of that State Government.

- (c) Executives holding top positions up to two levels below the Board-level in the public sector undertakings.
- (d) Officers in Scale-V and above in the public sector banks.
- (e) Officers of the rank of Assistant Manager and above in the insurance sector (covered by LIC and GIC).
- (f) Officers drawing basic pay of Rs.8700 and above in autonomous bodies/local authorities/societies etc.

1.8 VIGILANCE ADMINISTRATION IN KMRL

1.8.1 Selection of CVO in KMRL

The appointment of CVO has to be made in line with CVC Guidelines. As per the sanction order of 50-50 JV Metros, it was made clear that those metros would come under the DPE and CVC guidelines. In the meeting convened by MoUD on 18th August 2015 on the common issues related to Metro Corporations formed on 50:50 Joint Venture of Government of India and State/UT Governments, it has been directed to appoint CVO in the Deputy Secretary / Director Level in Metro Corporations having metro rail projects sanctioned for less than 100 kms. Further, in the meeting convened by MoUD on the same subject on 5th May 2016, DMRC has been advised by MoUD to share their procedure for the appointment of CVO to all other Metros. It was generally decided that the 50-50 JV Metro Companies would follow the DMRC procedure for appointment of CVO.

As per the CVC guidelines, CVO shall be from outside the PSE concerned. Hence, the CVO in KMRL, as far as practicable, should be from outside KMRL, preferably from Indian Railways. The thrust behind this policy is to ensure that the officer appointed as CVO is able to inspire confidence that he would not be hampered by the past association with the organisation in deciding vigilance cases.

The officers proposed to be considered for appointment as CVO of KMRL shall be shortlisted by the Board of KMRL, once list is obtained from DoPT and Railway Board through MoHUA. Names of three to five officers (preferably) as shortlisted by the Board of KMRL shall be sent to CVC for clearance/ approval of one name from among

the list given. After getting clearance from CVC, the appointment of CVO will be done by the administrative Ministry, i.e MoHUA.

However, until an outsider CVO, as above is appointed or if at any time, the post of CVO becomes vacant, the Managing Director of KMRL may designate any one senior employee of KMRL to carry out the functions of CVO as a temporary / provisional arrangement.

Managing Director of KMRL can appoint required number of employees from among the existing staff, whose integrity is beyond doubt as vigilance officers to assist the CVO.

1.8.2 CONSTITUTION AND FUNCTIONS OF VIGILANCE COMMITTEE OF KMRL

The Organization Vigilance Committee in KMRL will be constituted as follows:

MD - Chairman

All Functional Directors - Members

CVO - Member Secretary

The Vigilance Committee constituted as above may co-opt any other senior Executive of the Organization as member of the committee on need basis when there is requirement of such member in the committee to discuss the vigilance matters pertaining to area of activity of such member.

1.8.3 Role and Functions of Vigilance Committees

1. The meeting of Vigilance Committee is to be held every month latest by 25th to deliberate on vigilance matters pertaining to the Organization. In the absence of the Chairman, the senior most Member of the Committee officiate as Chairman of the Committee. The Minutes of the meeting along with the Monthly Report of vigilance status is to be sent by the Member Secretary through Chairman Vigilance Committee to Corporate Vigilance so as to reach by 1st of next month.

2. The Vigilance Committee reviews the status of pending Investigation / Enquiry / Disciplinary Proceedings cases in the Organization and takes necessary action to ensure timely disposal of such cases. The Member Secretary puts before the

Committee, the details of such pending cases and other vigilance matters requiring the attention of the Committee

3. The Vigilance Committee reviews the status of implementation of e-tendering/ e-procurement in the Organization and ensures that, CVC Guidelines / CMD / CVOs instructions on the subject is complied with to bring transparency in procurement and contracts.

4. The Vigilance Committee reviews the status of implementation of instructions contained in CVC / MoD / DPE Guidelines and CMD / CVO Circulars received from time to time on vigilance matters in the Organization. For this purpose, the Member Secretary puts up the list of such Guidelines and Circulars received every month and requiring / pending implementation.

5. The Vigilance Committee identifies the corruption prone / sensitive areas of the sections in the Organization and plan and implement rotation of Executives and Non-Executives working in corruption prone / sensitive areas for more than three years within the period of next one or two months. The Member Secretary puts up the list of such Executives and Non-Executives in the monthly meeting held in April every year and thereafter status of implementation of job rotation every month.

6. The Vigilance Committee reviews monthly, the system of surprise and regular inspection in the Organization and takes appropriate steps for its efficient working. The Vigilance Committee takes notice and also reviews the lapses observed during such surprise and regular inspection and takes appropriate actions. The Member Secretary puts up before the Committee, a brief on surprise / regular inspection conducted in the month highlighting the lapses found. He also puts up actions pending for implementation in earlier surprise / regular checks.

7. The Vigilance Committee appoints sub-committee to scrutinise high value POs / Sub - contracts orders and reviews the status of implementation of actions and on lapses found by the sub - committee every month. As per the MDs Orders, all POs / Contracts of more than Rs.1 crore are to be scrutinised compulsorily. The Member Secretary puts up list of such cases pending action before Committee every month.

8. The Vigilance Committee reviews the status of comments / replies and actions pending on CTE type Intensive Examination Reports and takes appropriate actions on

timely compliance. The Member Secretary will put up list of such pending Paras and actions pending relating to such CTE Type Intensive Examination Reports.

9. The Vigilance Committee facilitates study of system improvement taken by the Vigilance Officer on different areas at least once in three months and ensures implementation of measures recommended.

10. The Vigilance Committee reviews the implementation of Corruption Risk Management Policy.

11. The Vigilance Committee ensures that all Executives are put through Vigilance Awareness Programme at least once in 10 years. Besides, it also ensures that, Non-Executives who are functioning in sensitive areas are to be exposed to Vigilance Awareness Programme.

12. The Vigilance Committee provides all logistics support and other facilities to VO / IO to facilitate efficient functioning of vigilance in the Organization.

13. Any other task assigned by MD / CVO.

1.8.4 FUNCTIONS & RESPONSIBILITIES OF VIGILANCE OFFICIALS

While it is difficult to outline an exhaustive list of functions & responsibilities of Vigilance functionaries, as the sphere of Vigilance is ever-evolving, an indicative list is as under:

- i. Undertake prompt investigation of authenticated complaints, with special emphasis on Presidential & PMO references, CVC-referred complaints, complaints appearing in the media and serious complaints, involving malafide intent, sent by the public.
- ii. Carry out checks, with follow ups investigations, on serious causes of irregularities, based on source information.
- iii. Ensure speedy proceedings of vigilance cases at all stages. Undertake regular reviews of these cases.

- iv.** Ensure that charge sheets are prepared accurately, without any loopholes and relevant documents are carefully stored and sent promptly to the inquiry officer.
- v.** Ensure prompt appointment of Presenting Officer (PO) and Inquiry Officer (IO) for D & AR inquiries.
- vi.** Ensure that D & AR inquiries are conducted expeditiously by inquiry officer
- vii.** Process the IO's Report properly and expeditiously for obtaining final orders of Disciplinary Authority.
- viii.** Ensure that the Central Vigilance Commission (CVC) is consulted at all relevant stages, in an expeditious manner.
- ix.** Ensure prompt submission of returns to CVC.
- x.** Maintain close liaison with CVC and CBI.
- xi.** Ensure that proper assistance is given to CBI for investigation of cases.
- xii.** Keep a close watch on functioning & integrity of personnel in the vigilance department itself.
- xiii.** Undertake review of existing Rules and procedures, with a view to plug loopholes and suggest systemic improvements to curb corruption.
- xiv.** Maintain close surveillance on officials of doubtful integrity.
- xv.** Arrange regular and surprise inspections at sensitive work units which are susceptible to corruption.
- xvi.** Monitor adherence to aspects of conduct rules relating to integrity.
- xvii.** Disseminate awareness about vigilance, through vigilance bulletins, seminars, workshops, lectures, vigilance awareness week etc.

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MODULE – II

DIFFERENT FACETS OF

VIGILANCE

2.1 Different Facets of Vigilance

Vigilance is not a stand-alone activity but it is an integral part of the overall risk management strategy of an organisation wherein the structures, systems and processes are built in such a manner so as to prevent revenue leakage that adversely affects productivity and profitability. There is a compelling need to integrate vigilance activity as a part of overall risk management strategy which in turn has to be integrated in the mainstream operations of organisations.

Vigilance has to be looked upon as one of the essential components of management. It is as important a segment in an organisation as Finance, Personnel, Technical and Marketing. If the vigilance set up is effective in an organisation, it will certainly ensure the functioning of the other segments like Finance, Personnel, Technical and Marketing in an efficient way. It has therefore to be given rightful place in the management.

The objective of vigilance is to ensure that the management gets the maximum out of its various transactions. In the field of purchases, it should get the quality product at competitive rates. In the field of sales, it should get the maximum realisation within time for its products at the minimal selling cost. In the field of personnel, it recruits the best talented people and keeps the morale of people high. Likewise, in any one of its transactions, it should endeavour to get the best.

Vigilance is not a substitute for departmental supervision and checks. The vigilance set up on the one hand must realize importance and consequences of absence of vigilance in the organisation and on the other hand effects of 'over vigilance' and 'under vigilance'. The 'under vigilance' increases the level, causes and scope for corruption, whereas the 'over vigilance' creates a sense of demoralisation and insecurity among the public servants rendering them reluctant to take decision and initiative in disposal of official files. Thus, there is a need to strike a reasonable balance between the two. The vigilance is not just a police function but it protects the executive and assists them in taking right decision at right time in a right manner making distinction between mistakes made with mala fide intention and those made with bona fide intention. The executives must maintain a balance between need to take quick decision and need to safeguard the Company's interest by correcting system in decision making process.

The successful discharge of role of vigilance as protective, reactive and punitive largely depends upon the positive vigilance only. The vigilance must set an example by their own conduct and integrity in all areas of transactions in the Company. Transparency in their dealings, impartiality in deciding the cases and award of punishment, honesty while investigating, fair procedure while conducting inquiry and fearlessness without succumbing to undue pressure are important aspects of positive vigilance which every vigilance executive must uphold for the credibility of the department. The reformatory and educative vigilance are an integral part of positive vigilance.

Vigilance in the context of any organisation would mean keeping a watchful eye on the activities of the officers and officials of the organisation to ensure integrity of personnel in their official transactions. Vigilance, in other words, is to ensure clean and prompt administrative action towards achieving efficiency and effectiveness of the employees in particular and the organisation in general. Lack of vigilance leads to waste, losses and economic decline. Vigilance is thus, basically and admittedly a managerial function and therefore, it is an integral part of duties of an executive. There is a setup of internal vigilance, in every department, and their primary responsibility is to ensure Purity, Integrity and Efficiency of the staff.

The vigilance function comprises of:

- a) Preventive Vigilance
- b) Punitive Vigilance
- c) Detective Vigilance
- d) Corrective Vigilance
- e) Predictive Vigilance
- f) Administrative Vigilance

2.2 PREVENTIVE VIGILANCE

Preventive vigilance is also a proactive vigilance which should be the main focus in any organisation which aims to eliminate totally corruption risks in the organisation.

Santhanam Committee, while outlining the preventive measures that should be taken to significantly reduce corruption, had identified four major causes of corruption, viz.

(i) administration delays; (ii) Government taking upon themselves more than what

they can manage by way of regulatory functions; (iii) scope for personal discretion in the exercise of powers vested in different categories of government servants; and (iv) cumbersome procedures of dealing with various matters which are of importance to citizens in their day to day affairs. The salient features of preventive vigilance as suggested by Santhanam Committee are as follows:

- (i) To undertake a study of existing procedures and practices prevailing in the organisation with a view to modifying those procedures or practices which provide a scope for corruption, and also to find out the causes of delay, the points at which delay occurs and devise suitable steps to minimise delays at different stages;
- (ii) To undertake a review of the regulatory functions with a view to see whether all of them are strictly necessary and whether the manner of discharge of those functions and exercise of powers of control are capable of improvement;
- (iii) To devise adequate methods of control over exercise of discretion so as to ensure that discretionary powers are not exercised arbitrarily but in a transparent and fair manner;
- (iv) To educate the citizens about the procedures of dealing with various matters and also to simplify the cumbersome procedures as far as possible;
- (v) To identify areas in the organisation which are prone to corruption and to ensure that officers of proven integrity only are posted in those areas;
- (vi) To prepare a list of officers of doubtful integrity – the list would include names of those officers who, after inquiry or during the course of inquiry, have been found to be lacking in integrity, such as:
 - (a) Officer convicted in a court of law on the charge of lack of integrity or for an offence involving moral turpitude but who has not been imposed a penalty of dismissal, removal or compulsory retirement in view of exceptional circumstances.
 - (b) Awarded departmentally a major penalty on charges of lack of integrity or gross dereliction of duty in protecting the interest of government although corrupt motive may not be capable of proof.
 - (c) Against whom proceedings for a major penalty or a court trial is in progress for alleged acts involving lack of integrity or moral turpitude.

- (d) Who was prosecuted but acquitted on technical grounds and there remains a reasonable suspicion about his integrity;
- (vii) To prepare the 'agreed list' in consultation with the CBI – the list will include the names of officers against whose honesty and integrity there are complaints, doubts or suspicions;
- (viii) To ensure that the officers appearing on the list of officers of doubtful integrity and the agreed list are not posted in the identified sensitive/corruption prone areas.
- (ix) To ensure periodical rotation of staff; and
- (x) To ensure that the organisation has prepared manuals on important subjects such as purchases, contracts, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission.

The main objectives of preventive vigilance can be summed up as follows:

- (a) To assist and help the management in bringing about and sustaining propriety and integrity concurrently with efficiency at all levels of working.
- (b) To function as a service/cerebral department to the management to help identifying black spots and to make fair, objective and prompt investigations.
- (c) To suggest ways and means of qualitative improvement in administration by plugging loopholes.
- (d) To improve/simplify procedures to curb scope for malpractices and corruption.
- (e) To suggest ways and means to plug deliberate leakages of public funds.
- (f) To spread awareness among all the employees of the organisation about the cardinal principle that vigilance is a management function and everyone has responsibility in his/her sphere of activity.
- (g) To protect and strengthen the hands of those that are efficient, honest and law abiding but who may be the victims of malicious complaints and also to correct gently and constructively those who may have committed genuine mistakes without mala fide intention.
- (h) To ensure implementation of the directives/guidelines of the Central Vigilance Commission in the matters of tenders/contracts/disciplinary matters etc. received from time to time.

- (i) To lay emphasis on improving vigilance administration by leveraging technology in areas like tenders/contracts etc.
- (j) To ensure that Integrity Pact is implemented wherever the requirement arises in consonance with Govt. of India/CVC guidelines issued from time to time.
- (k) To ensure that all tenders/contracts/payments made to suppliers/contractors are put up periodically on the official website of the Company.
- (l) To ensure that e-Payments and e-Procurements/e-Tenders are implemented.
- (m) To periodically conduct awareness sessions on vigilance matters to employees and other stakeholders (as and when the opportunity arises).
- (n) To undertake a review of bills (of six months duration). The review should be meant to primarily determine the time taken in clearing the bills.
- (o) To conduct an exercise to identify the weaknesses in the existing systems and policies and the lapses that may have arisen or likely to arise due to the systemic flaws noted.

2.2.1 Preventive vigilance calls for constant review of rules, procedures and practices, which afford scope for corruption. Some of the salient features of preventive vigilance in different segments of organisation are enumerated below:

a) Purchases

- i. Should be invariably on a public tender basis.
- ii. Whenever limited tender is resorted to, enquiries should be sent only by certificate of posting and adequate notice be given to participate in tender.
- iii. Further, tenders should have both technical and financial bids.
- iv. Technical bids should be scrutinised and approval of samples made before financial bids are opened.
- v. Once the samples are approved, then the lowest price concept should be implemented in awarding purchase contracts.
- vi. List of suppliers should be reviewed periodically.
- vii. Adherence of purchase conditions to be monitored.
- viii. Delivery of samples should be checked with basic samples.
- ix. Review of settlement of bills of parties.
- x. E-procurement mode may be adopted wherever possible.

b) Civil and Electrical Works

- i. Strict adherence to the procedure laid down by MoRTH, CIL, BPE, CPWD etc., in the execution of works.
- ii. Surprise checks of measurements, quality of material etc.

c) Inventory

- i. Surprise checks of stores both for quality and quantity.
- ii. Review of stored lying unused for long time.

d) Finance

- i. Settlement of payments through e-banking/online payments and only in exceptional cases by A/c payee cheques,
- ii. Dispatch of cheques by certificate of posting instead of hand delivery,
- iii. Review of debtors list,
- iv. Obtaining confirmation of balances outstanding from parties.

e) HR

- i. Periodical rotation of officers/staff in sensitive posts.
- ii. Review of the Immovable Properties Returns of individuals.
- iii. Proper implementation of the proposed Conduct, Discipline and Appeal Rules like weeding out corrupt officers in public interest.
- iv. Dispensation of unwanted procedures and practices.
- v. Streamlining procedures for recruitment.
- vi. Institution of an effective grievance procedure machinery.

2.2.2 Internal Vigilance

Vigilance activities mostly pertain to complaints received from sources outside departments. An efficient administration however, should prefer to discover misconduct on its own. This internal vigilance depends on the efficiency of inspections.

1. Inspections are indeed meant to ensure that what was intended to be done has been done correctly, honestly, economically, promptly and efficiently.

Regrettably, inspections are considered a routine matter and therefore, less importance than most demonstrable activities. A consequence is that larger dependence has come to be placed on outside complaints for unearthing misconduct cases arising out of inspections/audit. Obviously, inspections are not as effective as they were intended to be.

2. Prevention is preferable to detection, inspection, inquiry and penal action. Normally, rules and procedures are made with a view that the public is served without fear or favour, justly, fairly and uniformly. A misconduct, therefore, would generally be reflected in violation of these rules and procedures, resulting in absence of entries, incorrect entries, fabrication of entries, etc. If the rules and procedures are, therefore, well-conceived then inspections in depth should not only bring out many of the corrupt acts to light, but also help to improve procedures and deter fresh attempts. It is necessary, therefore, that inspections are regularly planned and thoroughly carried out and their outcome is promptly processed. A continuous watch over the results of inspections cannot but fail to bring out lacunae in procedures.
3. If the purpose of vigilance is to reduce the occurrence of corruption/misconduct to the minimum, emphasis ought not to be given only on creation of machineries to investigate, inquire and punish the offender. What is important is continuous emphasis on good conduct. It should be a matter of concern whether or not Government activities take place correctly, honestly, economically, promptly and efficiently. It follows that things should get done and public should receive what they are entitled to without difficulty, without delay, without having to know somebody or without having to approach somebody. In practice, there is no compulsion on departments to be watchful over the continuous observance of good conduct.
4. It follows that every opportunity should be taken to improve and simplify rules and procedures whether such suggestions come out of inspections, investigations, inquiries or reports. Any sensitive areas (where they can go on changing) where there are more opportunities of corruption would naturally receive adequate consideration.

2.3 DETECTIVE VIGILANCE

- (i) Effective use and scan of Complaints, Inspection Reports, Audit Reports, Press Reports, CBI Reports, Judicial Remarks, Source Information.
- (ii) Detection of Corrupt Practices, Malpractices, Negligence, Misconduct.
- (iii) Better surveillance of public contact points.
- (iv) Close watch on officers at sensitive posts of doubtful integrity and detect fraud.
- (v) Scrutiny of decisions taken by officials having discretionary powers.
- (vi) Organising traps/raids with the help of Police/CBI.

2.4 CORRECTIVE VIGILANCE

- (i) Analysis of results of detective vigilance.
- (ii) Exploration of the reasons and contributory factors.
- (iii) Finding solution to stop recurrence and activate alarm signals.
- (iv) Updating the practices to keep pace with times.
- (v) Transparency in procedures and decision-making.
- (vi) Plugging of the loopholes and updating and building in new whistle blowing arrangements.
- (vii) Prepare case study and educate employees.
- (viii) Attempt to bring in transparency in procedures and decision-making. For corrective vigilance to be effective, the organisation has to have an effective vigilance network and the management has to have respect for the advice of the Vigilance Department.

2.5 PREDICTIVE VIGILANCE

- (i) Foreseeing an activity prejudicial to the interests of the organisation.
- (ii) Suggesting in advance corrective measures to be taken by the management against acts of misconduct, corruption, lapses which may occur in the wake of modification of rules, regulations, technology, circumstances, etc.

2.6 ADMINISTRATIVE VIGILANCE

Administrative vigilance encompasses conduct of (i) Monthly Vigilance Committee Meetings in the SBUs/Units/Offices, (ii) Issuance of No-Objection Certificate/Vigilance Clearance for various purposes, and (iii) timely submission of Reports and Returns.

2.7 PUNITIVE VIGILANCE

Punitive vigilance deals with vigilance cases which have been investigated, enquiry has been held and penalty has been imposed. Following actions are to be taken on the punitive vigilance aspects:

- (i) To receive complaints from all sources and scrutinise them with a view to finding out if the allegations involve a vigilance angle or otherwise.
- (ii) To maintain and reflect the complaints in appropriate registers and update them from time to time and to follow the guidelines of CVC while handling complaints.
- (iii) To investigate into such specific and verifiable allegations that involve vigilance angle in accordance with the guidelines contained in the Complaint Handling Policy and Whistle Blower Policy of the Company.
- (iv) To investigate into the allegations forwarded by the Commission or by the CBI.
- (v) To complete investigations in a time bound manner as laid down by CVC.
- (vi) To process the investigation reports expeditiously for obtaining orders of the competent authorities about further course of action to be taken and also obtaining Commission's advice on the investigation reports where necessary.
- (vii) To ensure that the charge-sheets to the concerned employees are drafted properly and issued expeditiously.
- (viii) To ensure that there is no delay in appointing the inquiring authorities where necessary.
- (ix) To adduce required/relevant evidence (oral/documentary/material) in the departmental enquiry as and when called upon as management witness.
- (x) To examine the enquiry officer's report, keeping in view the evidence adduced by the prosecution and the defence during the course of inquiry, and obtaining orders of the competent authority about further course of action to be taken and also for obtaining the Commission's second stage advice, where necessary.
- (xi) To ensure that the disciplinary authority concerned issues a speaking order, while imposing a punishment on the delinquent employee. The order to be issued by the disciplinary authority should show that the disciplinary authority had applied its mind and exercised its independent judgement.

- (xii) To ensure that rules with regard to disciplinary proceedings are scrupulously followed at all stages by all concerned as any violation of rules would render the entire proceedings void.
- (xiii) To ensure that the time limits prescribed for processing the vigilance cases at various stages, are strictly adhered to.
- (xiv) To take up review of final orders of the disciplinary authority wherever felt necessary.
- (xv) To be well versant with court/legal proceedings and their implications with respect to disciplinary matters, as there are possibilities that some employees affected by the action of vigilance may involve the management in litigation.

MODULE – III

COMPLAINTS AND INVESTIGATION

3.1 COMPLAINTS

3.1.1 INTRODUCTION

Receipt of information about corruption, malpractice or misconduct on the part of public servants, from whatever source, would be termed as a complaint.

3.1.2 SOURCE OF COMPLAINTS

Complaints relating to corruption and malpractices are being received by the CVO or by the Vigilance Unit of the KMRL. These may comprise of complaints received from, or forwarded by:

- a. The complaints received from the public, or through the administrative Ministry, CBI and the CVC
- b. Complaints received from employees of the organization.
- c. The President's Secretariat and the Prime Minister's Office.
- d. MPs/MLAs/VIPs, individuals and social and other organizations.
- e. Complaints made under Public Interest Disclosure.
- f. Scrutiny of Annual Property Statements.
- g. Scrutiny of transactions reported under the Conduct Rules.
- h. Reports of irregularities in accounts detected in the routine audit of accounts; tampering with records, over –payments, misappropriation of money or materials etc.
- i. Complaints and allegations appearing in the press etc.
- j. Source information, if received verbally from an identifiable source, to be reduced in writing.
- k. Complaints received through E-mails and verified through formal letter.

3.1.3 ACTION ON ANONYMOUS AND PSEUDONYMOUS COMPLAINTS

The pre-requisite for investigation of a complaint, barring certain exceptions, is that the complaint should be signed and contain the name and address of the complainant. Any complaint that does not bear the name and address of the complainant is an anonymous complaint. A complaint which does not bear the full particulars of the complainant or is unsigned or is not subsequently acknowledged by a complainant as

having been made is a pseudonymous complaint. As per CVC instructions, no action is required to be taken on such complaints and these complaints are simply filed.

3.1.4 COMPLAINTS RECEIVED FROM SUB-ORDINATE OFFICIALS

While normally an employee is required to address communications through proper official channel, but in case of vigilance there is no objection in entertaining a direct complaint or communication from him giving information about corruption or other kinds of malpractice. While genuine complainants should be afforded protection against harassment or victimization, serious notice should be taken if a complaint, after verification, is found to be false and malicious. There should be no hesitation in taking severe departmental action or launching criminal prosecution against such complainants.

3.1.5 VERIFICATION OF GENUINENESS

Every complaint is required to be verified for genuineness. This may be done by one or both of the following methods:-

- j) Addressing the complainant through a registered letter (acknowledgement due), asking him to confirm, within a specified time limit, that he has made the complaint.
- k) By deputing an authorised official to personally contact the complainant.

Where a complaint, received from a VIP, has been forwarded to the KMRL with a positive endorsement by, or on behalf of the Minister, asking for a report, the investigations may be undertaken without verification of genuineness. In addition verification of genuineness is not required to be done in cases of complaints forwarded by the CVC for investigation and in regard to complaints received under the Public Interest Disclosure Scheme.

3.1.6 SCRUTINY OF COMPLAINTS

Each complaint will be examined by the Chief Vigilance Officer to see whether there is any substance in the allegations. Where the allegations are vague and general and prima facie unverifiable, the CVO may decide, with the approval of MD, where considered necessary, that the complaint should be filed. In other situations, the following action may be taken:-

- (a) If the complaint contains allegations which have no vigilance angle, the same should be forwarded for necessary action to the administrative department concerned.
- (b) If the allegations are of a vague or general nature, or not susceptible of verification the complaint may be filed.
- (c) Anonymous and pseudonymous complaints should be dealt with as laid down in the relevant Para.
- (d) Where the allegations attract a vigilance angle, the genuineness of the complainant should be verified, unless verification has already been done by the authority forwarding the complaint.

A final decision on the above will be taken by the CVO of Kochi Metro Rail Limited.

3.1.7 DISPOSAL OF COMPLAINTS

A complaint which is registered, can be dealt with as follows:

- i. File it without or after investigation; or
- ii. To pass it on to the CBI for investigation/appropriate action; or
- iii. To pass it on to the concerned administrative authority for appropriate action on the ground that no vigilance angle is involved; or
- iv. To take up for detailed investigation by the departmental vigilance. An entry to that effect would be made of the vigilance complaint register with regard to “action taken” and “date of action” respectively. A complaint will be treated as disposed-off for monthly/annual returns either on issue of charge-sheet or final decision for closing or dropping the complaint. If a complaint is taken up for investigation by the departmental vigilance or in cases in which it is decided to initiate departmental proceedings or criminal prosecution, further progress would be watched through other relevant registers. If there were previous cases/complaints against the same officer, it should be indicated in the remarks column of register.

In the first instance, the decision with regard to the existence of a vigilance angle in a case may be taken by the CVO. After registering the information as a complaint in the Vigilance Complaint Register, he would then process the matter further to decide as to whether the allegations are general or vague and deserve to be filed or the matter requires further investigation. In the latter case, he would also have to decide

as to whether the investigation into the allegations should be entrusted to the CBI or local police or taken up departmentally. In case the matter is entrusted to outside agency, specific approval of MD is required.

The case may, with the approval of the MD, be entrusted to the CBI, if the allegations:

- i. Are criminal in nature (e.g. bribery, corruption, forgery, criminal breach of trust, possession of assets disproportionate to known sources of income, cheating, etc.; or
- ii. Require inquiries to be made from non-official persons; or
- iii. Involve examination of private records; or
- iv. Need expert police investigation for arriving at a conclusion; or
- v. Need investigation abroad.

3.2 COMPLAINTS RECEIVED UNDER PUBLIC INTEREST DISCLOSURE

The Central Government had issued a Resolution dated 21.4.2004 relating to Public Interest Disclosure and Protection of Informers (PIDPI). The resolution contains details of the machinery evolved for acting on complaints from whistle blowers. The salient features of the resolution are as follows:-

- a) The Central Vigilance Commission is authorised, as the designated agency, to receive written complaints or disclosure on any allegation of corruption or misuse of office by any employee of the Central Government or of any Corporation established by or under any Central Act, Govt. Companies, Societies or local authorities owned or controlled by the Central Govt. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material.
- b) The CVC may, if it deems fit, call for further information or particulars from the persons making the disclosure. If the complaint is anonymous, the CVC shall not take any action in the matter.
- c) Notwithstanding anything contained in the Official Secrets Act, 1923, any public servant other than those referred to in clauses (a) to (d) of Article 33 of the Constitution or any other person including any non-Governmental organisation, may make a written disclosure to the CVC.

- d) If the complaint is accompanied by particulars of the person making the complaint, the CVC shall take the following steps:
- i. The CVC will ascertain from the complainant whether he was the person who made the complaint or not.
 - ii. The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other office or authority.
 - iii. After concealing the identity of the complainant, the CVC shall make, in the first instance discreet inquiries to ascertain if there is any basis of proceedings further with the complaint. For this purpose, the CVC shall devise appropriate machinery.
 - iv. Either as a result of the discreet inquiry, or on the basis of the complaint itself without any inquiry, if the CVC is of the opinion that the matter requires to be investigated further, the CVC shall officially seek comments/or explanation from the Head of the Department of the concerned Organisation or office. While doing so, the CVC shall not disclose the identity of the informant and also shall request the concerned Head of the Organisation to keep the identity of the informant secret, if for any reason, the concerned Head of the Organization comes to know of the identity.
 - v. After obtaining the response of the concerned Organisation, if the CVC is of the opinion that the investigations reveal either misuse of office or substantiate allegation of corruption, the CVC shall recommend appropriate action to the concerned Govt. Department or Organisation. These, shall, inter alia, include following:
 - 1) Appropriate proceedings to be initiated against the concerned Government servant.
 - 2) Appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt act or misuse of office, as the case may be.
 - 3) Recommend to the appropriate authority/agency initiation of criminal proceedings in suitable cases, if warranted by the facts and circumstances of the case.
 - 4) Recommend taking of corrective measures to prevent recurrence of such events in future.

- 5) For the purpose of making discreet inquiry or obtaining information from the concerned organisation, the CVC shall be authorised to call upon the CBI or the police authorities, as considered necessary, to render all assistance to complete the investigation pursuant to the complaint received.
- 6) If any person is aggrieved by any action on the ground that he is being victimised due to the fact that he had filed a complaint of disclosure, he may file an application before the CVC seeking redress in the matter, who shall take such action, as deemed fit. The CVC may give suitable directions to the concerned public servant or the public authority as the case may be.
- 7) Either on the application of the complainant, or on the basis of the information gathered, if the CVC is of the opinion that either the complainant or the witnesses need protection, the CVC shall issue appropriate directions to the concerned Government authorities.
- 8) The machinery evolved herein shall be in addition to the existing mechanisms in place. However, secrecy of identity shall be observed, only if the complaint is received under this machinery.
- 9) In case the CVC finds the complaint to be motivated or vexatious, the CVC shall be at liberty to take appropriate steps.
- 10) The CVC shall not entertain or inquire into any disclosure:-
 - (a) In respect of which a formal and public inquiry had been ordered under Public Servants Inquiries Act, 1850 or
 - (b) In respect of a matter which has been referred for inquiries under the Commissions of Inquiry Act, 1952.
 - (c) In the event of the identity of the informant being disclosed in spite of the CVC's directions to the contrary, the CVC is authorized to initiate appropriate action as per extant regulations against the person or agency making such disclosure.

3.2.1 In pursuance of the aforementioned Resolution, the CVC had issued the following public guidelines relating to the receipt of complaints:-

- i. The complaint should be in a closed/secured envelope.

- ii. The envelope should be addressed to Secretary, Central Vigilance Commission and should be super scribed "Complaint under The Public Interest Disclosure". If the envelope is not super scribed and closed it will not be possible for the Commission to protect the complainant under the above resolution and the complaint will be dealt with as per the normal complaint policy of the Commission. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter.
- iii. Commission will not entertain anonymous/pseudonymous complaints.
- iv. The text of the complaint should be carefully drafted so as not to give any details or clue as to his/her identity. However, the details of the complaint should be specific and verifiable.

In order to protect the identity of the person, the Commission will not issue any acknowledgement and the whistle-blowers are advised not to enter into any further correspondence with the Commission in their own interest. The Commission assures that, subject to the facts of the case being verifiable; it will take the necessary action, as provided under the Resolution mentioned above. If any further clarification is required, the Commission will get in touch with the complainant.

3.3 INVESTIGATION

3.3.1 AGENCY FOR CONDUCTING INVESTIGATION

As soon as a decision has been taken to investigate the allegations contained in a complaint, it will be necessary to decide whether the allegations should be inquired into departmentally or whether a police investigation is necessary.

As a general rule, investigation into the allegations of the types given below should be entrusted to the Central Bureau of Investigation or the Anti-Corruption:-

- i. Allegations involving offences punishable under law which the Delhi Special Police Establishment are authorised to investigate; such as offences involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, possession of assets disproportionate to known sources of income, etc.
- ii. Cases in which the allegations are such that their truth cannot be ascertained without making inquiries from non-official persons; or those involving examination of non-Government records, books of accounts etc.; and

iii. Other cases of a complicated nature requiring expert police investigation.

3.3.1.1 In cases where allegations relate to a misconduct other than an offence, or to a departmental irregularity or negligence, and the alleged facts are capable of verification or inquiry within the department/office, the investigation should be made departmentally.

3.3.1.2 In certain cases, the allegations may be of both types. In such cases, it should be decided in consultation with the Central Bureau of Investigation as to which of the allegations should be dealt with departmentally and which should be investigated by the Central Bureau of Investigation.

3.3.1.3 If there is any difficulty in separating the allegations for separate investigation in the manner suggested above, the better course would be to entrust the whole case to the Central Bureau of Investigation.

3.3.2 COMPETENCY TO REFER THE MATTER TO CBI

Chief Vigilance Officer of KMRL after taking approval from MD may refer the above types of cases to the CBI and it is not necessary to seek prior permission from the Commission.

3.3.3 PARALLEL INVESTIGATION BY VIGILANCE AND THE CBI

Once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a parallel investigation by the departmental agencies should be avoided. Further action by the department in such matters should be taken on completion of investigation by the CBI on the basis of their report.

However, if the departmental proceedings have already been initiated on the basis of investigations conducted by the departmental agencies, the administrative authorities may proceed with such departmental proceedings. In such cases, it would not be necessary for the CBI to investigate those allegations, which are the subject matter of the departmental inquiry proceedings, unless the CBI apprehends criminal misconduct on the part of the official(s) concerned.

3.3.4 PRELIMINARY INQUIRY/INVESTIGATION BY VIGILANCE

After it has been decided that the allegations contained in the complaint should be investigated departmentally, the vigilance officer should proceed to make a preliminary

inquiry/investigation with a view to determining whether there is, prima facie, some substance in the allegations. The preliminary inquiry may be made in several ways depending upon the nature of allegations and the judgment of the investigating officer, e.g.:

- a) If the allegations contain information which can be verified from any document or file or any other departmental records, the investigating/vigilance officer should, without loss of time, secure such records, etc., for personal inspection. If any of the papers examined is found to contain evidence supporting the allegations, such papers should be taken over by him for retention in his personal custody to guard against the possibility of available evidence being tampered with. If the papers in question are required for any current action, it may be considered whether the purpose would not be served by substituting authenticated copies of the relevant portions of the records; the original being retained by the investigating officer in his custody. If that is not considered feasible for any reason, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of investigation;
- b) In case, where the alleged facts are likely to be known to other employees of the department, the investigating officer should interrogate them orally or ask for their written statements. The investigating officer should make a full record of the oral interrogation which the person interrogated should be asked to sign in token of confirmation. Wherever necessary, any important facts disclosed during oral interrogation or in written statements should be verified by documentary or collateral evidence to make sure of the facts;
- c) In case, it is found necessary to make enquiries from the employees of any other Government department or office, the investigating officer may seek the assistance of the department concerned, through its CVO, for providing facility for interrogating the person(s) concerned and/or taking their written statements.
- d) In certain types of complaints, particularly those pertaining to works, the investigating officer may find it helpful to make a site inspection, or a surprise check, to verify the facts on the spot and also to take suitable action to ensure that the evidence found there, in support of the allegations, is not disturbed.

- e) If during the course of investigation, it is found that it will be necessary to collect evidence from non-official persons or to examine any papers or documents in their possession, further investigation in the matter should be entrusted to the Central Bureau of Investigation;
- f) If the employee complained against is in-charge of stores, equipment, etc., and there is a possibility of his tampering with the records pertaining to such stores or equipment, the investigating/vigilance officer may consider whether the employee concerned should not be transferred immediately to other duties. If considered necessary, he may seek the assistance of the head of the department or office in doing so.
- g) During the course of preliminary enquiry, the employee concerned may be given an opportunity to say what he may have to say about the allegations against him to find out if he is in a position to give any satisfactory information or explanation. In the absence of such an explanation, the employee concerned is likely to be proceeded against unjustifiably. It is, therefore, desirable that the investigating officer tries to obtain the suspect officers' version of 'facts' and why an inquiry should not be held. There is no question of making available to him any document at this stage. Such an opportunity however may not be given in cases in which a decision to institute departmental proceedings is to be taken without any loss of time; e.g. in a case in which the public servant concerned is due to retire or to superannuate soon and it is necessary to issue a charge-sheet to him before his retirement.
- h) While, normally, the preliminary enquiry/investigation will be made by the vigilance officer himself, he may suggest to the administrative authority to entrust the investigation to any other officer considered suitable in the particular circumstances of the case; e.g. it may be advisable to entrust the conduct of the preliminary enquiry to a technical officer if it is likely to involve examination and appreciation of technical data or documents. Similarly, the administrative authority may entrust the investigation to an officer of sufficiently higher status if the public servant complained against is of a senior rank.

After the preliminary enquiry has been completed, the investigating officer should prepare a self-contained report, containing inter alia the material to controvert the defence, and his own recommendations.

Where a case involves both criminal misconduct as well as flagrant violation of systems and procedures of the organisation, further investigation into the former should be left to the CBI. However, KMRL may also simultaneously consider the latter and initiate appropriate disciplinary proceedings, in accordance with the prescribed procedure, if required. The CVO of the KMRL and the DIG concerned of the CBI should coordinate their efforts to ensure that violation of rules, regulations and KMRL norms which are best covered under DA rules are left to the disciplinary authority to deal with; the CBI on the other hand should focus their investigation on the criminal aspects of the case.

3.3.5 INVESTIGATION/INQUIRY REPORT

The Investigating Officer (IO) should indicate the allegations contained in the complaint in the first paragraph of his report. The next paragraph should contain the gist of the investigation carried out by him as well as documentary and oral evidence that he has relied upon. The IO should then detail the procedure and guidelines which the Suspected Public Servant (SPS) was required to follow/comply with. After reporting the SPS's explanation, the same along with evidence on record should be discussed and assessed by the IO. Finally, he should give his findings in the last paragraph of the report clearly bringing out the accountabilities of the officials. Seized documents and statements of the witnesses and the SPS recorded during the investigation should accompany the investigation report.

3.3.5.1 The report of the IO should thus be comprehensive and completely documented so as to enable the CVO and DA to form an opinion whether any disciplinary or any other action is called for or not.

3.3.5.2 The report should be forwarded to the disciplinary authority through the CVO. The disciplinary authority/CVO should make a meticulous evaluation of the actions of various officials with reference to the nature of their duties. They are also required to assess the gap between what the managers at different levels of the decision-making hierarchy actually did and what they were required to do in accordance with manuals/guidelines/orders. They may follow the following criteria for the purpose and highlight in their reports if the answer to any of the questions is in the affirmative:-

- a) Can mala fide be inferred or presumed from the actions of any of the concerned officials?

- b) Could any of the officials be said to have engaged in a misconduct or misdemeanour?
- c) Was the conduct of any of the officials reflective of lack of integrity?
- d) Did the official(s) act in excess of their delegated powers/jurisdiction and failed to report the same to the competent authority?
- e) Did they or any of them show any gross neglect of their official functions?
- f) Is there any material to indicate that any of them acted recklessly?
- g) Has the impugned decision caused any undue loss to the organisation?
- h) Has any person/party or a set of persons/parties either within the organisation or outside it been caused any undue benefit?
- i) Have the norms or systems and procedures of the organisation been flagrantly violated?

3.3.5.3 Timeliness in the conduct of the preliminary inquiry cannot be overemphasised. Both the courts as well as administrative instructions have indicated that there should not be an inordinate delay between the occurrence of the impugned events and the issue of the charge-sheet. The current instructions of the Government are that the preliminary inquiry should be completed within three months. In the State of M.P. Vs. Bani Singh, 1990 Suppl. S.C.C. 738, it was held that an inordinate and inexplicable delay in finalisation of the charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity. Similarly, delayed charge sheets can also be legally challenged on grounds of staleness. Further, in State of Punjab Vs. Chaman Lal Goyal SLR (1995)(1) 700 S.C. it was held that in the case of inordinate delay, the burden of proving that the delay was due to a reasonable cause would be on the department. Thus, although it may not be desirable to indicate time limit for staff accountability, yet the need to ensure that the same is done at the earliest, needs to be reiterated.

3.3.6 INVESTIGATION OF COMPLAINTS AGAINST VIGILANCE PERSONNEL IN KMRL

Complaints against the CVO of KMRL may be examined/investigated by the CVO of the administrative ministry. A report along with the original record together with comments of the Secretary of the Ministry/Department may be referred to the CVC for proper and independent examination of the case.

3.3.6.1 Complaints against vigilance executives other than the CVO of KMRL may be examined/investigated by the CVO himself and a final decision may be taken with the approval of the MD.

3.3.6.2 If the allegations are prima facie established against such vigilance functionaries, they should be shifted to non-sensitive positions and in case they are on deputation from some other organisations, they may be repatriated to their parent organisations with appropriate recommendation to their disciplinary authorities with regard to the disciplinary action to be initiated against them.

3.3.7 INVESTIGATION OF COMPLAINTS AGAINST BOARD LEVEL APPOINTEE

3.3.7.1 If the CVO of an administrative ministry asks for a factual report against a Board-level appointee from the CVO of the KMRL, the latter will send the same to the CVO of the ministry, after taking approval of MD. The CVO of the ministry may make a reference to the CVC after collecting all the relevant facts and following the prescribed procedure.

3.3.7.2 In cases where CVC calls for investigation and report against a Board-level appointee, the CVO of the ministry shall initiate inquiries and may in this regard obtain factual information from the CVO of the KMRL.

3.3.8 ACTION ON INVESTIGATION REPORT

3.3.8.1 The disciplinary authority would consider the investigation report and the first stage advice of the CVO and decide, on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning/caution etc. administered or regular departmental proceedings launched. The test to be applied at this juncture relates to whether a prima facie case has been built up on the basis of the evidence collected during the course of preliminary enquiry. Generally, if any of the criteria indicated in the relevant paragraph is satisfied, a prima-facie case for instituting regular departmental proceedings could be said to exist. If on the other hand the evidence on record falls short of establishing such a prima facie case, the disciplinary authority may either close the matter, or may take recourse to other forms of disapproval, such as reprimanding the concerned employee, issuing him an advisory memo or warning, or communicating the Organisation's displeasure etc., as per rules of the KMRL. While taking such a decision, the disciplinary authority should

bear in mind that a departmental proceeding is not a criminal trial, and that the standard of proof required is based on the principle of 'preponderance of probabilities' rather than 'proof beyond reasonable doubt'.

3.3.8.2 If any of the employees involved in the case falls within the Commission's jurisdiction, the latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as "tentative". Such a reference would be required to be made even in respect of an officer/staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the and fall within the Commission's jurisdiction. The matter may be referred to the Commission, through the CVO, for its advice. However, if an administrative authority investigates into an anonymous or pseudonymous complaint under the impression that it is a genuine signed complaint, or for any other reason, the Commission need not be consulted if it is found that the allegations are without any substance. Further action in the matter should be taken on receipt of the Commission's advice, wherever the same has been sought. Lapses/irregularities in KMRL would depend upon the functions which the KMRL is performing. However, misconduct, lack of devotion to duty or integrity, as the case may be, could be inferred illustratively in the following circumstances, where the employee concerned:

- a) Has not acted in accordance with rules and his recommendations are not in the public interest; or
- b) Has failed to conduct himself in such a manner that his decisions or recommendations do not appear objective and transparent and seem to be calculated to promote improper gains for himself or for any one else; or
- c) Has acted in a manner to frustrate or undermine the policies of the organization or decisions taken in the public interest by the management; or
- d) Seems to have complied with unauthorized and unlawful oral instructions of his seniors without bringing them to the notice of the MD;
- e) Has exceeded his discretionary powers and his actions do not appear justifiable or to serve any organizational interests; or
- f) Has abused or misused his official position to obtain benefit for himself or for another; or
- g) Has not reflected intellectual honesty in his decisions and recommendations.

3.4 REFERENCE TO CVC

3.4.1 The CVC is consulted at two stages of departmental proceedings. Following documents are required to be sent to CVC by DA on completion of the preliminary investigation of the case, the disciplinary authority shall be required to forward:-

- i. The preliminary investigation report;
- ii. The relevant documents and records/files connected with the case;
- iii. A self-contained note clearly indicating the facts on which the Commission's advice is sought;
- iv. The disciplinary authority's own tentative recommendations;
- v. In cases investigated by the Central Bureau of Investigation under the Special Police Establishment Act, 1946, the comments of the disciplinary authority on the recommendations of the CBI;
- vi. A neatly typed tabular statement clearly indicating the allegations against the officer proposed to be included in the charge-sheet, his defence in respect thereof, and the disciplinary authority's and CVO's comments;
- vii. A panel of employees to be nominated as Presenting Officers; and
- viii. The bio-data of the officials concerned.

3.4.2 The CVO should invariably provide their own analysis and assessment of the facts of the case so that the Commission can have the benefit of their expertise.

3.4.3 It is necessary that before a case is referred to the CVC for advice, it receives due consideration at the appropriate level in the organisation.

3.5 CATEGORISATION OF CASES

Before making references to the Commission, the CVO may classify references into Vigilance A and B. Vigilance-A would comprise cases where the lapses committed/irregularities noticed are serious and a prima-facie case for initiation of RDA for major penalty proceedings has been made out; Vigilance-B, on the other hand, would comprise less serious cases of procedural lapses, which in the opinion of the CVO, do not reflect adversely on the integrity of the official concerned. Vigilance-B cases ordinarily will not invite any administrative disabilities normally associated with the registration of a vigilance case against an official. These cases will continue to be monitored through the Vigilance Complaints Register till their disposal but only

because they technically fall within the ambit of the term 'vigilance' and not because the official is accountable for a serious misdemeanour/misconduct or equivalent negligence. It follows then that an official can be proceeded against for a minor penalty but may not suffer any disability by way of posting, training, placement on 'Agreed List' etc., during the pendency of the disciplinary proceedings. If he is found accountable in the disciplinary proceedings, he will be duly punished but for all other purposes (except promotion, for which a separate sealed cover procedure exists) he will be treated at par with other equally/comparably placed employees facing minor penalty proceedings in a non-vigilance case.

3.6 RECONSIDERATION OF COMMISSION'S ADVICE

3.6.1 The scheme of consultation with the Commission envisages consultation at two stages. First stage advice is required at the time of initiation of disciplinary proceedings on the basis of investigation carried out by the CBI or the KMRL Vigilance. Second stage advice, on the other hand, is required before a final decision is taken on the conclusion of the departmental proceedings. There is provision for another reference to the Commission requesting for reconsideration of its advice if the disciplinary authority disagrees with the Commission's perception of the case. Requests should be made soon after the receipt of the Commission's advice.

3.6.2 Reconsideration of the Commission's advice is necessary regardless of whether the disciplinary authority proposes to take "severer" or "lighter" action than that recommended by the Commission. Decisions taken in a manner, other than that mentioned above, would be treated as cases of non-acceptance of the Commission's advice and may be reported in the Commission's annual report to be placed on the Table of both the Houses of Parliament. Ordinarily, the Commission does not entertain more than one request for reconsideration and that too, if new facts not within its knowledge earlier are brought to light.

3.6.3 Compliance of CVC's first stage advice and second stage advice may be ensured within periods of one month and two months respectively.

3.7 INVESTIGATION AGAINST OFFICERS ON DEPUTATION

When investigation is started against an officer, who is on deputation, it will be appropriate if parent department sends intimation to that effect to the borrowing

organisation. In such cases, the result of final investigation should also be sent to the borrowing organisation.

3.8 REVIEW OF CASES ENTRUSTED TO THE CBI

No review should ordinarily be made by the administrative authority of a case registered by the C.B.I. If, however, there are special reasons for discussion/review, the C.B.I. should invariably be associated with it.

3.9 RESIGNATION IN PENDING INVESTIGATION/INQUIRY

If an officer against whom enquiry or investigation is pending, irrespective of whether he has been placed under suspension or not, submits his resignation, such resignation should not normally be accepted. Where, however, the acceptance of resignation is considered necessary in the public interest, because the alleged offence(s) do not involve moral turpitude; or the evidence against the officer is not strong enough to justify the assumption that if the proceedings are continued, the officer would be removed or dismissed from service; or the proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation, the resignation may be accepted with the prior approval of MD.

3.10 ACTION AGAINST PERSON MAKING FALSE COMPLAINTS

3.10.1 If a complaint against a public servant is found to be malicious, vexatious or unfounded, it should be considered seriously whether action should be taken against the complainant for making a false complaint.

3.10.2 If the person making a false complaint is a public servant, it may be considered whether departmental action should be taken against him as an alternative to prosecution.

3.11 GRANT OF IMMUNITY/PARDON TO APPROVERS

3.11.1 If during an investigation, the CVO finds that an employee has made a full and true disclosure implicating himself and other members of the public and that such statement is free from malice, the CVO, may consider grant of immunity/leniency to such person from departmental action or punishment.

3.11.2 The intention behind this is not to grant immunity/leniency in all kinds of cases but only in cases of serious nature and that too on merits. It is not open to the employee

involved in a case to request for such immunity/leniency. It is for the disciplinary authority to decide in consultation with the CVO, in which case such an immunity/leniency may be considered and granted in the interest of satisfactory prosecution of the disciplinary case.

MODULE – IV

WHISTLE BLOWER POLICY

4.1 INTRODUCTION

As per Section 177(9) of the Companies Act, 2013; read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, every listed company and the companies which accept deposits from the public or the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances.

Further, the companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

Since, the money borrowed from banks by Kochi Metro Rail Limited exceeds the threshold limit of Rupees fifty crore, the Company has also established a vigil mechanism as required under the Companies Act, 2013.

The Audit Committee in its 9th meeting held on 8th December, 2015 at Thiruvananthapuram reviewed the Vigil Mechanism which is titled as 'KMRL Vigil Mechanism / Whistle Blower Policy' and recommended the same to the Board for approval and the 23rd Board meeting of KMRL has approved the KMRL Vigil Mechanism / Whistle Blower Policy, as recommended by the Audit Committee.

4.2 KMRL VIGIL MECHANISM / WHISTLE BLOWER POLICY

The Company believes in the conduct of its affairs in a fair and transparent manner by adopting highest standards of professionalism, honesty, integrity and ethical behaviour. The Company is committed to developing a culture where it is safe for all employees to raise concerns about any poor or unacceptable practice and any event of misconduct.

1. OBJECTIVE & PURPOSE

1.1 This policy has been introduced in Kochi Metro Rail Limited based on Government of India Resolution on Public Interest Disclosure & Protection of Informer (PIDPI).

1.2 The Government of India has authorized the Central Vigilance Commission

(CVC), as the Designated Agency to receive written complaints for disclosure on any allegation of corruption for misuse of office and recommend appropriate action. Kochi Metro Rail Limited (KMRL), being a Joint Venture PSU of Government of India and Government of Kerala, KMRL comes under the jurisdiction of the CVC for the said purpose.

- 1.3 This policy is formulated to provide an opportunity to employees to report to the management instances of actual or suspected, fraud or violation of the company's code of conduct.
- 1.4 It is to provide necessary safeguards for protection of employees from reprisals or victimization.

However, a disciplinary action against the Whistle Blower which occurs on account of poor job performance or misconduct by the Whistle Blower and which is independent of any disclosure made by the Whistle Blower shall not be protected under this policy.

In addition to the above, Section 177 (9) of the Companies Act, 2013 mandates that every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. Kochi Metro Rail Limited which falls under the ambit of such class of companies is required to establish a Vigil Mechanism and accordingly, this Policy has been formulated with a view to provide a mechanism for employees of the Company to approach the appropriate authority and/or Chairman of the Audit Committee of the Company in exceptional cases.

2. DEFINITIONS

- 2.1 "Bonafide Complaint" means a complaint shall be deemed to be bonafide unless it is found to be motivated.
- 2.2 "Employee" means an employee or Director in the Board of KMRL.
- 2.3 "Improper Activity" means actual or suspected fraud or violation of the company's

general guideline by an employee of KMRL.

- 2.4 “Investigators” means those persons authorized, appointed, consulted or approached by the Managing Director/Competent Authority in connection with conducting investigation into a protected disclosure and include the Auditors of KMRL.
- 2.5 “KMRL” means Kochi Metro Rail Limited.
- 2.6 “Motivated Complaint” means a complaint shall be deemed to be motivated if it is found to be deliberately false or motivated by revenge/enmity/mischief or extraneous considerations.
- 2.7 “Protected Disclosure” means any communication made in good faith that discloses or demonstrates information that may be treated as evidence of “Improper Activity”
- 2.8 “Whistle Blower” means an Employee making a Protected Disclosure under this policy.

3. WHISTLE BLOWER- ROLE & PROTECTION

Role:

- 3.1 The Whistle Blower’s role is that of a reporting party with reliable information.
- 3.2 The Whistle Blower is not required or expected to conduct any investigation on his own.
- 3.3 The Whistle Blower may also be associated with the investigations, if the case so warrants.
- However, he shall not have a right to participate.
- 3.4 Protected Disclosure will be appropriately dealt with by the Competent Authority.
- 3.5 The Whistle Blower shall have a right to be informed of the disposition of his disclosure except for overriding legal or other reasons.

PROTECTIONS:

- 3.6 Genuine Whistle Blowers will be accorded protection from any kind of harassment /unfair treatment/victimization. However, motivated and frivolous disclosures shall

be discouraged.

- 3.7 If the Whistle Blower is required to give evidence in criminal or disciplinary proceedings, arrangements will be made for the Whistle Blower to receive advice about the procedure. Expenses incurred by the Whistle Blower in connection with the above, towards travel etc. will be reimbursed as per normal entitlements.
- 3.8 A Whistle Blower may report any violation of Clause 3.7 above to the Competent Authority who shall investigate into the same and take corrective action as may be required.
- 3.9 Any other Employee assisting in the said investigation shall also be protected to the same extent as the Whistle Blower.

4.4 ELIGIBILITY

All employees of KMRL are eligible to make “Protected Disclosure”

4.5 PROCEDURE

- 5.1 The complaint should be in a closed / secured envelope.
- 5.2 The envelope should be addressed to Chief Vigilance Officer and should be superscribed. Complaint under the Public Interest Disclosure”. If the envelope is not superscribed and enclosed, it will not be possible for management to protect the complainant. The complaint should give his/her name and address in the beginning or end of the complaint or in an attached letter.
- 5.3 CVO will not entertain anonymous/pseudonymous complaints.
- 5.4 In order to protect the identity of the persons, CVO will not issue any acknowledgement and the whistleblowers are advised not to enter into any further correspondence with CVO in their own interest. The company assures that, subject to the facts of the case being verifiable; it will take the necessary action, as provided under the Government of India Resolution on the subject and if any further clarification is required, the CVO will get in touch with the complainant.
- 5.5 The CVO may, if it deems fit call for further information or particulars from the person making disclosure. If the complaint is anonymous, he shall not take any action in the matter.

5.6 If the complaint is accompanied by particulars of the person making the complaint, the CVO shall take the following steps:

- (i) Ascertain from the complainant whether he was the person who made the complaint or not.
- (ii) The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other office or authority.
- (iii) After concealing the identity of the complainant, the CVO shall make, in the first instance, discrete inquiries to ascertain if there is any basis of proceeding further with the complaint. For this purpose, the CVO shall devise an appropriate machinery
- (iv) Either as a result of the discrete inquiry, or on the basis of complaint itself without inquiry, if the CVO is of the opinion that the matter requires to be investigated further, he shall officially seek comments/or explanation from the Head of the Department concerned. While doing so, he shall not disclose identity of the informant and also shall request the concerned head of the department to keep the identity of the informant secret, if for any reason, if the concerned Head comes to know the identity.
- (v) After obtaining the response of the concerned department, if the CVO is of the opinion that the investigation reveals either misuse of office or substantiate allegation of corruption, he shall recommend appropriate action to the management. These shall inter alia, include following:
 - (a) Appropriate proceedings to be insisted against the concerned employee.
 - (b) Appropriate administrative steps for redressing the loss caused to the company as a result of the corrupt act or misuse of office, as the case may be.
 - (c) Recommend to the management initiation of criminal proceedings in suitable cases, if warranted by the facts and circumstances of the case.
 - (d) Recommend taking of corrective measures to prevent recurrence of such events in future.

5.7 For the purpose of making discrete inquiry, or obtaining information from the concerned organization, the CVO shall be authorized to call upon the CBI or the Police authorities, as considered necessary, to render all assistance to complete

the investigation pursuant to the complaint received.

- 5.8 If any person aggrieved by any action on the ground that he is being victimized due to the fact that he had filed a complaint or disclosure, he may file an application before the CVO seeking redressal in the matter, who shall take such action, as deemed fit. The CVO may give suitable directions to the concerned employee.
- 5.9 Either on the application of the complainant, or on the basis of information gathered, if the CVO is of the opinion that either the complainant or the witness need protection, he shall issue appropriate direction to the concerned departments.
- 5.10 In the case of motivated complaints, the CVO shall recommend appropriate action to the management.
- 5.11 The CVO shall not entertain or inquire into any disclosure on which proceedings are already underway.
- 5.12 In the event of the identity of the informant being disclosed in spite of the CVO's directions to the contrary; the CVO is authorized to initiate appropriate action as per extant regulation against the person or agency making such disclosure.

4.6. SAVINGS

This Policy can be changed, modified or abrogated at any time by the Board of Directors of the Company.

MODULE – V

INTEGRITY PACT

5.1 INTRODUCTION- INTEGRITY PACT

Integrity Pacts are a tool for preventing corruption in public contracting. They are essentially an agreement between the government agency offering a contract (the “contracting authority”) and the companies bidding for it (the “bidders”) that they will abstain from bribery, collusion, extortion and other corrupt practices for the extent of the contract. To ensure accountability, Integrity Pacts also include a monitoring system typically led by civil society organisations.

Integrity Pacts have been around since the 1990s, and have been applied in more than 15 countries and 300 separate situations. They help save taxpayer funds, ensure that projects and public works are delivered efficiently, and stave off avenues for illicit gain. Beyond the individual impact on the contracting process in question, Integrity Pacts also intend to create confidence and trust in the public decision-making, a more hospitable investment climate and public support for the government’s own procurement, privatisation and licensing programmes.

Integrity Pacts can be used in a wide variety of situations. They can be used for:

- Construction contracts,
- Supply contracts,
- Engineering, architectural or other consultants’ contracts,
- State permits, licenses or concessions, or for government-regulated services (such as telecommunications, water supply or rubbish collection services),
- State asset privatisation programme,
- Other services delivery contracts.

Whenever possible, the Integrity Pact should cover all the activities related to the contract from the identification of a need for procurement, the designing of the tender, the preselection of bidders, the bidding and contracting proper, through the implementation, to its completion and operation.

In the preparatory phase of the procedure (from the identification of a need for procurement up to the moment of publishing a call for tenders) the contracting authority and the monitor constitute the parties of the Integrity Pact. In the bidding phase, the Integrity Pact is joined by the bidders, the persons making an offer for carrying out the task that the procurement is aimed at. In the third, closing phase,

which is the implementation of the contract signed by the winner of the public procurement procedure, only the successful bidder, the contracting authority and the monitor take part.

Donors and investors as well as sub-contractors of the bidders can also join the Integrity Pact. The monitor follows closely all stages of the procedure and the implementation of the contract, and signals the eventual unlawful components to the parties. Within his duties is also the preparation of regular reports on the transparency and fairness of the process, which are made publicly available.

An Integrity Pact is signed for a particular project between the contracting authority undertaking the project, the monitor and the bidders. The major elements are:

- i. An undertaking by the contracting authority that its officials will not demand or accept any bribes, gifts or payments of any kind and maintain appropriate disciplinary, civil or criminal sanctions in case of violation.
- ii. A statement by each bidder that it has not paid, and will not pay, any bribes in order to obtain or retain the contract.
- iii. An undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody.
- iv. The explicit acceptance by each bidder that the commitments and obligations remain in force for the winning bidder until the contract has been fully executed.
- v. Bidders must have a company code of conduct and a compliance programme for the implementation of the code of conduct throughout the company.
- vi. A set of sanctions for any violation by a bidder of its statements or undertakings, such as: - Denial or loss of contract – Forfeiture of the bid or performance bond or other security – Liability for damages to the contracting authority and the competing bidders – Debarment of the violator by the contracting authority for an appropriate period of time
- vii. An independent external expert monitor, who has wide-reaching rights and functions.

The cost of implementing an Integrity Pact may vary depending on the implementation arrangements, the activities included in the process and the complexity of bidding procedures. Whatever the case, experience has shown that they remain a very small percentage of the project costs and can be covered by different sources:

- The authority's own resources,
- Contributions from donors or project financiers,
- Bidders' fees,
- A combination of the above.

Integrity Pacts increase transparency and accountability, enhance trust in authorities and government contracting, contributes to a good reputation of government agencies, brings cost savings and improves competition through better procurement.

Integrity Pacts are essentially contracts establishing the rights and obligations of all the parties to a public contracting process. They are very simple, flexible and adaptable:

- They can be implemented within the regular authority of contracting officials and bodies,
- They allow the implementation of desirable standards without the need for additional
- legal reform,
- They can be applied to a wide variety and size of public contracts.

5.2 PRIMARY OBJECTIVES OF IP

IP is intended to accomplish the following primary objectives:

- a. To enable companies to abstain from bribing by providing assurances to them that :-
 - i. Their competitors will also refrain from bribing
 - ii. Government procurement, privatization or licensing agencies will undertake to prevent corruption including extortion, by their officials and to follow transparent procedures and
- b. To enable governments to reduce high cost and the distortionary impact of corruption on public procurement, privatization or licensing. Beyond the individual contract in question, the IP is of course also intended to create confidence and trust in the public decision making process, procurement, privatisation and licensing programmes.

5.3 OPERATION OF IP

- (i) IP covers all the activities relating to the contract from pre-qualification of bidder, bidding and contracting proper, implementation, completion and operation.
- (ii) IP will cover planning, design, construction, installation or operation of the assets by the authority, the issuing by the Authority of licenses and concessions, as well as the corresponding services such as consulting services and similar technical, financial and administrative support.
- (iii) IP begins when the bidder submits Expression of Interest or purchases the bid document. It ends after the execution of the contract when payments have been made to the satisfaction of the contracting authority.

5.4 EFFECTS OF IP

- i. It helps Governments, businesses and civil society which are prepared to fight corruption in the field of public contracting – both for procurement and works.
- ii. It enhances public trust in government contracting.
- iii. It improves the credibility of government procedures and administration.
- iv. It achieves maximum transparency all along various steps leading to the contract and throughout the implementation which calls for extensive and easy access to the relevant information.

The IP programme offers preventive way to supplement existing methods and make the total effort more effectively in reducing corruption.

5.5 POTENTIAL BENEFITS OF IP

- (i) It would help in speeding up and streamlining the contract management process.
- (ii) It would lower the cost of procurement and works.
- (iii) It reduces harassment faced by honest officials.

5.5.1 BENEFITS TO THE CONTRACTORS/SUPPLIERS

Contractors and suppliers are also benefited by implementation of IP as it makes processes more efficient and reduces the business cost.

5.6 KEY FEATURES OF IP

- (i) The Commitments and obligations of the Principal (the concerned PSU/Govt. agency)
- (ii) The Commitments and obligations of the counter party (i.e. the bidder, contractors, suppliers of goods and services)

5.6.1 COMMITMENTS AND OBLIGATIONS OF PRINCIPAL

- (i) The Principal will commit to have ethical and corruption-free business dealings with counter parties.
- (ii) The Principal will value its relationship with all counter parties and will deal with them in a fair and transparent manner.
- (iii) The Principal and/or its associates (employees, agents, consultants, advisors etc.) will not seek any favour, undue benefit or accept bribes for themselves or for third parties.
- (iv) Will deal with all counterparties with equity, reasonableness and fairness.
- (v) Will exclude all associates who may be prejudiced or have a conflict of interest in dealings with counter parties.
- (vi) Will honour its commitments and make payments in a time bound manner.
- (vii) Will initiate action and pursue it vigorously whenever corruption or unethical behaviour comes to notice.

5.6.2 COMMITMENTS AND OBLIGATIONS OF COUNTER PARTY

- (i) Counterparty directly or indirectly (through agent, consultant, advisor etc.) will not pay any bribe or extend illegal benefit or provide undue advantage to any one dealing with the Principal.
- (ii) The counterparty will not engage in collusion, price-fixing etc. with other counterparties in dealing with the principal.
- (iii) The counterparty will not pass to any third party any information unless authorized by the principal.
- (iv) The counterparty will disclose all commissions and similar expenses paid by them to anybody in connection with the contract.
- (v) The counterparty will promote and observe best ethical practices within its organization.

(vi) The counterparty will not make any false statement or allegation against the principal.

(vii) The counterparty will inform the IEM:

- If it receives demand for a bribe or illegal payment/benefit/favour.
- If it comes to know of any unethical or illegal practice of the principal. Of all payments if makes to the associates of the principal.

5.7 VIOLATIONS AND CONSEQUENCES

(i) If a counter party commits any violation of the IP it may lose bid security and performance bond. In addition the Principal may terminate any current contract and business relationship with such counterparties and their associates.

(iii) The Principal would ban the business and exclude the counterparty from future dealings until the EIM is satisfied that the counterparty will not commit any violation in future.

(iv) The counterparty will be liable to damages as determined by the IEM

(v) The Principal may initiate criminal proceedings against violating counterparties.

5.8 INDEPENDENT EXTERNAL MONITORS

(i) The Principal in consultation with CVC will appoint an IEM to oversee IP program implementation and effectiveness.

(ii) IEM will be a person of impeccable integrity and knowledgeable of Government tendering/contracting processes.

(iii) At the time of appointment as IEM, the person should be less than 70 years of age. On completion of tenure of initial three years if age of seventy years has been crossed, further extension of 2 years will not be admissible. (CVC Circular No 06/07/12 Dt 23rd July 2012)

(iv) IEM preferably should have domain knowledge/experience of the principal's work area

(v) The major role of IEM will be to prevent/reduce/eliminate corruption, bribing and other unethical practices.

(vi) IEM will not have any administrative, implementation or enforcement responsibilities. He will coordinate with other anti-corruption organisations

- such as CVC. He may engage services of outside agencies such as accounting firms, law firms etc., if required in discharge of his responsibilities.
- (vii) IEM will have access to all offices and internal records of the principal. He will also have access to counterparty's records and information regarding their dealings with the principal.
 - (viii) IEM will have the right to attend any meeting between Principal concerned and the counterparties as well as internal meetings of principal.
 - (ix) If the IEM observes or suspects any irregularity, he will inform the appropriate senior most officer of Principal concerned. He may also inform CVC and make the information public.
 - (x) IEM can be removed from his office by the Principal concerned with the consent of CVC through an open and transparent process.
 - (xi) IEM will be a voluntary and non-salaried position.

5.9 IMPLEMENTATION STEPS

- i. To get commitment from all Senior-level officials of Principal to implement the program.
- ii. To identify Nodal Officer and Nodal Department.
- iii. To develop a phased implementation program, initially all contracts worth over a threshold limit and more should be covered under this Program.
- iv. To select and appoint IEMs in consultation with CVC.
- v. To develop detailed implementations plans and modify the Integrity Pact document in consultation with the TI India and/or IEM.
- vi. To notify all senior staff members and major contractors about the plans to implement Integrity Pact Program.
- vii. To include it in the web-site and publicize this initiative through the media.
- viii. To modify the Integrity Pact Document in consultation with Transparency International India and IEMs.
- ix. To notify all senior staff members and major contractors about the plans to implement the Integrity Pact Program.

5.10 PERIODIC REVIEW AND EVALUATION

The Principal periodically reviews the effectiveness of Integrity Pact Program through all or some of the following:

- A) IEM will have to submit a Quarterly Report on the progress and effectiveness of Integrity Pact Program.
- B) IEM and senior leadership of the Principal will do a self-assessment of Integrity Pact Program's effectiveness and identify areas / ways to improve.
- C) Principal will have to conduct a complete and periodic review by an outside agency, including Government Officials, suppliers, Independent Observers etc. about IP's effectiveness in reducing corruption.
- D) Principal will have to meet with CVC and TI-India on an annual basis to discuss the above.

Adoption of Integrity Pact –Standard Operating Procedure - CVC Circular No. 10/5/09 dated 08-05-2009, Office Order No.41/12/07 dated 04-12-2007, CVC Circular No.24/8/08 dated 05-08-2008, the revised Standard Operating procedures issued under CVC Circular No.02/01/2017 dated 13-01-2017.

Integrity Pact shall be taken in all tenders floated/ contracts executed by KMRL in the format as given below.

INTEGRITY PACT

Between

KOCHI METRO RAIL LIMITED (KMRL) hereinafter referred to as “The Principal”

And

_____ hereinafter referred to as “The Bidder/Contractor”

Preamble

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

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

Section 1 – Commitments of the Principal

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

in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary action.

Section 2 – Commitments of the Bidder(s)/Contractor(s)

- (1) The Bidder(s)/Contractor(s) commit themselves to take all measures necessary to prevent corruption. The Bidder(s)/Contractor(s) commit themselves to observe the following principles during participation in the tender process and during the contract execution:-
- a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The Bidder(s)/Contractor(s) will not enter with any other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions or restrict competitiveness or to introduce cartelisation in the bidding process.
 - c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further Bidder(s)/Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the agents/representatives in India, if any. Similarly the Bidder(s)/Contractor(s) of Indian nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines, all payments made to the Indian agent/representative have to be in Indian Rupees only.

- e. The Bidder(s)/Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
 - f. Bidder(s)/Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.
- (2) The Bidder(s)/Contractor(s) will not instigate third parties to commit offences outlined above or be an accessory to such offences.

Section 3 – Disqualification from tender process and exclusion from future contracts.

If the Bidder(s)/Contractor(s) before award or during execution has committed a transgression through a violation of Section 2 above, or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the “Guidelines on Banning of Business Dealings”.

Section 4 – Compensation for Damages

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

Section 5 – Previous Transgression

- (1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.

- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in the “Guidelines on Banning of Business Dealings”.

Section 6 – Equal treatment of all Bidder(s)/Contractor(s)/Subcontractor(s)

- (1) In case of sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the subcontractor.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 – Criminal charges against violating Bidder(s)/ Contractor(s)/ Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Section 8 – Independent External Monitor

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his/her functions neutrally and independently. The monitor would have access to all contract documents, whenever required. It will be obligatory for him/her to treat the information and documents of the Bidders/Contractors as confidential. He/she reports to the Chairman, KMRL
- (3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his/her request and demonstration of a valid interest, unrestricted and

unconditional access to their project documentation. The same is applicable to subcontractors.

- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-Disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform Chairman, KMRL and recuse himself/herself from that case.
- (5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he/she will so inform the management of the Principal and request the management to discontinue or take corrective action, or to take other relevant action. The Monitor can, in this regard, submit non-binding recommendations. Beyond this, the Monitor has no right to demand for the parties that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report to the Chairman, KMRL within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to the Chairman, KMRL a substantial suspicion of an offence under relevant IPC/PC Act, and the Chairman, KMRL has not within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Chief Vigilance Commissioner.
- (9) The word 'Monitor' would include both singular and plural.

Section 9 – Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

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

Section 10 – Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Kochi.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or consortium, this agreement must be signed by all the partners or consortium members.
- (4) Should one or several provisions of this agreement turn invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) Issues like Warranty/Guarantee etc. shall be outside the purview of IEMs.
- (6) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.

(For and on behalf of Principal)
(Office Seal)

(For and on behalf of Bidder/Contractor)
(Office Seal)

Place:

Date:

Witness 1: _____
(Name and Address) _____

Witness 2: _____
(Name and Address) _____

MODULE – VI

**CHECKLIST FOR TENDERS AND
CONTRACTS**

6.1 CHECK LIST FOR REVIEW OF PURCHASE ORDERS & CONTRACTS

6.1.1 OPEN TENDER

1. Whether the work or quantity has been split to avoid open tender.
2. If the value of the order exceeds Rs. 50 Lakhs, whether limited tender resorted to.
3. Whether the reasons for not following open tender have been recorded and justification for deviating the procedure recorded while obtaining approval.

6.1.2 LIMITED TENDER

4. If the item is not of proprietary nature, whether quotes have been obtained to generate adequate competition.
5. Whether quotes have been received in sealed envelopes and opened by a Committee?
6. Whether the secrecy of the price ensured, in case of quotes received by fax/e-mail or other modes, other than sealed envelopes.
7. If there are more than one PRs for the same item, whether the quantities have been combined to obtain quantity related benefits, like discounts, lower order processing costs, better logistics management etc.
8. Whether the requirement has been broken into smaller quantities or smaller values with a view to circumvent to the delegated powers.
9. Whether enquiries have been sent to all the approved vendors.
10. Whether the approved vendor directory has been up-dated to include new entrants to the market.
11. If the item has been procured earlier,
 - (a) Whether enquiries have been sent to all the Manufacturers / Authorized dealer of the previous enquiry.
 - (b) Whether the reasons for the non-inclusion of any previous suppliers justified and approval obtained.
12. If the item has been purchased in the past, whether the earlier procurement prices have been compared.
13. In case of capital items, items of technical complexity or items capable of resulting in multiple choices, brands, etc.
 - a. Whether technical and price bids have been separately obtained.

- b. Whether technical clarifications, if any have been obtained and discussions held with all suppliers in order to obtain prices that are technically comparable.
 - c. Whether price bids (original or revised) of only technically acceptable quotes are opened for comparison.
14. Whether the bid has been opened in the presence of the bidders or their representatives?
 15. Whether the price bid of any supplier has been rejected on technical grounds after the same are opened.
 16. Whether any changes have been effected in the technical parameters of the item/supply conditions/payment terms after the price bid is opened.
 17. Whether any changes in the item/supply parameters have been effected after deciding the lowest price (L1).
 18. If so, whether all the contenders to the tender have been given adequate and equal opportunity to revise their technical and price bids.
 19. Whether the landing cost of the items has been considered in all cases for arriving at L1 status.
 20. Whether the supply and payment terms are same for all the suppliers? If not, whether the prices have been suitably loaded to make the prices comparable.
 21. Whether Purchase Order has been released on the L1 only.
 22. Where the L1 supplier has been identified based on overall price but prices for different items vary compared to others. Whether negotiations have been held to bring down the prices of items quoted at higher prices on par with the lower prices quoted by other bidders.
 23. Whether the negotiation has been held without Finance Representative.

6.1.3 SINGLE TENDER

1. Whether a technically equivalent product or a product with comparable performance exists.
2. Whether item procured is proprietary by choice and not by design.
3. Whether ST has been resorted due to urgency.
4. Whether procurement under ST has been adequately justified while obtaining approval.
5. In case the item is of proprietary nature, whether the prices of similar or technically comparable items obtained and compared.

6.1.4 GENERAL

1. Whether any deviations have been allowed in supply date & time, resulting in any undue favour to the supplier.
2. Whether LD clause has not been stipulated.
3. Whether LD has not been levied even though supply has been delayed.
4. Whether a time overrun / cost overrun report has been prepared and reasons thereof analyzed.

1. Whether LD has been waived off even though time overrun is attributable to supplier.

NOTE

- The review of P.O/Contracts should be done by (i) a committee consisting of members who are not involved in routine purchase / contracting activity or (ii) those working in other SBUs/Units.
- If answers to points other than 1 to 3, 8, 13, 15 to 17, 23, 24, 29, 31 is 'YES', then the report should be submitted to Chairman, Vigilance Committee & a copy to CVO.

6.2 CTE/ CVC's GUIDELINES FOR IMPROVEMENT IN THE PROCUREMENT SYSTEM

1) Purchase Manual

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) Filing System

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.

3) Provisioning

a) 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.

b) One time purchase for projects or capital equipment / 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) Estimated Rates

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.

5) Notice Inviting Tender

- a. In order to give wide publicity, generate enough competition and to avoid favouritism, 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.
- b. 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.
- c. 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.

6) Tender / Bid Document

- a) All the important clauses such as those relating to Earnest money, Delivery schedule, Payment terms, Performance / Warrantee Bank Guarantee, Pre-dispatch inspection, Arbitration, Liquidated Damages / Penalty for the delayed supplies etc. need to be incorporated in the bidding documents so as to fully safeguard the interest of the organization and, for evaluation of bids on equitable and fair basis and in a transparent manner.
- b) 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, the terms & conditions should clearly stipulate that the offers without Earnest Money Deposit would be considered as unresponsive and rejected.
- c) 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.

d) 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) Receipt of Tenders

A proper arrangement for receipt of tenders at scheduled date and time through tender box needs to be adopted, in case of conventional tendering.

8) Postponement of Tender Opening

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.

9) Opening of Tenders

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, initialled and dated on the first page. Each page of the tender should also be initialled with date and particularly, the prices, important terms & conditions etc. should be encircled and initialled in red ink by the tender opening officer / committee. Alterations in tenders, if any, made by the firms, should be initialled legibly to make it perfectly clear that such alteration were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should be encircled and initialled 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.

10) Post Tender Negotiations

As per CVC guidelines, negotiations with the select / all the vendors shall not be carried out. The instructions/guidelines circulated by CVC on post tender negotiations only with L-1 need to be strictly followed.

11) Technical Evaluation of Tenders

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.

12) Advance Payment & Bank Guarantees

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 organization interest.

13) Performance Bank Guarantee

In order to safeguard the organization 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 Guarantees should also be appropriately extended so as to protect the organization interest.

14) Stipulation of Delivery Period in the contract

The specific delivery period for supply as per the terms of delivery such as FOR station of dispatch / 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.

15) Guarantee / Warranty Terms

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.

6.3 CTE / CVC's GUIDELINES FOR IMPROVEMENT IN THE CONTRACT SYSTEM

1) Works Manual

A codified 'Works Manual' containing the detailed tender / contract procedures, guidelines and standards for execution along with proper delegation of powers needs to be prepared by all the organizations so that there is a systematic and uniform approach in the organizations. Such an integrated approach is not only likely to put a cap on corruption but would also ensure smoother and faster decision-making.

2) Necessity and Justification of Work

a) Before according administrative approval for any project, it is necessary to establish its techno-commercial viability in terms of rate of return and other benefits and also to evaluate the available alternatives to ensure an optimum utilization of public funds.

b) Gross over-designing cannot be justified on the basis of unpredictable long-term futuristic demands. This kind of over-designing, not only results in unjustified one time extra expenditure but also results in avoidable recurring expenditure in terms of maintenance costs and higher standing losses.

(i) Estimates

Preparation of estimates for contracts is an area, which needs special emphasis. A well-defined scope of work and a realistic market rate estimate can prove to be a vital input for successful execution of a contract with high standards of quality. The estimates should take into consideration all relevant factors based on the prevailing market price of various inputs such as labour, material, equipment, etc. at the concerned locations. The estimates inter-alia should include the basic price, fabrication charges, inspection fees, duties, packing, handling and transportation charges, sales tax on works (WCT), octroi or any other statutory levies and installation, erection, testing and commissioning charges, license fees, contingencies etc. as applicable at the time of conception of the project. For big projects and other turnkey contracts where financial assessment of the project is done well in advance, before the finalization of the contracts, the financial amount indicated in Techno-Economic clearance/Techno-Commercial feasibility reports should be duly analyzed and updated before converting the same into a workable estimate. Any deficiency or

inadequacy of data (in terms of rates or quantity) found in such reports should be highlighted beforehand in order to prepare a realistic estimates for the tenders.

(ii) Notice Inviting Tender

In order to generate wide publicity for better competition and to avoid cartel formation and favouritism to select firms, it is imperative that the advertised/global tender notice should be published in select 'national' and 'local' dailies with a large circulation. Tender notices may also be displayed on the notice boards of other organizations. In case of global tenders, copies of the tender notices should be sent to the Indian Missions / Embassies in major trading countries. In addition to the paper advertisements, the tender notices should also be put on the website indicating all the details of the tender. In case of limited tenders to 'approved contractors', due care should be taken to generate adequate competition and reasonableness of rates should be established. The 'approved' list should be periodically updated weeding out the non-performers and including fresh entrants in the field.

(iii) Pre - Qualification Criteria

While framing the prequalification conditions, the end purpose of doing so should be kept in view. The purpose of any selection procedure is to attract the participation of reputed and capable firms with proven track-records. The PQ conditions should be exhaustive, yet specific. For bigger and new projects, as far as possible a preliminary survey may be conducted to collect relevant data from the market about the firms of repute in the field. The factors that may be kept in view while framing the PQ criteria are namely,

- a) The nature of the work
- b) The scope of work involved in the project
- c) Likelihood of availability / experience of firms for such works
- d) Volume/amount of the work
- e) Financial status

In addition to above, the cut off dates for the period of work experience, the volume in terms of minimum capacity of equipment as well as in terms of monetary amount

should be clearly indicated in the pre-qualification criteria so as to avoid any ambiguity at the time of evaluating the bids.

(iv) Receipt of Tenders

A suitable arrangement for receipt of tenders at the scheduled date and time through conspicuously located tender boxes (in case of conventional tendering process) needs to be adopted. The tender notice should categorically contain the information regarding receipt of bids, viz. designation and address of officer to whom the tender should be addressed, the superscription / reference number to be indicated on the envelopes and most importantly, the due date of opening of tenders to be written on the envelope containing tenders.

(v) Opening of Tenders

a) The opening of tenders in presence of the bidders' representatives needs to be scrupulously followed. While opening the tenders it needs to be ensured that each page of tender, particularly the price and important terms and conditions should be encircled and initialled with the date. Any cutting / overwriting should be encircled and initialled in red ink by the tender opening office/committee. The tender opening officer / committee should also prepare an 'on the spot statement' giving details of the quotations received and other particulars like the prices, taxes/duties, EMD, any rebates etc. as read out during the opening of tenders. A proper tender opening register in a printed format should be maintained containing information viz. date of opening including extensions, if any, names and signature of all the persons present to witness the tender opening which should include the bidders' representatives also.

b) In order to make the system fool-proof in case of two bid system, after opening of the Technical bids, the price bids, which are to be opened subsequently shall not be kept as loose envelopes and it needs to be ensured that the tender opening officer/committee should sign on the envelopes containing the price bids and the date of opening of price bids should be clearly mentioned on the envelopes and should again be placed in the tender box.

(vi) Post Tender Negotiations

As per CVC guidelines, negotiations with the select / all the vendors shall not be carried out. The instructions / guidelines circulated by CVC on Post Tender negotiation only with L-1 need to be followed strictly.

(vii) Reasonableness of Prices / Market Rate Justification

Before acceptance of the offer, it is very important to establish the reasonableness of rates on the basis of estimated rates and the prevailing market rates. The AHR (Abnormally High Rate) and ALR (Abnormally Low Rate) items should be duly identified and the officials / agencies responsible for execution of work should be intimated to exercise appropriate control on such identified items.

(viii) Advance Payment & Bank Guarantees

The advance payments need to be generally discouraged. Whenever the payment of advance is considered unavoidable, the same should be interest bearing as per CVC guidelines and should be allowed after getting an acceptable Bank Guarantee for an equivalent amount with sufficient validity. Timely action for revalidation/encashment of the bank guarantees also need to be taken so as to protect the organization interest.

(ix) Performance Bank Guarantee (BG) and Insurance

a) In order to safeguard the organization interest, it would be appropriate to take reasonable amount as Performance Bank Guarantee valid up to Defect Liability period for due performance of the contract. The validity of the Bank Guarantee needs to be properly monitored and whenever the time extension for contract is granted, the validity of BG should also be appropriately extended. The date of submission for the BG should be clearly spelt out and adhered to at the time of the execution of the contract.

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

(x) Defect Liability Period Clause

Detailed Defect-Liability period clause embodying all the safeguards needs to be incorporated in the bid documents and in the resultant contract. In the contracts involving installation/commissioning of equipment, the defect-liability period should be reckoned only from the date of installation/commissioning. However, in case supply and installation have to be executed through separate contract due to some compelling reasons, both the contracts should be processed in such a manner that the time-gap between supply and commissioning is minimal.

MODULE – VII
GIST OF IMPORTANT CIRCULARS
OF CVC

7.1 GIST OF VARIOUS CIRCULARS ISSUED BY THE COMMISSION RELATED TO PROCUREMENT

7.1.1. PRE BID STAGE

1. Pre-qualification Criteria (PQC)

- a. To ensure that the pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict / facilitate the entry of bidders.
- b. It should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition.
- c. It should also be ensured that the PQ criteria is clearly stipulated in unambiguous terms in the bid documents.

(CVC Circular No. 98/ORD/1 Dtd. 04.09.2003 & No. 12-02-1-CTE- 6 Dtd. 07.05.2004).

- d. It is necessary to fix in advance the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.

(CVC Circular No. 12-02-1-CTE-6 Dtd. 17.12.2002).

- e. Whatever pre-qualification, evaluation / exclusion criteria, etc. which the organization wants to adopt should be made explicit at the time of inviting tenders so that basic concept of transparency and interests of equity and fairness are satisfied.

- f. The acceptance / rejection of any bid should not be arbitrary but on justified grounds as per the laid down specifications, evaluation / exclusion criteria.

(CVC Circular No.98/ORD/1 Dtd. 09.07.2003).

- g. It should be ensured that pre-qualification criteria, performance criteria and evaluation criteria are incorporated in the bid documents in clear and unambiguous terms as these criterions are very important to evaluate bids in a transparent manner. Whenever required, the departments/organisations should follow two-bid system, i.e. technical bid and price bid. The price bids should be opened only of those vendors who were technically qualified by the Department / Organisation.

(CVC Circular No.98/ORD/1 Dated 04.09.2003).

2. Integrity Pact (IP)

- a. CVC recommends IP concept and encourages its adoption and implementation in respect of all major procurements.
- b. Independent External Monitors (IEMs) to review independently and objectively whether and to what extent parties have complied with their obligations under the Pact.
- c. Entering into IP would be a preliminary qualification to participate in the bidding.
- d. Based on the proposal of panel of eminent persons to be appointed as IEMs by the organisation, CVC would approve their appointment.

(CVC Circular No.007/VGL/033 Dtd. 04.12.2007, 28.12.2007 & 008/CRD/013 Dtd. 11.08.2009).

- e. Adoption of Integrity Pact in an organization is voluntary, but once adopted, it should cover all tenders / procurements above a specified threshold value, which should be set by the organization itself.
- f. In view of limited procurement activities in the Public Sector Banks, Insurance Companies and Financial Institutions, they are exempted from adopting IP.

(CVC Circular No. 007/VGL/033 Dtd. the 05.08.2008).

- g. "Standard Operating Procedure" for adoption of Integrity Pact. Format for integrity pact is enclosed to this Circular.

(CVC Circular No. 008/CRD/013 Dtd. 18.05.2009).

- h. Organisation to select the names of the IEMs after due diligence and should not propose the officer serving or retired from the same organisation (Ref: 009/VGL/016 Dtd.19.04.2010).

Maximum age limit for initial appointment of three years or further extension of two years is 70.

(CVC Circular No. 011/VGL/053 Dtd. 23.07.2012)

- i. Organizations to undertake a general review and assessment of implementation of IP and submit progress through CVO's monthly report to the Commission.

(CVC Circular No. 008/CRD/013 Dated: 13.08.2010 & 008/CRD/013 Dtd 11.08.2009)

- j. The organizations, while forwarding the names of the persons for empanelment as IEMs should send a detailed bio-data in respect of each of the persons proposed. The

bio-data should, among other things, include the postings during the last ten years before superannuation of the persons proposed as IEMs, in case the names relate to persons having worked in the government sector.

The bio-data should also include details regarding experience older than ten years before superannuation of the persons proposed as IEMs, if they have relevant domain experience in the activities of PSUs where they are considered as IEMs.

(CVC Circular No: 008/VGL/001 Dtd 19.05.2008)

3. Use of Brand Names in NIT

It has come to the notice of the Commission that some departments / organisations are issuing tenders for purchase of computers where they mention and insist on international brands. This not only encourages the monopolistic practices but also vitiates the guidelines issued by the Ministry of Finance, D/o Expenditure vide its OM No. 8(4) - E.II (A) 98 dated 17.12.1998. It is therefore, advised that departments / organisations may follow the instructions issued by the Department of Expenditure.

(CVC Circular No.98/ORD/1 Dtd. 05.05.2003. (Ref: No.8 (4)-E.II (A)/98 Dtd 17.12.1998)

4. Measures to curb the menace of counterfeit and refurbished IT products

To insist on undertaking from OEM that all the components / parts / assembly / software used in the Desktop and Server are original / new components and that not refurbished / duplicate / second hand components / parts / assembly / software are being used or would have been used.

(CVC Circular No: No.007/CRD/008 Dtd.15.02.2008)

5. Tender Sample Clause

a. While it is recognized that samples may be required to be approved to provide a basis in respect of indeterminable parameters such as shade, feel, finish & workmanship for supplies of such items but system of approving / rejecting tender samples at the time of decision making is too subjective and is not considered suitable,

especially for items which have detailed specifications. The lack of competition in such cases is also likely to result in award of contracts at high rates.

b. It is thus advised that Government Departments / Organizations should consider procurement of such items on the basis of detailed specifications. If required, provision for submission of an advance sample by successful bidder(s) may be stipulated for indeterminable parameters such as, shade/tone, size, make-up, feel, finish and workmanship, before giving clearance for bulk production of the supply.

Such a system would not only avoid subjectivity at the tender decision stage but would also ensure healthy competition among bidders and thus take care of quality aspect as well as reasonableness of Prices.

(CVC Circular No. 2EE-1-CTE-3 Dtd. 15.10.2003).

6. Turnkey Contracts

The Commission has been receiving complaints that in turnkey contracts for networking of computer systems a lot of unrelated products are being included in the contracts which are either not required or which are stand alone in nature and can be procured separately at much lower cost. Inclusion of these unrelated items creates opportunities for malpractices. The Commission is of the view that wherever possible it will be advisable to take an independent third party view about the scope of turnkey projects so that the tendency to include unrelated products as part of the turnkey project is avoided.

(CVC Circular No. 004/ORD/8 Dtd. 03.11.2004)

7. Use of products with standard specifications

It is reiterated that the items with standard specifications only should be stipulated in the bid documents. In case, items with non-standard specifications are to be procured, reasoning for procuring such items may be recorded and reasonability of rates must be checked before placing order.

(CVC Circular No. 98-VGL-25 Dtd. 26.04.2007)

9. Expression of Interest (EOI)

a. There have been instances where the equipment / plant to be procured is of complex nature and the procuring organisation may not possess the full knowledge of the various technical solutions available in the market to meet the desired objectives of the transparent procurement that ensures value for money spent simultaneously ensuring up-gradation of technology & capacity building.

b. It would be prudent to invite Expression of Interest and proceed to finalise specifications based on technical discussions / presentations with the experience manufacturers / suppliers in a transparent manner. In such cases, two stage tendering process may be useful and may be preferred. During the first stage of tendering, acceptable technical solutions can be evaluated after calling for EOI from the leading experienced and knowledgeable manufacturers / suppliers in the field of the proposed procurement. Once the technical specifications and evaluation criteria are finalised, the second stage of tendering could consist of calling for techno-commercial bids as per the usual tendering system under single bid or two bid system as per the requirement of each case.

(CVC Circular No.11/VGL/014 Dtd. 11.02.2011).

10. Transparency in Tendering System

In order to maintain transparency and fairness, it would be appropriate for organisations to evolve a practice of finalizing the acceptability of the bidding firms in respect of qualifying criteria before or during technical negotiations with Tenderer. Obtaining revised price bids from the firms, which do not meet the qualification criteria, would be incorrect. Therefore, the exercise of short listing of the qualifying firms must be completed prior to seeking the revised price bids. Moreover, the intimation of rejection to the firms whose bids have been evaluated but found not meeting the qualification criteria, along with the return of the unopened price bid, will enhance transparency and plug the loopholes in the Tendering System. All organisations/departments are advised to frame a policy accordingly.

(CVC Circular No. 004/ORD/9 Dtd. 10.12.2004).

11. Time bound Processing of Procurement.

a. The Commission has observed that at times, the processing of tenders is inordinately delayed which may result in time and cost overruns and also invite criticism from the Trade Sector.

b. It is, therefore, essential that tenders are finalized and contracts are awarded in a time bound manner within original validity of the tender, without seeking further extension of validity. While a short validity period calls for prompt finalization by observing specific timeline for processing, a longer validity period has the disadvantage of vendors loading their offers in anticipation of likely increase in costs during the period. Hence, it is important to fix the period of validity with utmost care.

(CVC Circular No : 008/VGL/083 Dtd. 06.11.2008).

7.1.2. TENDER STAGE

12. Notice Inviting Tenders

The Commission has observed that some of the Notice Inviting Tenders (NITs) have a clause that the tender applications could be rejected without assigning any reason. This clause is apparently incorporated in tender enquiries to safeguard the interest of the organisation in exceptional circumstances and to avoid any legal dispute. The Commission has discussed the issue and it is emphasized that the above clause in the bid document does not mean that the tender accepting authority is free to take decision in an arbitrary manner. He is bound to record clear, logical reasons for any such action of rejection / recall of tenders on the file

(CVC Circular No: OFF-1-CTE-1(Pt) V Dtd 24.03.2005).

14. Improving Vigilance Administration-Tenders

Some organisations 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. Another issue that has been raised is that many a time the quantity to be ordered is much more than that L1 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.

(CVC Circular No. 98/ORD/1 Dtd. 15.03.1999).

15. Agents:

a. In a tender, either the Indian agent on behalf of the Principal / OEM or Principal / OEM itself can bid but both cannot bid simultaneously for the same item/ product in the same tender.

b. If an agent submits bid on behalf of the Principal / OEM, the same agent shall not submit a bid on behalf of another Principal / OEM in the same tender for the same item / product.

Tender conditions may be carefully prepared keeping in view of above guidelines.

(CVC Circular No: 12-02-06-CTE/SPI (1)-2/161730 Dtd.13.01.2012).

16. Contracts Awarded on Nomination basis

a. In the circumstances, if sometimes award of contract on nomination basis by the PSUs become inevitable, the Commission strongly feels that the following points should be strictly observed:

i. All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for scrutiny and vetting post facto.

ii. The reports relating to such awards will be submitted to the Board every quarter.

iii. The audit committee may be required to check at least 10% of such cases

(CVC Circular No.005/CRD/19 Dtd. 09.05.2006).

b. It is needless to state that tendering process or public auction is a basic requirement for the award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties.

c. A relevant extract from the recent Supreme Court of India judgement in the case of Nagar Nigam, Meerut Vs. A1 Faheem Meat Export Pvt. Ltd.[arising out of SLP(civil) No.10174 of 2006] is reproduced below to reinforce this point (refer circular cited below). The Commission advises all CVOs to formally apprise their respective Boards / Management of the above observations as well as the full judgement of the Hon'ble Supreme Court for necessary observance.

(CVC Circular No.005/CRD/19 Dtd. 05.07.2007).

All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for information.

(CVC Circular No. 005/CRD/19 (Part) Dtd.19.05.2010)

d. The Commission has been emphasising on the need for observing integrity, transparency, fairness and equity in all aspects of decision making including in tendering and award of contracts. In view of the complaints being received regarding award of contracts on 'nomination basis' without adequate justification, the commission has decided to reiterate their earlier instructions for strict implementation. Further, the Commission directs that details of all tenders awarded on nomination basis shall be posted on the website in the public domain as per Commission's Office Order of 5th July 2007 along with brief reasons for doing so.

e. The Commission has observed that there have been instances where government organisations / PSUs obtain contract from other government organisations / PSUs and further award the same to private entities on 'back to back tie up' basis without competitive tendering mechanism and without any significant value addition by the procuring government organisation / PSU. Their practice subverts the Commission's emphasis on integrity, transparency, fairness and equity in decision making.

(CVC Circular No.005/CRD/19/196756 Dtd. 11.07.2012)

17. Grant of Mobilization Advance

a. Adequate steps may be taken to ensure stipulation of mobilization advance only for selected works and advance should be interest bearing so that contractor does not draw undue benefit.

Timely execution/completion of all projects is an essential requirement and the contractor would like to draw interest bearing mobilization advance only when he needs to maintain his cash flow.

(CVC Circular No. No. UU/POL/19 Dtd. 08.10.1997)

b. Provision of mobilization advance should essentially be need-based. Decision to provide such advance should rest at the level of Board (with concurrence of Finance) in the organization in respect of interest free advance. However, in case of interest bearing advance, organisation may delegate powers at appropriate levels such as CMD or Functional Directors.

(CVC Circular No. 4CC-1-CTE-2 Dtd. 05.02.2008).

c. Though the Commission does not encourage interest free mobilization advance, if the Management feels its necessity in specific cases, then it should be clearly stipulated in the Tender document and its recovery should be time-based and not linked with progress of work.

This would ensure that even if the contractor is not executing the work or executing it at a slow pace, the recovery of advance could commence and scope for misuse of such advance could be reduced.

d. Mobilization advance should be released only against furnishing of Bank Guarantee (BG). Recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.

e. There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.

f. The amount of mobilization advance; interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.

g. Relevant format for BG should be provided in the tender document.

h. Authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.

i. In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.

j. Utilization certificate from the contractor for the mobilization advance should be obtained. Preferably, mobilization advance should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.

(CVC Circular No.4CC-1-CTE-2 Dtd. 10.04.2007).

k. BG etc., taken towards security of advance should be at least 110% of the advance so as to enable recovery of not only principal amount but also interest portion, if required. l. The advance should not be paid in less than two instalments except in special circumstances for the reasons to be recorded. This will keep check on contractor misusing the full utilisation advance when the work is delayed considerably. A clause in the tender enquiry and the contract of cases providing for interest free mobilisation advances may be stipulated that if the contract is terminated due to

default by the Contractor, the mobilisation advance would be deemed as interest bearing advance at the interest rate of ____% (to be stipulated depending on the prevailing rate at the time of issue of NIT) to be compounded quarterly.

(CVC Circular No:01-11-CTE-SH-100 Dtd. 17.02.2011)

18. Post Tender Negotiation

a. The Commission has banned post-tender negotiations except with L-1 vide its instruction No.8 (1) (h)/98(1) dated 18/11/98. This instruction pertains to the award of work / supply orders etc., where the Government or the Government Company has to make payment.

b. If the tender is for sale of material by the Government or the Government company, the post tender negotiations are not to be held except with H-1 (i.e. the highest tenderer), if required.

(CVC Circular No: 98/ORD/1 Dtd 03.08.2001).

c. There should not be any negotiations. Negotiations if at all shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. Negotiations shall be held with L-1 only. Counter offers tantamount to negotiations and should be treated at par with negotiation. Negotiations can be recommended in exceptional circumstances only after due application of mind and recording valid, logical reasons justifying negotiations. In case of inability to obtain the desired results by way of education in rates and negotiations prove infructuous, satisfactory explanations are required to be recorded by the Committee who recommended the negotiations. The Committee shall be responsible for lack of application of mind in case its negotiations have only unnecessarily delayed the award of work / contract.

Further, it has been observed by the Commission that at times the Competent Authority takes unduly long time to exercise the power of accepting the tender or negotiate or re-tender.

Accordingly, the model time frame for according such approval to completion of the entire process of Award of tenders should not exceed one month from the date of submission of recommendations. In case the file has to be approved at the next higher level, a maximum of 15 days may be added for clearance at each level. The overall time frame should be within the validity period of the tender/contract. In case of L-1 backing out there should be re-tendering as per extant instructions.

(CVC Circular No. 005/ORD/12 Dtd. 25.10.2005).

d. Post tender negotiations could often be a source of corruption, it is directed that there should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.

e. In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.

f. Competent Authority should exercise Due Diligence while accepting a tender or ordering negotiations or calling for a re-tender. In no case should the overall time frame exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

g. Quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable.

h. It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item), the Commission insists on predisclosing the ratio of splitting the supply in the tender itself.

i. Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

(CVC Circular No. No.005/CRD/012 Dtd. 03.03.2007 & 005/CRD/012 Dtd. 20.01.2010).

Commissions' guideline would not be applicable in Projects funded by World Bank, ADB, etc., if found to be in conflict with the applicable procurement rules of the funding agencies.

(CVC Circular No.98/ORD/001 Dtd. 28.10.2011& No.3 (V)/99/9 Dtd. 01.10.1999).

j. Reference is invited to Commission's instructions of even number dated 25.10.2005 on the above subject. A number of references have been received in the Commission, asking for clarification on issues pertaining to specific situations. The Commission's guidelines were framed with a view to ensure fair and transparent purchase procedure in the organizations. The guidelines are quite clear and it is for the organizations to take appropriate decision, keeping these guidelines in view. In case they want to take action in deviation or modification of the guidelines, to suit their requirements, it is for them to do so by recording the reasons and obtaining the approval of the competent authority for the same. However, in no case, should there be any compromise to transparency, equity or fair treatment to all the participants in a tender.

(CVC Circular No.005/CRD/12 Dtd. 03.10. 2006).

19. Use of Website in Government Procurement or Tender Process.

a. In addition to the existing rules and practices regarding giving publicity of tenders through newspapers, trade journals and providing tender documents manually and through post etc., the complete bid documents along with application form shall be published on the website of the organization. It shall be ensured by the concerned organization that the parties making use of this facility of website are not asked again to obtain some other related documents from the Department manually for purpose of participating in the Tender Process i.e. all documents up to date should remain available and shall be equally legally valid for participation in the Tender Process as manual documents obtained from the Department through manual process.

b. The concerned organization must give its web site address in the advertisement /NIT published in the newspapers.

c. If the concerned organization wishes to charge for the application form downloaded from the computer then they may ask the bidding party to pay the amount by draft /cheques etc. at the time of submission of the application form and bid documents.

d. While the above directions must be fully complied with, efforts should be made by organizations to eventually switch over to the process of e-procurement /e-sale wherever it is found to be feasible and practical.

(CVC Circular No. No.98/ORD/1 Dtd.18.12.2003).

e. The Commission has issued a Directive vide No. 98/ORD/1 Dtd 18.12.2003 wherein detailed instructions are issued regarding the use of website for tendering process. The objective is to improve vigilance administration by increasing transparency. The instructions were to take effect from 1st January 2004. It is noticed that many organisations whose websites are functional are still not putting their tenders on the website. The Commission has desired that CVOs should ensure compliance of the above directive. They should regularly pursue the newspaper advertisements, the website of their organisation and in general keep track to ensure that the directives of the Commission on this subject are complied with. Further, the Commission has desired that the CVOs should indicate in their monthly report in the column pertaining to Tender Notices whether all the tenders have been put on the website, and if not, the reasons for noncompliance. The explanation of the concerned officers who are not complying with these directions should be called and further necessary action taken. (CVC Circular No. 98/ORD/1 Dtd 05.02.2004).

f. In CPWD, MCD, Civil Construction Division of Post & Telecom Departments and in many other departments/organizations, there is system of short-term Tenders (by whatever name it is called in different organizations), wherein works below a particular value are undertaken without resorting to publicity as is required in the open tenders. This practice is understandable because of cost and time involved in organizing publicity through newspapers. In all such cases, notice can be put on the web-site of the department as it does not take any time compared to giving advertisements in the newspapers and it practically does not cost anything. This will benefit the department by bringing in transparency and reducing opportunities for abuse of power. This will also help the organizations by bringing in more competition.

In view of the reasons given above, the Commission has decided that instructions given in the Commission's circular (No. 98/ORD/1 dated 18.12.2003) for the use of web-site will also apply to all such works awarded by the department/PSEs/ other organizations over which the Commission has jurisdiction.

(CVC Circular No. 98/ORD/1 Dtd 11.02.2004).

g. It is clarified that Commission's instructions are with regard to goods, services and works procured through open tender system, so these instructions do not apply to and OESs (Original equipment Suppliers).

h. In many organizations goods, services and works which as per laid down norms are to be procured / executed through open tender system many times due to urgency are done through short term tenders without resorting to wide publicity in newspapers because of time constraint.

In all such cases short term tenders (by whatever name it is called) etc. should also be put on the website of the dept. As it does not involve any additional time or cost.

i. Periodic Updating of Vendor Directory:

The Commission desires that in all such cases there should be wide publicity through the web site as well as through the other traditional channels at regular intervals for registration of contractors / suppliers. All the required proforma for registration, the pre-qualification criteria etc. should be always available on the website of the organization and it should be possible to download the same and apply to the organization. There should not be any entry barriers or long gaps in the registration of suppliers / contractors. The intervals on which publicity is to be given through website and traditional means can be decided by each organization based on their own requirements and developments in the market conditions. It is expected that it should be done at least once in a year for upgrading the list of registered vendors / contractors.

j. Opportunity to all registered Vendors in Limited Tendering:

The concerned organisation should give web - based publicity for Limited Tenders also except for items of minor value. If the organization desires to limit the access of the Limited Tender documents to only registered contractors / suppliers, they can limit the access by issuing passwords to all registered contractors / suppliers. But it should be ensured that password access is given to all the registered contractors / suppliers and not denied to any of the registered suppliers. Any denial of password to a registered supplier / contractor will lead to presumption of malafide intention on the part of the Tendering Authority.

(CVC Circular No.98/ORD/1 Dtd. 02.07.2004).

k. All organisations must post a summary every month of all the contracts/purchases made above a certain threshold-value, to be decided by the CVO in consultation with the Head of organisation i.e. CEO / CMD etc. as per Annexure-I enclosed to the Circular cited below. The threshold-value may be reported to the Commission for concurrence.

(CVC Circular No. No.005/VGL/4 Dtd 16.03.2005).

l. The threshold limits as proposed by the CVOs in consultation with CEOs can be taken as the starting point which could be revised subsequently to cover 60% of the transactions in a year and further 100% on stabilization.

(CVC Circular No. No.005/VGL/4 Dtd 20.09.2005)

m. CVOs are, therefore, once again advised to ensure that details of the tenders awarded above the threshold value by the organizations are uploaded in time on the organisation's official website and are updated every month. CVOs should also specifically bring to the notice of the Commission, any violation of this order.

(CVC Circular No.005/VGL/4 Dtd. 01.09.2006)

n. The Commission, therefore, while reiterating its aforementioned instructions directs the CVOs to convey to the Commission the following information latest by 30/4/07:-

i. The threshold value decided by the organization for publishing on their website, details of award of tenders/contracts;

ii. The extent to which the details of awarded tenders are being posted on the website and whether the websites are being updated regularly or not;

iii. Whether first/second phase of the Commission's circular dated 22/11/06 has been implemented or not;

iv. If not, the reasons thereof: steps being taken by the organization to ensure implementation of the Commission's circular and the exact date by which both the phases as mentioned in the Commission's circular would be fully implemented;.

Any failure on the part of organization to implement the directions contained in the Commissions circulars as mentioned above would be viewed seriously by the Commission.

(CVC Circular No. 006/VGL/117 Dtd. 18.04.2007).

o. To post summary of details of contracts/purchases awarded so as to cover 75% of the value of the transactions without any further delay. Any failure on the part of the organisations on this account would be viewed seriously by the Commission.

All Chief Vigilance Officers should reflect the compliance status in their monthly reports to the Commission after personally verifying the same.

(CVC Circular No. No.005/VGL/4 Dtd 14.07.2009).

20. Leveraging Technology

a. All Govt. Organisations discharging regulatory / enforcement functions or service delivery of any kind, which cause interface with the general public / private businesses, etc., shall provide complete information on their websites regarding the laws, rules and procedures governing the issue of licenses, permissions, clearances, etc. An illustrative list is given in the annexure to this Circular.

b. In case of Contracts & Procurement:

i. Applications for registration of contractors/suppliers/consultants/vendors, etc.

ii. Status of all bill payments to contractors / suppliers, etc.

c. All application forms / proforma should be made available on the websites in a downloadable form. If the organisation concerned wishes to charge for the application form downloaded from the computer, the same may be done at the time of the submission of the application forms.

d. In the second stage, the status of individual applications / matters should be made available on the organisation's website and should be updated from time-to-time so that the applicants remain duly informed about the status of their applications.

In addition to the manual receipt of applications, all organisations should examine the feasibility of online receipt of applications and, wherever feasible, a timeframe for introducing the facility should be worked out. As a large number of Govt. organisations are opting for e-governance, they may consider integrating the above mentioned measures into their business processes so that duplication is avoided.

(CVC Circular : No.006/VGL/117 Dtd. 22.11.2006).

21. E-Tendering / E-Procurement

a. The Commission has been receiving a number of references from different departments/organisations asking for a uniform policy in this matter. The departments /organisations may themselves decide on e-procurement/reverse auction for purchases or sales and work out the detailed procedure in this regard. It is, however, to be ensured that the entire process is conducted in a transparent and fair manner.

(CVC Circular : No.98/ORD/1 Dtd. 11.09.2003).

b. Guidelines on security related issues in e-tendering systems.

(CVC Circular : No.009/ VGL/002 Dtd 17.09.2009).

c. Checklist for implementation of e-tendering solutions.

(CVC Circular : No.009/VGL/002 Dtd. 26.04.2010).

d. In order to ensure proper security of the e-procurement system all departments /organisations are advised to get their system certified by Department of Information Technology (DIT).

(CVC Circular : No.010/VGL/035 Dtd. 23.06.2010).

e. DIT in turn requested its attached STQC (Standardisation, Testing and Quality Certificate) Directorate to establish necessary processes and systems to enable certifications of e procurement systems. Accordingly, the guidelines prepared by STQC in this regard approved and notified by the DIT is available on e-Gov. standards website (www.egovstandards.gov.in). The guidelines are also available on Commission's website. All the Ministries / Departments / Organisations are advised to use these guidelines for compliance to Quality Requirements for certifying the e-procurement systems.

(CVC Circular : No.010/VGL/035/161731 Dtd. 12.01.2012).

f. All organisations should invariably follow a fair, transparent and open tendering procedure to select the application service provider for implementing their e-tendering solutions. The standard guidelines on tendering procedure should hold good for the procurement of these services as well.

(CVC Circular No: 009/VGL/002 Dtd. 13.01.2009).

7.1.3 . CONTRACT AWARD / ORDER EXECUTION STAGE/ CONTRACT ADMINISTRATION STAGE

22. E-Payments

a. The payment to all suppliers / vendors, refunds of various nature, and other payments which the Organisations routinely make shall be made through electronic payment mechanism at all centres where such facilities are available in the banks.

Salary and other payments to the employees of the concerned organisations at such centres shall also be made through electronic clearing system (ECS) wherever such facilities exist. As the organisations will have to collect bank account numbers from the vendor, suppliers, employees and others who have interface of this nature with the Govt. organisations, the concerned organisations may plan to switch over to e-

payment system in a phased manner starting with transactions with the major suppliers in the beginning or in whatever manner is found more convenient.

(CVC Circular No.98/ORD/1 Dtd. 08.04.2004).

b. The Commission had directed that by July 2004, 50% of the payment transactions both in value terms as well as in number of transactions shall be made through ECS/EFT mechanism instead of payments through Cheques; and urged all Banks, PSUs and Departments to provide an enabling environment and facilities so that such an initiative is successful.

(CVC Circular : No. 98/ORD/1 Dtd. 20.10.2004)

23. Delays in Payments to Contractors & Suppliers etc. Reducing opportunities for corruption reg.

The Commission has directed that all the CVOs should undertake a review of bills received during the last six months. The review is meant to primarily determine the time taken in clearing the bills. It is suggested that the cut off limit for bills can be Rs. 1 lakh i.e. time taken for payment of all bills above this amount should be seen.

In smaller organisations the cut off limit can be lower depending on feasibility and convenience.

The CVO should also review whether payments are being made on “first-come-first-serve” basis or not.

(CVC Circular No. 005/ORD/1 Dtd. 10.03.2005)

24. Selection and Employment of Consultants

a. Conflicts of Interest: A firm which has been engaged by the PSU to provide goods or works for a Project and any of its affiliates will be disqualified from providing Consulting Services for the same Project. Conversely, a firm hired to provide Consulting Services for the preparation or implementation of a Project, and any of its affiliates, will be disqualified from subsequently providing goods or works or services related to the initial assignment for the same Project.

b. Consultants or any of their affiliates will not be hired for any assignment, which by its nature, may be in conflict with another assignment of the consultants.

(CVC Circular No.98/ DSP/3 Dtd. 24.12.2004)

c. The Commission has declared that following guidelines be kept in view while finalising the contracts for engaging Consultants:-

i. Conflicts of Interest:

- I. Conflict between consulting activities and procurement of goods, works or non-consulting services
- II. Conflict among consulting assignments
- III. Relationship with employer's staff
- IV. A consultant shall submit only one proposal. If participates in more than one proposal, all such proposals shall be disqualified.

ii. Professional Liability:

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

(CVC Circular No. 011/VGL/063 Dtd. 24.06.2011)

d. Some of the common irregularities / lapses observed have been narrated in the Circular. No OFF 1 CTE 1 Dtd. 25.11.2002. (<http://www.cvc.nic.in/three.pdf>)

25. Acceptance of Bank Guarantee (BG)

The guidelines on this subject issued by Canara Bank provides for an elaborate procedure, which may be found helpful for the organizations in eliminating the possibility of acceptance of forged/fake bank guarantees. The guidelines issued by Canara Bank provides that –

“ The original guarantee should be sent to the beneficiary directly under Registered Post (A.D.). However, in exceptional cases, where the guarantee is handed over to the customer for any genuine reasons, the branch should immediately send by Registered Post (A.D.) an unstamped duplicate copy of the guarantee directly to the beneficiary with a covering letter requesting them to compare with the original received from their customer and confirm that it is in order. The A.D. card should be kept with the loan papers of the relevant guarantee. At times, branches may receive letters from beneficiaries, viz., Central/State Governments, public sector undertakings,

requiring bank's confirmation for having issued the guarantee. Branches must send the confirmation letter to the concerned authorities promptly without fail".

4. Therefore, all organizations are advised to evolve the procedure for acceptance of BGs, which is compatible with the guidelines of Banks/Reserve Bank of India. The steps to be ensured should includes).

a. Copy of proper prescribed format on which BGs are accepted from the contracts should be enclosed with the Tender Document and it should be verified verbatim on receipt with original document.

b. It should be insisted upon the contractors, suppliers etc. that BGs to be submitted by them should be sent to the organisation directly by the issuing bank under Registered Post (A.D.).

c. In exceptional cases, where the BGs are received through the contractors, suppliers etc., the issuing branch should be requested to immediately send by Registered Post (A.D) an unstamped duplicate copy of the Guarantee directly to the organisation with a covering letter to compare with the original BGs and confirm that it is in order.

d. As an additional measure of abundant precaution, all BGs should be independently verified by the organisations.

e. In the organisation / unit, one officer should be specifically designated with responsibility for i) verification, ii) timely renewal and iii) timely encashment of BGs.

(CVC Circular : No.02-07-01-CTE-30 Dtd. 31.12.2007).

26. If L-1 Party backs out

If L-1 Party backs out, there should be re-tendering in a transparent and fair manner. The authority may in such a situation call for Limited or Short Notice Tender if so justified in the interest of work and take a decision on the basis of lowest tender.

(CVC Circular : No.98/ORD/1 Dtd 24.08.2000).

27. Back to Back tie-up by PSUs

a. It has been observed during intensive examination of various works / contracts awarded by construction PSUs on back to back basis that the works are being awarded in an adhoc and arbitrary manner without inviting tenders and ascertaining the performance, capability and experience of the tenderers. In some cases, the works were awarded on single tender basis / limited tender basis though sufficient time was available with the organisation to invite open tenders.

(Note: Observations of the Commission are listed in the circular mentioned below)

(Ref: CVC Circular No.06-03-02-CTE-34 Dtd. 20.10.2003)

b. The Commission has observed that there have been instances where Government Organisations / PSUs obtain contract from other Government Organisations / PSUs and further award the same to private entities on 'back to back tie up' basis without competitive tendering mechanism and without any significant value addition by the procuring Government Organisation / PSU. Their practice subverts the Commission's emphasis on integrity, transparency, fairness and equity in decision making.

(CVC Circular No 005/CRD/19/196756 Dtd. 11th Dec 2012)

28. Out of turn Allotments / Discretion:

The details of all such cases regarding tenders or out of turn allotments or discretion exercised in favour of an employee / party to be published on the Notice Board and in the organisation's regular publication(s),

(CVC Circular : No.005/VGL/4 Dtd the 16.03.2005)

29. Banning of Business Dealings

The Commission once again reiterates its instructions that banning of business is an administrative matter to be decided by the management of the organization and the CVC does not give its advice in such matters.

(CVC Circular No. 000/VGL/161 Dtd. the 24.03.2005)

30. Undertaking by the Members of Tender Committee / Agency.

In continuation of the Commission's directions vide Order 005/VGL/4 dated 16/3/2005 regarding transparency in the tender process, the Commission would advise that the members of the Tender Committee should give an undertaking at the appropriate time, that none of them has any personal interest in the Companies / Agencies participating in the Tender Process. Any Member having interest in any Company should refrain from participating in the Tender Committee.

(CVC Circular No: 005/VGL/66 Dtd the 9/12/2005)

31. Recoveries arising out of Intensive Examination conducted by CTEO

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

(CVC Circular No. TE (NH)/2011/Recoveries/144262 Dtd. 12.09.2011)

7.1.4. GENERAL

32. Checklist for Examination of Procurement (Works/ Purchases / Services) Contracts by CVOs

A. Pre-Award Stage

1. Financial and Technical sanction of Competent Authority is available.
2. Adequate and wide publicity is given. Advertisement is posted on website and Tender Documents are available for downloading.
3. Convenient tender receiving/opening time and address of the Tender receiving officials/tender box are properly notified.
4. In the case of Limited Tender, panel is prepared in a transparent manner clearly publishing the eligibility criteria. The panel is updated regularly.
5. Pre-Qualification Criteria are properly defined/ notified.
6. Short listed Firms/Consultants are fulfilling the eligibility criteria. There is no deviation from notified criteria during evaluation.
7. Experience certificates submitted have been duly verified.
8. Tenders/Bids are opened in the presence of Bidders.
9. Corrections/omissions/additions etc., in price bid are properly numbered and attested and accounted page-wise. Tender summary note/ Tender opening register is scrupulously maintained.
10. Conditions having financial implications are not altered after opening of the Price Bids.
11. In case of consultancy contracts
 - (a) Upper ceiling limit is fixed for consultancy fee and
 - (b) Separate rates for repetitive works are fixed.

B. Post-award stage

a. General

1. Agreement is complete with all relevant papers such as pre-bid conference minutes, etc.
2. Agreement is page-numbered, signed and sealed properly.
3. Bank Guarantee is verified from issuing bank.
4. Insurance Policies, Labour Licence, Performance Guarantee are taken as per Contract.
5. Technical Personnel are deployed as per Contract.

6. Plant and Equipment are deployed as per Contract.
7. Action for levy of liquidated damages is taken in case of delay/default.

b. Payments to contractors

1. Price escalation is paid only as per Contract.
2. Retention Money/Security Deposit is deducted as per Contract.
3. Recovery of Mobilisation & Equipment advance is made as per the provisions in the Contract.
4. Recovery of I.Tax & Works Contract tax is made as per provisions in the Contract.
5. Glaring deviations are supported with adequate justification and are not advantageous to the contractor.

c. Site Records

1. Proper system of recording and compliance of the instructions issued to the Contractors is maintained.
2. Proper record of hindrances is maintained for the purpose of timely removal of the hindrance and action for levy of liquidated damages.
3. Mandatory tests are carried out as per the frequency prescribed in the agreement.
(Ref: CVC Circular F.No.006/VGL/29 Dated, the 1st May, 2006).
(<http://www.cvc.nic.in/006vgl29.pdf>)

33. A Comprehensive Set of Guidelines Issued by CVC on Common Irregularities / Lapses Observed in Stores / Purchase Contract.

Guidelines for improvement in the procurement system. (Ref: CVC Publication Dtd. 15.01.2002) (http://www.cvc.nic.in/cte_man_2002.pdf)

34. Issues arising out of Annual Review Meeting of Defence Sector CVOs held by CVC in July 2012

- i. Updating all Procurement/Purchase Manuals, in alignment with the spirit of DPP &DPM (if not already done).
- ii. The Threshold value of Contracts for signing Integrity Pact needs to be reviewed to cover 90% of the transactions, in a planned manner. The progress made in %age may be intimated on a quarterly basis.

- iii. The proportion of Limited / Single Tenders should be gradually reduced through Vendor development.
- iv. Online Vendor registration process should be strictly followed so as to encourage vendor registration. The database of vendors so registered should be uploaded on the website, for use by all the Divisions of the Organisation.
- v. Efforts should be made to achieve 90% of procurements through e-procurement. The progress made may be intimated on a quarterly basis.
- vi. All the payments to vendors / contractors should be through e-payment, as far as possible.
- vii. Efforts may be made to prevent cartelisation and wide variation in rates awarded for same products, by maintaining relevant data on vendors / rates pertaining to previous procurements; and sharing these details across various units in the organisation.
- viii. Computerised File Tracking should be introduced (if not already done), in a time bound manner.
- ix. Clearance of Bills of contractors should be done in a transparent and time bound manner. The contractors should be able to track the status of their bills, online.
- x. CVC suggested that for transparency in procurement, especially in proprietary items in Defence Sector, a committee may be setup which may include one industrial member and one academic member, for assessing innovative products for assimilation followed by vendor development programme so that new products could be brought in.

(Ref: 8(94)/2012-D (Coord/DDP) Dtd 29.10.2012)

35. Purchase Preference Policy

- i. The Department of Public Enterprises has issued guidelines vide O.M. No. DPE /13 (15) / 2007- Fin. Dated 21.11.2007 on the subject cited above which reiterates DPE's earlier guidelines dated 18.07.2005 to the effect that the Purchase Preference Policy would stand terminated w.e.f. 31.03.2008. Further, it also provides that Preferential Policy framed for the specific sectors by the concerned Ministry/Department within relevant Act of Parliament or otherwise do not come within the purview of these guidelines.

However, the DPE OM. Dated 21/11/2007, lays down that the concerned Ministry / Department may independently evolve/review preferential policies for the sectors of

their concern as per their requirement. A copy of DPE's O.M dated 21/11/2007 is enclosed for reference.

ii. The Commission has desired that if any Ministry/Department has evolved a Purchase Preference Policy pursuant to the DPE Guidelines, the same may be brought to the notice of the Commission.

(CVC Circular No. 009/VGL/055 Dtd 09.11.2009)

The objective of publishing this booklet is to sensitize our colleagues to the prevailing CVC guidelines. For detailed information, the relevant CVC circular /instruction / directives / guidelines may please be referred to viz., <http://www.cvc.nic.in>

36. Improving Vigilance administration by leveraging technology - Increasing transparency through effective use of website.

(CVC CIRCULAR No. 13/4/07 dated 18-04-2007)

37. Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis.

(CVC CIRCULAR No.23/7/07 dated 05-07-2007), (CVC CIRCULAR No.15-05-2006 dated 09-05-2006)

38. Improving Vigilance administration - Tenders

Some of the organisations have sought clarification as to whether they can consider the L- 2 offer or negotiate with that from if L-1 withdraws his offer before the work order is placed, or before the supply or execution of work order takes place. In this regard, it is clarified that such a situation may be avoided if a two-bid system is followed (techno commercial) so that proper assessment of the offers is made before the award of work order. Therefore, if L-1 party backs out, there should be retendering in a transparent and fair manner. The authority may in such a situation call for limited or short notice tender if so justified in the interest of work and take a decision on the basis of lowest tender

(CVC CIRCULAR No.98/IRD/001 dated 24-08-2000),(CVC Circular No. 01/02/11 dated 11.02.2011)

39. Improving Vigilance Administration: Increasing Transparency in Procurement / Sale etc .

i) In addition to the existing rules and practices regarding giving publicity of tenders through newspapers, trade journals and providing tender documents manually and through post etc. the complete bid documents along with application form shall be

published on the web site of the organisation. It shall be ensured by the concerned organisation that the parties making use of this facility of web site are not asked to again obtain some other related documents from the department manually for purpose of participating in the tender process i.e. all documents upto date should remain available and shall be equally legally valid for participation in the tender process as manual documents obtained from the department through manual, process.

ii) The complete application form should be available on the web site for purposes of downloading and application made on such a form shall be considered valid for participating in the tender process.

iii) The concerned organisation must give its web site address in the advertisement/NIT published in the newspapers.

iv) If the concerned organisation wishes to charge for the application form downloaded from the computer then they may ask the bidding party to pay the amount by draft/cheques etc. at the time of submission of the application form and bid documents.

3. While the above directions must be fully complied with, efforts should be made by organisations to eventually switch over to the process of e-procurement/e-sale wherever it is found to be feasible and practical.

(CVC CIRCULAR No.98/IRD/001 dated 18-12-2003)

40. Improving vigilance administration - no action to be taken on anonymous/ pseudonymous petitions/complaints.

(CVC Circular No.3 (v)/99/2 dated 29-06-1999), (CVC Circular No. 03/03/16 dated 07.03.2016)

41. Disposal of Complaints.

(Office Order No. 53/09/03 dated 23-09-2003, 16/03/04 dated 01-04-2004, CVC Circular No. 3/2/07 dated 23-02-2007, 15/07/09 dated 01-07-2009, 39/11/07 dated 01-11-2007)

42. Imposition of penalty on PSU employees after their retirement.

(CVC Circular No. 44/12/07 dated 28-12-2007)

43. Disposal of cases involving public servants due to retire shortly.

(Office Order No. 34/9/07 dated 27-09-2007), (CVC Circular No. 03/03/11 dated 11-03-2011)

44. Reference to the Commission for first stage advice –Procedure regarding
(CVC Circular No.21/8/09 dated 06-08-2009) (Office Order No. 03/01/10 Dated 28th January, 2010) **(CVC Circular No. 14/3/06 dated 13-03-2006)** (CVC Circular No.21/8/09 dated 06-08-2009) [CVC circular No.07/04/15 dated 27- 4-2015]

45. Obtaining Commission's advice in composite cases.
(CVC Office Order No. 2/1/04 dated 08-01-2004)

46. Second stage consultation with the CVC in disciplinary cases
[CVC Circular No.08/12/14 dated 3-12-2014]

47. Referring matters of alleged commission of criminal offences and frauds etc., in CPSEs to CBI – Special Chapter for Vigilance management in CPSEs – reg

[GOI CVC Circular No.03/03/15 (No.014/VGL/066) dated 19-3-2015]

48. Schedule of time limits in conducting investigations and departmental inquiries.

(CVC Office Order No.000/VGL/18 dated 23-05-2000), (CVC Office Order No.13/3/10 dated 09-03-2010), (CVC Circular No. 02/01/2016 dated 18.01.16), DoPT guidelines under OM No. 425/04/2012-AVD-IV(A), 29-11-2012, (CVC Circular No. 28/7/06 dated 21-07-2006), CVC Circular No. 34 /09/06 dated 21-09-2006, CVC Circular No.14/3/06 - F.No. 006/PRC/001 dt.13.3.06 Office Order No.3(v)/99/8 dated the 5th October,1999.

49. Guidelines for monitoring and expeditious disposal of disciplinary proceedings cases.

(DoPT OM No. 425/04/2012-AVD-IVA dated 29-11-2012)

50. Drafting of charge- sheet.

CVC Office Order No.14/02/04 dated 26-02-2004

51. Vigilance Administration – Role of CVO- regarding.

Circular No.25/7/06 dated 06-07-2006.

Note: The guidelines and instructions covered in the above circulars and Office memorandum may be updated with the latest guidelines issued by the concerned government institutions, like CVC, DPE, DoPT, MoD, MoF etc., and are to be complied with.