

ILLUSTRATIVE CHECK POINTS
FOR
VARIOUS STAGES OF PUBLIC PROCUREMENT



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Preamble

This compendium lists illustrative check-points in public procurement for the purpose of ensuring fairness, equity and transparency. These check lists are illustrative. There could be certain specific cases, which may involve other areas requiring more focused attention. Such areas need to be determined on case to case basis.

The compendium is intended to serve as a guide to both executives dealing with procurement as well as vigilance officials.

1.0 Works/Purchase Manual

1.1 Cardinal principle of public procurement is to procure the material/services/works of the specified quality, at the most competitive prices and, in a fair, just and transparent manner. To achieve this end, it is essential to have uniform and well documented policy guidelines in the organization, so that this vital activity is executed in a well-coordinated manner with least time and cost overruns. In some organizations, Procurement Manual is either not in place or has not been updated for years together, which renders the system of procurement ad-hoc and arbitrary.

A codified Procurement Manual containing the detailed procurement procedures and guidelines needs to be prepared by the organizations so that there is systematic and uniform approach in the decision-making. Delegation of power and commensurate accountability at various levels of decision-making should be essential feature of the Procurement Manual. An integrated procurement policy in the form of Procurement Manual helps the Organisations in circumventing the possibility of corruption and would also ensure smoother and faster decision-making.

1.2 Following check-points are suggested:

- i. Whether procurement (work/purchase/services) manual are in place. If yes, whether updated regularly or not! When were these updated last time?
- ii. Whether the provision in the work/purchase/services manual are consistent with CVC guidelines, General Financial Rule (GFR) and Cannons of public procurement?
- iii. Whether the provisions in work/purchase/services manual cover the entire gamut of procurement activities of the organization?
- iv. Whether the procurement/contract/works manuals are uploaded on intranet/internet?
- v. Whether officials concerned are conversant with procurement manual or not?

2.0 Scope of Work

2.1 It is important for any scheme that the scope of work is properly defined. A well defined scope of work giving an overview of the proposed procurement needs to be put up to the

Competent Authority at the time of seeking approval/sanction. The objective of the procurement needs to be clearly brought out in the scope.

3.0 Administrative Approval & Expenditure Sanction (AA & ES)

3.1 Administrative Approval & Expenditure Sanction is an important component of procurement process. This provides an opportunity to the Competent Authority to have a comprehensive overview of the project. If the scheme is approved by the Competent Authority, suitable provision for expenditure to be incurred on the project is also to be made at this stage. There are situations, where projects/scheme is sanctioned by the authority, who is not competent. The importance of this aspect in public procurement can be gauged from the facts of a case, wherein the Competent Authority that was vested with the power to sanction an original scheme/project of Rs. 10 crores only had sanctioned the project of more than Rs. 300 crores.

3.2 Following check-points are suggested:

- i. Whether 'Feasibility Study' has been done before formulating the project?
- ii. Whether, proposal for A/A&E/S has been prepared after considering aspect of mandatory clearances such as Environmental, Land Use etc.?
- iii. Whether A/A&E/S is based on proper estimate?
- iv. Whether administrative approval and expenditure sanction has been accorded by the Competent Authority?
- v. Whether the authority, which accorded the administrative approval and expenditure sanction is competent to do so or not as per the delegation of power?
- vi. Whether necessary budget provision has been made for the instant project or not?
- vii. Whether scope of work in the instant contract matches with corresponding provision in the A/A & E/S?
- viii. Whether there is any excess expenditure over the corresponding sanctioned amount?
- ix. Whether in case of excess expenditure or change in scope, approval of the Competent Authority has been taken?

4.0 Consultancy

4.1 Earlier public organizations were undertaking planning and supervisory activities in-house. Now-a-days, in the era of large-scale infrastructure development, the in-house resources

available with public organizations are gradually being found to be inadequate. Therefore, there has been substantial outsourcing of services such as Architectural services, Preparation of DPR, Project Management Consultancy, and Quality Assurance etc. The Commission has issued instructions regarding appointment of Consultants vide circular No. 3L PRC1 DT.12.11.1982 and the same were reiterated vide circular No. OFF1-CTE-1 Dt. 25.11.2002. Gist of the above circulars is given below-

The consultant should be appointed in a transparent and competitive manner for need based and specialized jobs. The agreement should contain adequate provisions for penalizing the defaulting consultant keeping in view the fact that a consultant's role is only advisory and recommendatory. Consultant's fee should be based on some fixed value of the contract.

4.2 Commission in supersession of its earlier circular [No. No.98/DSP/3 dt. 24.12.2004] has issued detailed instruction on the possible 'Conflict of Interest' in appointment of Consultants and 'Professional Liability' of the Consultants, vide circular No. 08/06/11 dated 24th June, 2011.

4.3 Following check-points are suggested:

- i. Whether guidelines for appointment of consultants are in place in the organization?
- ii. Whether the guidelines are updated regularly or not and when were these last updated?
- iii. Whether the guidelines for appointment of consultants are covering various aspects of the consultancy contracts such as provision of 'Professional Liability', upper sealing of consultancy fee, work performance linked payment, panel clauses for frequent change of staff, panel clauses for deficiency in services, clauses to deal with professional misconduct, panel clauses to deal with delay in services etc.?
- iv. Whether the qualifying requirement fixed for the selection of the consultant is commensurate with the importance and size of the project?
- v. Whether the qualifying requirement is unambiguous and also fixed before inviting the offers for the consultancy work?

- vi. Whether wide and adequate publicity including web-publicity has been given for inviting the offers for the consultancy work?
- vii. In case of limited tender enquiry, whether the panel has been prepared in a fair and transparent manner or not! Whether this panel is being up updated regularly or not?
- viii. Whether the bid(s) are in conformity with the terms of the tender document?
- ix. Whether the evaluation of the bids is done as per the notified qualifying criteria and all bidders are treated at par?
- x. Whether all the issues relating to the services tax, professional tax travelling allowances etc. are taken into account at the time of bid evaluation?
- xi. Whether during performance of the consultancy contract, the contract conditions are being complied with?
- xii. Whether the quality of project management by the Project Management Consultant is up to the mark?

5.0 Detailed Project Report (DPR)/Detailed Estimate

5.1 Successful contract performance depends on the quality of Detailed Project Report (DPR). If, DPR is prepared on ad-hoc basis not based on site conditions, there is likelihood of delays and deviations resulting in time and cost overrun. It is imperative for trouble free execution of the contract that there is consistency among schedule of items, drawings and specifications. Any such ambiguity and inconsistency adds to time and cost overrun of the project besides leading to legal complications. Poor DPR leaves opportunity for the contractor to exploit the situation and gain profits out of ambiguity in the contract.

Designing of the products/structures of a Project is one of the most important activities in the project formulation. It is important that structures are designed using the latest codal provisions and latest engineering practices.

5.2 Following check-points are suggested:

- i. Whether detailed site investigation has been carried out before finalizing the items/materials and their corresponding quantities to be used in the project?
- ii. Whether proper specification suiting to the site conditions have been selected or not?

- iii. Whether all the items required for successful completion of the project has been taken into account?
- iv. Whether there is consistency among description of items in 'schedule of items'/ bill of quantities, drawings and specifications?
- v. Whether rates supported with proper documents (genuine market rate quotations or standard schedule of rate) have been considered in the preparation of the estimate?
- vi. Whether detailed analysis of rate has been carried out before arriving at the rate of a particular item?
- vii. Whether DPR has been reviewed as a whole to assess its conformity with local bylaws, Archaeological Survey of India guidelines, environmental norms, to other mandatory regulations or otherwise by an independent agency or in-house?
- viii. Whether the structural design has been proof checked by an independent agency or in-house?

6.0 Design and Drawings

6.1 Designing of products/structures/service modules is an important aspect of any procurement. It is important that various elements of the project are scientifically designed using the latest practices and should be economically efficient. Design should suit to the prevailing site conditions. Similarly drawings should be prepared indicating all necessary details leaving no room for ambiguity.

6.2 Following check-points are suggested:

- i. Whether proper design has been carried out considering the relevant parameters prevailing at site?
- ii. Whether design has been proof checked?
- iii. Whether any deficiency is observed in the design?
- iv. Whether any review of the design has been done! If so, reasons for the same?
- v. Whether 'good for construction' drawings contain all necessary elements?

7.0 Tender Document

The tender after acceptance becomes ‘the contract’- a legal document. An ambiguous agreement leads to poor contract performance and litigations. It also gives an opportunity to a contractor to make profit out of ambiguous conditions. It has been observed that often the tender document is prepared in a hurried manner without checking for consistency among Schedule of Items, Drawings, Specifications and Contract Conditions etc. This can happen due to different parts of the tender document like Schedule of Quantities, Specifications, Drawings and General Conditions etc. being prepared by different set of people without correlating them. Sometimes they are copied from old tender cases without giving a thought to the applicability of the conditions to the present work.

7.2 Following check-points are suggested:

- i. Whether complete tender document containing General/Special Conditions of Contract, specifications, Bill of Quantities, all Addendums etc. is approved by the Competent Authority?
- ii. Whether standard approved tender document has been used? If not, whether the tender document would be legally sustainable?
- iii. Whether all the prevailing guidelines of Govt./CVC organization have been made part of the tender document?
- iv. Whether relevant modality to deal with any ambiguity in the bid has been provided in the tender document?
- v. Whether all the documents/drawings stated to have been attached with the tender documents have actually been attached or not?
- vi. Whether proper place of tender receipt has been notified in the NIT or not?
- vii. Whether the provision of additional bank guarantees or other securities have been made in case of bid being unbalanced or front-loaded?
- viii. Bank Guarantees from Nationalised Banks only should be accepted. Under no circumstances bank guarantees from Co-operative Banks should be accepted?

8.0 Pre-qualification

8.1 The success of a project largely depends on the capability of the contractor/vendor. Pre-qualification is a process to select competent contractors having technical and financial capability commensurate with the requirements of the particular procurement (work/supply of goods/hiring of services). The pre-requisites of pre-qualification process are:

- Transparency
- Fairness
- Maintenance of fair competition

8.2 The Commission had issued guidelines vide circular No12-02-1-CTE-6 dated: 12.12.2002 and 07.05.2004 advising the organizations to frame the pre-qualification criteria in such a way that it is neither too stringent nor too lax to achieve the purpose of fair competition.

8.3 During intensive examinations of the works of the organizations dealing with the power projects, following deficiencies were observed:

- Stringent PQ Criteria resulting in poor competition.
- Unduly restrictive criteria, creating entry barrier for potential bidders.
- Evaluation criteria not notified to the bidders, making the PQ process non-transparent.
- PQ Criteria relaxed during evaluation, thus creating entry barrier to the other potential bidders fulfilling the relaxed criteria.
- Credentials of the bidders not matched with the notified criteria.
- Credentials of the bidders not verified.

8.4 Following check-points are suggested:

- i) Whether there are proper guidelines on pre-qualification of contractors/suppliers in the procurement manual of the organization?
- ii) Whether pre-qualification criteria for the instant procurement has been framed objectively commensurate with importance and size of the project/procurement?
- iii) Whether the pre-qualification criteria was frozen before inviting pre-qualification bids?

- iv) Whether the pre-qualification criteria has been approved by the Competent Authority as per the provision in the procurement manual of the organization?
- v) Whether there is any deliberate attempt to make the pre-qualification criteria suiting to particular bidder(s)?

9.0 Inviting & Opening of Tenders

9.1 The award of Public Contract through open tender is to ensure - transparency in public procurement, to maximize economy and efficiency in public procurement, to promote healthy competition among tenderers, to provide for fair and equal treatment to all the tenderers and to eliminate irregularities, interference and corrupt practices by authorities concerned. This is also required by the Article 14 of the Constitution of India.

9.2 Normally three modes of tendering are adopted. Namely:

- Open Tenders
- Limited Tenders
- Single Tender/Nomination Basis

In an open tender, bids are invited giving wide and adequate publicity. This is the most preferred mode of tendering.

In the case of small value works, urgent works and in case only a few bidders are available in the market, limited tenders from such bidders who have been empanelled are invited. In case of Limited Tenders the empanelment should be done in a transparent way and updated periodically.

Award of contracts on nomination basis, which is also called a single tender is to be resorted to only under exceptional circumstances such as natural calamities and emergencies or there were no bids to repeated tenders or where only one supplier has been licensed (proprietary item) in respect of goods sought to be procured.

9.3 In a judgment of the Hon'ble Supreme Court [Meerut Nagar Nigam, Meerut Vs Al Faheem Meat Exports Pvt. Ltd.] it has been emphasized that all the public tenders should be in an open and transparent manner with adequate publicity. Consequent to this judgment, the Commission has issued Office Order No. 23/7/07 dated 05.07.2007 laying down the circumstances where award through nomination is admissible.

9.4 The Commission vide its Circular No. 06-03-02-CTE-34 dt. 20.10.2003 and Circular No. 15/5/06 issued vide letter no. 005/CRD/19 dt. 9th May 2006 has emphasized upon open tendering as the most preferred mode of tendering and insisted on transparency in the preparation of panel in case of limited tenders.

9.5 Widest possible publicity is essential for greater transparency in open tenders. In addition to the existing rules and practices regarding publicity, the Commission vide their circular No. 98/ORD/1 dt.18.12.2003 has instructed for up loading the Notice Inviting Tender and also tender documents in a down loadable form on the web site. The web site publicity is to be given even in the case of limited tenders.

9.6 In the various booklets issued by the CTE Organization of the Commission, the need to maintain transparency in receipt and opening of tenders has been emphasized and it has been suggested therein that suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located tender boxes needs to be ensured. The Commission vide their Circular No. 05-04-1-CTE-8 dt. 8.6.2004 has further instructed that in case of bulky tender documents the provision for submission of bids to designated officials by hand should be made in the tender document itself.

To maintain transparency in the opening of tenders, the Commission in its circular dated 8.6.04 has instructed to open the bids in the presence of bidders.

9.7 Following check-points are suggested:

- i. Whether proper publicity has been given to the tender as per the guidelines of the organization?

- ii. Whether the guidelines of the organization for publicity of the tender are adequate?
- iii. Whether NIT has been posted on the organization's website?
- iv. Whether place of tender receipt as notified in the NIT is conspicuous?
- v. Whether the committee to open the tenders has been duly notified by the Competent Authority?
- vi. Whether the tenders are opened in presence of the bidders or their authorized representatives?
- vii. Whether cutting/overwriting /insertions are accounted for on each page of the price bid?
- viii. Whether the members of the Tender Opening Committee have signed on each page of the price bid?

10.0 Tender Evaluation and Award of Work

10.1 This is the most sensitive area susceptible to corruption. Corruption is inversely proportional to transparency and fairness. To ensure that evaluation is done in most transparent, fair & open manner, following points should be taken care of:

- Evaluation of tenders needs to be done as per pre-notified criteria.
- Timely decision within validity period.
- Complying with commission's circular regarding negotiations.
- Ensuring that conditions / specifications are not relaxed in favour of contractor to whom the work is being awarded.
- Ensuring that L1 is not ignored on flimsy grounds.
- Compliance with the purchase preference policy of the govt.
- Ensuring that work order / supply order is placed within justified rates.

10.2 CVC guidelines in this regard have been issued vide following circulars:

- Circular No. 8(1)(H)/98(1) dated 18.11.98,
- Circular No. 98/ORD/1 dated 24.8.2000 / 15.3.99,
- CVC'S Office Order No. 13/3/05 (005/VGL/4) dated 16.3.2005,
- Circular No. 06-03-02-CTE-34 dated 20.10.03,
- Circular No. 004/DSP/11-6594 dated 24-2-2005
- Circular No. 005/CRD/012 dated 3.03.2007

10.3 Following check-points are suggested:

- i. Whether the Tender Evaluation Committee has been duly notified by the Competent Authority?
- ii. Whether members of the Tender Evaluation Committee are competent enough to deal with the subject matter?
- iii. Whether the bids are evaluated as per the terms of the tender document or not?
- iv. Whether the tender evaluation committee has commented upon the aspect of the bid being unbalanced or front-loaded?
- v. Whether ambiguity clause has been properly applied to deal with any inconsistency in the bid during evaluation?
- vi. Whether there has been any inordinate delay in processing the tender for award of the work?

11.0 Contract Agreement

11.1 During course of technical examination of various contracts by CTE's Organisation, it was observed that officials, who are otherwise expert in their own technical domain, do not go through the complete contract document. During performance of the contract, their main focus could be on BOQ/specifications for various items. In other words, at times, the officials are more concerned with the technical aspects of the contract and as such, other important contract provisions, which are also essential for smooth operation of contract, get ignored. The contractors/vendors tend to take advantage of the ignorance of the officials for their benefit. Many a times, major financial irregularities occur during the performance of the contract because of the officials not being thorough with the contract conditions/provisions. Besides quality, timely completion of the work is also the essence of the contract. While examining the correspondence files of some power projects, it was observed that many projects get unduly delayed due to contractor's fault such as non deployment of adequate plant & machinery, technical staff, material, labour etc. Officials have been found wanting in their action against the contractors/suppliers. Such actions in many cases lead to recoveries from the contractors/suppliers. In some projects, it was further observed that 'Extension of Time' was granted without claiming compensation i.e. 'Liquidated Damages', ignoring correspondence that could pin the delay to the account of contractor.

11.2 Following check-points are suggested:

- i. Whether proper agreement between the organization and the contractor / supplier has been entered into within the prescribed period or not?
- ii. Whether the contract agreement containing all the relevant papers has been properly sealed or not?
- iii. Whether irrelevant documents/papers have been made part of the agreement?
- iv. Whether various contract provisions such as labour laws, insurances, guarantees etc. are being compiled by the contractor or not?
- v. Whether action has been taken against the contractor for non-compliance of the contract conditions?
- vi. Whether the payment is being made to the contractor strictly as per the contract?
- vii. Whether any overpayment/inadmissible payment?
- viii. Whether Bank Guarantees submitted by the contractor/supplier have been duly verified for their genuineness from the issuing bank?
- ix. Whether action has been taken/proposed against the contractor/supplier for delay?
- x. Whether the work is being carried out as per the detailed procedure/protocol for quality of the material/product provided in the contract and in case of any deviation, whether approval of Competent Authority highlighting the financial implication has been obtained?
- xi. In case of the contractor being a Joint Venture of two or more firms, whether representatives are being shared by each of the partner as per their disclosure at the time of bidding?
- xii. Whether sub-contracting of the work is allowed in the contract and if so to what extent? Proposal for sub-contracting should be scrutinised scrupulously to assess the competence of the sub-contractor. Indiscriminate sub-contracting that too the inexperienced/incompetent sub-contractors may lead to serious quality compromises besides delay in execution of the work?

12.0 Payment to the Contractors

12.1 Payment to the contractors/suppliers should be made strictly as per the terms of contract. Any payment outside the contact agreement should have proper & specific approval of the

Competent Authority highlighting the need/necessity for the same as well as rule position. Various types of advances such as Mobilization Advance, Plant & Machinery Advance, Advance on Materials (Secured Advance) etc. may have been provided in the contracts, which need to be paid and recovered as per the stipulation in the contract agreement. The basic purpose of Mobilization advance is to extend financial assistance within the terms of contract to the contractor to mobilize the man and material resources for timely and smooth take off of the project or procurement of equipment material or other services contract. There could be possibility of misuse of Mobilization Advance, especially the interest free advance, either due to absence of necessary safeguards or due to non-implementation of these safeguards provided in the contracts. The Mobilization Advance so paid could be misused by the contractors either in building their own capital or for the purpose other than the one for which it was disbursed, rendering to be counter-productive. In view of the susceptibility of its misuse, Commission vide its Circular No. NU/POL/19 dated 8th December 1997, banned the provision of interest free Mobilization. However, in view of representations from various organization, Commission has reviewed the earlier instructions and allowed the organizations to stipulate interest free advance with elaborate mechanism for safeguards against its misuse vide circular No.10/4/07 issued vide letter No.4CC-1-CTE-2 dated 10.04.2007. More importantly the BGs taken in lieu of Mobilization Advance need to be properly examined within respect to the acceptable format and any condition deterrent to the Govt.'s interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/ encashment of BGs also needs to be taken so as to protect the Govt. interest. Similarly, Plant & Machinery Advance should be allowed only for the purchase of Plant & Machinery for the bona-fide use in the project and it should be allowed only on the production of genuine documents.

Tax evasion in the procurement contracts could be another area of concern; therefore, it is necessary that tax liability of the contractors/suppliers is examined properly with reference to as per the extant instructions of the Government.

12.2 Following check-points are suggested:

- i. Whether the payment is made as per the terms of the contract?
- ii. Whether there is any possibility of duplicate payment being made to the contractor/supplier?
- iii. Whether any over payment is being made to the contractor/supplier?
- iv. Whether the rates for extra/substituted items have been derived as per the provision in the contract agreement/Procurement Manual?
- v. Whether the payment for extra/substituted items have been made after due approval of the Competent Authority?
- vi. Whether advances are paid to the contractors/suppliers for the amount specified in the contract agreement?
- vii. Whether recovery of advances is being made as per the terms of the contract agreement?
- viii. Whether recovery of mandatory taxes and duties is being done as per the extant instructions of the Government and as per the terms of the contract agreement?
- ix. Whether reimbursement of service tax, excise duty etc. is being done after obtaining the actual proof of depositing the same with authorities concerned?
- x. Some of the contracts provide escalation clause, with detailed formula in order to compensate the contractors for increase in the material cost during the contract period. Whether the formula for escalation is applied correctly or not?
- xi. Whether hire charges of Plant and Machineries are being recovered from the contractor as per the specified rate?

13.0 Site Records

13.1 Records connected with the execution of the work should be maintained in a proper manner. The registers/files, wherein important data such as record of the mandatory test, record of hindrances, record of receipt and supply of materials, record of issue of drawings/design etc. are kept should be properly bound and page numbered. These records should be maintained under the signature of designated senior officials. This will guard against the possibility of manipulation/tempering of these records at any stage.

13.2 Following check-points are suggested:

- i. Whether the registers are properly bound and having machine numbered pages?
- ii. Whether the registers to keep record of important data like mandatory test, hindrances etc are being issued under the signature of designated senior officer?
- iii. Whether these records are being maintained properly with signatures and attestation of the designated officers?
- iv. Whether any tampering/manipulation is noticed in these records?

14.0 Site Inspection

14.1 Site inspection is basically to assess the quality of work being carried out. All the stages discussed previously are the means, whereas the quality/quantity is the end product. One of the cardinal principles of public procurement is to procure works or goods or services of specified quality. For this purpose, detailed quality standards are stipulated in the contracts. Any compromise in the quality will not only defeat the very purpose of stipulating such elaborate quality standards, but also cause irreversible loss to public exchequer.

To maintain the quality of the work, testing of the material at various stages of the work is required. The contract documents stipulate mandatory tests to be carried out for ensuring that the materials represented by the sample conform to desired quality standards. It has been observed that at times, aspect of testing at specified frequency & interval is ignored. This not only defeats the objective of mandatory testing of input materials/products, but also gives opportunity to the contractors/manufactures/vendors to supply sub-standard materials and save on the testing charges.

It needs to be examined whether the work is being carried out with the specified quality standards? Site inspection should highlight the specific quality compromises w.r.t. the benchmark i.e. specified standards/specifications rather than general observation.

15.0 Leveraging information technology

15.1 The Government is promoting E-Governance to improve transparency in government functioning. As regards public procurement, the modern IT tools can be used in enhancing

transparency in the form of E-Tendering, E-Procurements, E-Payments & uploading of post tender details on the website. CVC has issued instructions in this regard from time to time.

15.2 Following check-points are suggested:

- i. Whether e-payment is being made to the contractors/suppliers in general in the organization?
- ii. Whether e-payment is being made in the instant contract?
- iii. If the e-payment is not being made then reasons for the same?
- iv. Whether CVC's instructions on e-tendering/e-auctions/reverse-auctions are being complied with?
- v. Whether post-tender details are being uploaded on the organization's website?

16.0 Integrity Pact

16.1 As part of its endeavour to promote transparency in public procurement, the Commission has issued instructions for putting in place the mechanism of Integrity Pact. Among the important provisions in the instructions of the Commission are mandatory provision of Integrity Pact in the procurement contracts and appointment of Independent Monitors in the organisation.

16.2 Following check-points are suggested:

- i. Whether the provision of Integrity Pact as approved by the Management has correctly been incorporated in the tender documents/contracts?
