



File. No.: NESTS/VIGILANCE/PreventiveVigilance/2023-24

Dated: 13/04/2023

To,

CMD/MD/CEO,
B&R, EPIL, HSCL, MANIDCO, MTDC, NPCC, TCIL, WAPCOS.

Subject: General Instructions w.r.t Revised A/A & E/S and Deviations in EMRS works-reg.

Dear Sir/Madam,

This is to invite your kind attention towards the subject cited above.

In this regard, it is to state that many cases of Deviations and Revised A/A & E/S- wherein post-tender negotiation with L-1 tender has taken place, have been submitted to NESTS wherein approvals have duly been granted.

2. In continuation to above, the relevant instructions of Central Vigilance Commission (CVC) in this regard are reproduced below:-

- **CVC OM No 8/2/04 dated 05.02.2004 in r/o Deviation:**

"xxxx The post award amendments issued by the organisations, at times recommended by consultants, without into account the financial implications favour the contractors. Such post award deviations without financial adjustment are unwarranted and against the principles of competitive tendering. xxxx"

- **CVC OM No 005/CRD/012 dt 03.03.2007 in r/o post-tender negotiation with L-1 tenderer:**

"xxxx As post tender negotiations could often be 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. xxxx"

DEVIATIONS

3. In view of the above, it is to state that in future, all cases of Deviations shall only be entertained and paid by NESTS to Construction Agencies if all the cases of deviations are submitted along with the following undertaking:

"The case of deviation/s submitted by (name of Construction Agency) vide letter/s no _____ dated _____ and previously approved vide NESTS letter no/s _____ dated _____ (write 'Nil,' in case of no approval till date) are not advantageous to the contractor in any way and are in compliance with the directions issued by Govt of India/CVC etc in this regard."

While the cases wherein approval for deviation has already been accorded by NESTS, following undertaking must be submitted by the Construction Agencies **at the earliest:**

"The case of deviation/s got approved vide NESTS letter no/s _____ dated _____ is not advantageous to the contractor in any way and are in compliance with the directions issued by Govt of India/CVC etc in this regard."

REVISED A/A & E/S wherein post-tender negotiation with L-1 has taken place/shall take place

4. With respect to all the cases of Revised A/A & E/S wherein post-tender negotiation with L-1 shall take place, shall only be entertained and RA bills paid in their cases by NESTS if the Construction Agencies submit such request/s alongwith the following undertaking:

“The case of Revised A/A & E/S, wherein post-tender negotiation with L-1 has taken place, submitted by (name of Construction Agency) vide letter/s no _____ dated _____ duly follows the guidelines issued by CVC/Govt of India as on date in r/o post-tender negotiation with L-1 tenderer. The responsibility of the same lies solely on part of (name of Construction Agency).”

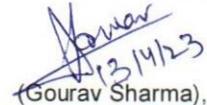
While the cases wherein post-tender negotiation with L-1 has taken place and Revised A/A& E/S has been approved/issued by NESTS, the Construction Agencies must submit the following undertaking at the earliest:

“The case of Revised A/A & E/S, wherein post-tender negotiation with L-1 has taken place, got approved/issued by NESTS vide letter/s no _____ dated _____ duly follows the guidelines issued by CVC/Govt of India as on date in r/o post-tender negotiation with L-1 tenderer. The responsibility of the same lies solely on part of (name of Construction Agency).”

5. Therefore, it is emphasized upon Construction Agencies that they must ensure all the actions in respect of Revised A/A & E/S and Deviations in EMRS works shall mandatorily be in compliance with CVC/Gol guidelines, etc issued in that regard from time to time.

This issues with the approval of CVO, NESTS.

Yours sincerely,


13/11/23

(Gourav Sharma),
Asstt. Commissioner, NESTS

Copy to:

1. CVOs of the PSUs entrusted with EMRS works **with a request to kindly keep a strict vigil on the aforesaid matters and cooperating with NESTS on the same;**
2. PS to Commissioner, NESTS for kind information;
3. Nodal Officer of the EMRS Works of the PSU concerned.
4. Nodal Officer of the State EMRS Societies;
5. CVO, NESTS;
6. Joint Commissioner, NESTS (AS & BCR);
7. Deputy Commissioner (Fin.), NESTS;
8. Asstt. Commissioner (Fin.), NESTS (Sh SN Gurjar), **with a direction to kindly ensure that payments to Construction Agencies are done in accordance with the aforesaid instructions;**
9. Guard File.

No.OFF-1-CTE-1
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi – 110 023
Dated 5.02. 2004.

OFFICE MEMORANDUM-8/2/04

Subject: Common irregularities in the award of contracts.

The CTE Organisation of the Central Vigilance Commission conducts independent intensive examinations of various types of works and contracts executed by the organisations under its purview. The lapses and deficiencies observed during the course of such examinations are brought to the notice of the CVOs, for suitable corrective action. With a view to prevent recurrence of such lapses and irregularities and for improving the systems and procedures in the organisations, a few booklets have also been issued by the CTEO. However, it is observed that certain common deficiencies and irregularities continue to plague the systems in a large number of organizations. Some of these noticed during recent inspections are enumerated as under:

Appointments of consultants continue to be done in an arbitrary manner. At times two or even three consultants are appointed for a work with no clear cut and some times overlapping responsibilities. A PSU, in a recent case, in addition to the engineering and project management consultants appointed an inspection and expediting consultant with no well defined role for them.

The tendency of over dependence on the consultants continues. All activities are left completely to the consultants. In a recent inspection of an Oil PSU, the tenders for a big work of about Rs.20 cores were issued on the basis of a single page estimate submitted by the consultants and the same was revised by the latter upwards by 20% after opening of price bids, in order justify the quoted rates. A detailed and realistic estimate must be prepared before issue of tender.

Some organisations prefer limited tendering system, restricting competition to their approved contractors. The selection of these contractors at times is arbitrary and due of lack of competition or cartel formation amongst such group of contractors, the contracts are awarded at high rates. These needs to be discouraged and the organizations must ensure that contracts are awarded on the basis of competitive bidding at reasonable rates.

The works are awarded without preparing any market rate justification. The comparison at times is made with works which were awarded few years back. This procedure cannot be considered objective and appropriate for justifying the awarded rates. The justification should be based on realistic prevailing rates.

In a recent inspection of oil PSU, it was noticed that revised price bids were asked from all the bidders, as rates were high vis-à-vis the estimate. This tantamounts to negotiations with firms other than L-1 and is a clear violation of CVC instruction in this regard. The negotiations should be an exception rather than a rule and should be conducted if required, only with the L-1 bidder.

The organisations generally make provisions for a very small amount of say Rs.50000/- or Rs.1 lacs earnest money. This amount is grossly insufficient to safeguard the organization's interest in high rate tenders running into several crores of rupees. This needs to be revised to a sufficient amount.

The post award amendments issued by the organisations, at times recommended by consultants, without into account the financial implications favour the contractors. Such post award deviations without financial adjustment are unwarranted and against the principles of competitive tendering.

The tender documents and the agreement are maintained in loose condition, are not page numbered and not signed by both the parties. This is highly objectionable. In order to ensure that the agreements are enforceable in court of law, it is imperative that the agreements are well bound, page numbered, signed by both the parties and well secured. This shall also prevent any possibility of interpolation and tampering of documents.

Loose & incomplete implementation of contract clauses pertaining to insurance, Workmen's Compensation Act, ESIC, Labour Licenses etc., has been noticed, which give undue financial benefit to the contractors.

Time is the essence of any contract. It has been observed that at times the work is extended and even payments released without a valid extension to the agreement. This has legal implications and in case of disputes, may jeopardize the interest of the organisation. Timely extension to the contracts and BGs of any must be ensured.

In order to make contract management more transparent and professional, CVOs are requested to circulate this memorandum to the concerned officials in their organisations. The OM is also available in the Commission's website www.cvc.nic.in.

Sd/- (M.P.
Juneja)
Chief Technical Examiner

To
All CVOs of Ministries/ Departments/ PSUs/ Banks/ Insurance Cos./ Autonomous
Organizations/ Societies/ UTs.

No.005/CRD/012
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 3rd March, 2007

Circular No. 4/3/07

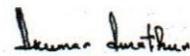
Sub:- Tendering process - negotiations with L-1.

Reference is invited to the Commission's circulars of even number, dated [25.10.2005](#) and [3.10.2006](#), on the above cited subject. In supersession of the instructions contained therein, the following consolidated instructions are issued with immediate effect:-

- (i) As 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.
- (ii) 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.
- (iii) Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

- (iv) As regards the splitting of quantities, some organisations have expressed apprehension that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of the L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the 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. 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) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.
- (v) 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.

2. It is reiterated that in case L-1 backs-out, there should be a re-tender.
3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.



(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers