VIGEYE VANI

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Monthly Newsletter of Central Vigilance Commission JULY 2013

Annual Zonal Review Meetings by the Commission

Under CVC Act, 2003, Central Vigilance Commission is mandated to exercise superintendence over the vigilance administration of various Ministries/Departments of the Central Government. Annual Zonal Review Meetings is an exercise in this direction. While the review meeting with CVOs take place every year, the Commission has a practice of inviting the Chief Executive Officers of various organizations in alternate years.

These meetings provide an opportunity to the CEOs to have a first hand feel of the issues concerning vigilance administration in their organization as well as in other organizations. The Commission's effort has always been to provide an ambient atmosphere where sharing of information, ideas and best practices can take place during such meetings. In return, the Commission also has an opportunity to know about the focus areas and the working patterns of these organizations which helps the Commission in taking views on issues concerning these organizations.

The Commission held five Annual Zonal Review Meetings during July, 2013. The sectors which were covered during these meetings are pertaining to Banking and Insurance sector, Steel and Mining sector, Commerce, Fertilizers & Textile sector and Power & Coal sector.

From the Editor's Desk

Dear Readers,

As promised, after two consolidated of Vigeye Vani, the monthly issue for July, 2013 is in your hands. Henceforth, the newsletter will continue to be issued on a monthly basis. The previous issue was very well received and appreciated by the readers and I will further solicit your support in maintaining high standards of this newsletter.

As you are aware, the Commission these days is engaged in conducting Annual Zonal Review Meetings of different sectors. These meetings provide an opportunity to various stake holders to know the best practices of the industry as well as issues being faced by the sector as a whole. It also encourages people to share information in a free and fair atmosphere and apprise the Commission about various activities undertaken in their organizations. The Commission also spells out its priorities for the year and sets the agenda for the vigilance administrations.

In this issue of Vigeye Vani, some of the case studies pertaining to Banking and Insurance sector has been shared. These case studies were prepared for the Annual Zonal Meetings, but the Commission desired that for larger outreach, these case studies should be published.

For the first time, a book review written by Sh. Anil Singhal, Chief Technical Examiner has also been included. The book deals with various issues of procurement. In fact by mere reading of the book review provides a good flavour of the contents of the book.

This may perhaps be my last editorial for Vigeye Vani as I would be completing my deputation tenure on 31.7.2013. I have spent my memorable five years in the Commission, which provided me with immense opportunity to learn. In fact, I feel that there are few places in the Government where you can learn more than what you can get by working in the Commission. I am thankful to the Commission in every which way possible for providing me this opportunity. However, my association with the Commission will always be there or rather grow in days to come as I am going to take up my new assignment as Chief Vigilance Officer of Pawan Hans Ltd.

I wish best of luck to my successor and I truly believe that he/she will take Vigeye Vani to new heights. I also request all of you to continue providing the editorial team with articles, materials, feedbacks and suggestions for further improvements. Your suggestions can reach me on my mail ID: prabhat.kumar@nic.in and prabhatjc@gmail.com which I will share with my successor. Signing off.

Prabhat Kumar
Editor

A Book Review of the book titled "Procurement Procedures & Contracting"

By: - Anil Singhal,
Chief Technical Examiner , CVC

A Book titled "Procurement Procedures & Contracting" has been published by National Power Training Institute, Ministry of Power, Govt. of India recently. The book has been authored jointly by three faculty members of the Institute. The authors are: Shri Subodh Garg, Shri J.S.S.Rao and Ms. Bhawana Choudhary. This book is intended to provide a good reading material to the participants in trainings being conducted by the Institute in topics relating to public procurement.

The book has been cauterized in 21 chapters and covers the entire gambit of public procurement which includes purchase planning, indenting, tendering & bidding process, inventory management etc. There are separate chapters on subjects like Procurement under World Bank Guidelines, and Indian Contract Act, Arbitration and Conciliation Act, CVC guidelines on procurement, General Financial Rules (GFR) etc. Topics like Types of Insurance, Taxes and Duties relevant to Procurement, etc. have also been covered in separate chapters for these topics.

The book elaborates on the concept of 6 R's principle in the procurement process. The 6 Rs represent i) Right quality, ii)Right quantity, iii) Right time, iv) Right price, v) Right source and vi) at Right place.

A procurement made following these six parameters would enable the procurer in getting the optimum value of the money spent besides eliminating wasteful expenditure. This concept is applicable to all types of purchases. The public procurement policies of Government organizations/ PSUs etc. also need to be framed addressing the need for getting the optimum value of the public exchequer spent.

The tender process including bid opening, evaluation of bids, placing letter of award, post award, execution of Bank Guarantees etc. have been dealt in considerable details. Some standard formats like letter of authority to the agent, Performa of Bank Guarantee etc. have been incorporated which could be utilized as it is or with necessary modifications, by various organizations.

The chapter titled "General Purchase Conditions" deals with the provisions like clarification of bids, determination of responsiveness, correction of errors etc. Most of such provisions appear to have been taken from the Standard Procurement Procedure of the World Bank. Even though the World Bank procedures have evolved after considerable experience and consensus, the respective organizations need to suitably modify such provisions to suit their specific needs in cases of procurement from own funding.

The chapter on inventory management dwells upon the need of keeping the inventory carrying costs low. The concept of 'Economic Order Quantity' (EOQ)which is the quantity if ordered at a time would incur minimum of total cost i.e. Annual Ordering Cost plus Annual Inventory Carrying Cost. This happens at a point where Annual Ordering Cost is equal to Annual Inventory Carrying Cost. This concept would be found useful by the organizations who deal with procurement of spares, consumables etc. as these items necessarily have to be kept in inventory for meeting day to day operational requirements. The indenting and ordering policy can be decided accordingly.

The book gives a good insight into the import licensing regime in the country. The types of licenses like Advance Licenses, Value Based Advance Licenses, Quantity Based Advance Licenses, Advance Intermediate Licenses have been well explained. This is one area where many of our public servants associated in the

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A Book Review of the book titled "Procurement Procedures & Contracting" – contd.

procurement process, lack deep understanding. Thus, the reading can be of great help. Factors affecting import purchase like exchange rate fluctuations, different type of exchanges rates, authority of exchange dealers, methods of payments in import contracts, various types of Letter of Credits etc. have also been explained in this chapter.

International Competitive Bidding (ICB) tenders require that both i.e. the buyer and the seller understand each other and there is no ambiguity in contractual terms and that responsibilities of each are clear under the contract. The arbitration in International Contract is generally through an arbitration panel which has representation from both the contracting parties. International Chamber of Commerce (ICC) has defined International Commercial Terms (**INCOTERMS**) which help in defining the responsibilities of each contracting party. INCOTERMS, first established in 1936 are almost unanimously adopted in all types of International contracts. These definitions have been recently reviewed and the current set of INCOTERMS have been deliberated upon in the book.

In order to give a holistic view the authors have also elaborated applicable rules and guidelines like GFR rules, the CVC Guidelines etc. One area which could have been dealt in greater detail is 'E-procurement'. It would have been better if methods like 'Reverse Auction' etc were elaborated by the authors.

On the whole the book deserves commendation for a good efforts by the authors in an area where good reading material is scarce. The book provides material at one place on all related topics to the procurement planning and process. However, proof reading of book could have been better as certain typographical errors could be observed in the book.

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Annual Zonal Review Meetings Steel & Mines Sector held on 11/07/2013 at Central Vigilance Commission

Vigilance Case studies of Banking and Insurance Sector

By: S.N.Munshi, Advisor, CVC

The Commission in its endeavor to bridge the knowledge gap has always stressed on dissemination of knowledge. In this regard some case studies have been prepared which focuses on the problem areas in the banking and insurance sectors. The details for these cases have been taken from the cases dealt with in the Commission. These case studies have also been shared with CVOs of various banks and insurance sectors during annual zonal review meetings.

I. Case study of Punjab & Sindh Bank - Sale of Third Party Products in PSBs.

Public Sector Banks have tied up with Insurance Companies, to sell insurance products and increase their fee based income by using their own manpower and logistics. However, in course of time such business has taken a toll on the core business activity of the bank especially lending , and the motivating factor for officials in this regard are the huge incentives in cash/kind and foreign trips.

On examining a complaint, against a public sector bank, it came to light that huge amount of incentives ranging from Rs.2 lacs to Rs.22 lacs have been paid to officials at field levels / Controlling Offices and Head Office including top functionaries, some of whom were not even associated with the insurance business. Even the then CVO of the Bank was paid incentive for reasons best known to the Bank.

Bank officials are also alleged to have resorted to unhealthy practices of mis-selling insurance and other products without explaining the details and compelling customers to take such products in order to achieve unrealistic targets. Commission has directed the Bank to recover the incentives from officials who were not eligible in this regard. DFS have been advised to look into the matter and take necessary action.

Lessons to be learnt:-

1. Core activity of the Bank is getting affected due to such business and available resources are getting diverted for this purpose. Is there a possibility to delink this activity from core banking activity.

2. Incentives are given without transparency and across the Board.

3. Curbing large scale mis-selling of products which affects customers/stake holders.

4. Bankers have a high regard for their customers and their needs. Customer servicing is a priority for the Banker and thus the products offered should necessarily be based on “need analysis”.

II. Case study of Dena Bank

This case originated on a complaint received in the Commission relating to a loan of Rs.20 crores sanctioned by the GM of a Bank to an Infrastructure Company. The company was already availing credit facilities from 5 banks for Rs.225 crores under consortium. The loan of Rs.20 crores was availed outside the consortium and the purpose shown was cash mismatch. However, the end use of the loan was to regularize the term loan accounts of the consortium lenders. In any term loan project, provision for cost overruns etc., is provided for. Normally, the consortium which had advanced for this project would be willing to lend further for cost overruns. It appears that when the borrowers could not get additional finance, they approached this Bank outside the consortium which resorted to financing to clear overdue of consortium lenders.

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Vigilance Case studies of Banking and Insurance Sector- contd.

Loan was sanctioned to the company with poor financials like adverse DSCR and financials were misrepresented in the sanction. The bank violated their guidelines and without proper appraisal, beyond discretionary powers and without additional security considered the loan. Company was even granted processing fee/interest concession and loan disbursed without compliance of terms and conditions.

Lessons to be learnt:-

(1) What was the need of the Bank to sanction loan outside the consortium. The bank could have joined as a consortium member.

(2)Whether the sanctioning authority for the Rs.20 crore loan had the power/mandate to sanction the loan within his discretionary power to lend to a borrower who had already availed consortium loan without MC/Board approval for the total exposure of Rs.245 crores

(3)Whether the processing officials had the capacity/skill at ground level to do proper due diligence for the total exposure.

(4) Are such sanctions not fraught with high risks and what is the motive behind such sanctions.

III. Case study of Insurance Sector

This case pertains to irregularities allegedly committed by Chief Executive of the subsidiary of Insurance Company in sanctioning /revalidating loan of Rs.60 crores to a Realty company by abusing his official position.

❖ The realty company engaged the services of a financial services company as advisor to them for the loan of Rs.100 crores to be arranged from banks/financial institutions. After the realty company addressed certain queries, a Term loan of Rs.60 crores was sanctioned subject to fulfillment of certain per-disbursement conditions. It was also one of the conditions that if the disbursement is not availed within 90 days from the date of issuance of loan offer letter, the loan is to be revalidated at Corporate Office before 90 days. Due to non-compliance of pre-disbursement conditions, loan was not availed within 90 days and the Realty Company requested the Regional Office to revalidate the Term loan.

❖ The note for revalidation was put up to the GM of the subsidiary of the Insurance Company. The GM recommended the note and placed it to the Chief Executive, who did not decide for revalidating the proposal of Rs.60 crores.

❖ After expiry of period of 6 months from the date of issue of loan offer letter, the Realty Company again requested for revalidation. This was recommended by the Regional office and proposal note was forwarded to the Corporate Office.

❖ As per guidelines of the subsidiary company, there is no provision for revalidating any proposal after expiry of 6 months from the date of offer as in this case. After 6 months only a new proposal is to be put up to be placed to appropriate authority.

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❖ When the proposal for revalidation was before the Chief Executive, he asked for Rs.45 lacs immediately and Rs.4-5 lacs afterwards. The amount of Rs.45 lacs was delivered to him. The Chief Executive ensured the revalidation of sanction for Rs.60 crores by the Executive Committee members, despite having internal guidelines that after lapse of six months, fresh proposal is to be obtained.

❖ CBI had been on the trail of the Chief Executive and recorded his conversations with various connected parties. CBI further found with evidence that out of Rs.45 lacs , an amount of Rs.30 lacs was deposited by the Chief Executive with the Developer for purchase of a flat. The various credits into the different bank accounts by way of cash deposited by the Chief Executive around the same time further corroborated taking of bribe. CBI conducted searches at the residential and office premises of the Chief Executive and other accused. During the searches incriminating documents, gold jewellery, investment papers, and cash were seized on the residential and office premises from the accused persons.

❖ Based on the above clinching evidence and water tight case by the CBI, the DA in the case granted sanction for prosecution of the Chief Executive.

❖ However, the same DA while dealing with RDA matter against the Chief Executive states that there is no reason for any RDA against the Chief Executive

The reasons furnished by the DA are that all requirements for revalidation were received except fresh proposal and mere receipt of fresh proposal would not have altered the outcome of the decision. Further since similar guidelines with regard to revalidation of proposals have not been complied with in several other cases also, no specific motive can be attributed to the Chief Executive in getting the sanction revalidated.

Lessons to be learnt

Before granting sanction for prosecution of the accused Chief Executive, the DA should have applied his mind objectively, instead of arguing now against RDA.
The evidence found by CBI has been so irrefutable that the same can be used by the DA to initiate RDA against the Chief Executive for violation of conduct rules.

Simply because the guidelines for revalidation of sanctions have not been complied with in other cases as well, and so far no case has come up for detailed investigation to ascertain whether any irregularities have been committed in them does not imply that no motives can be attributed to the Chief Executive in the instant case.

In fact all other such cases where the guidelines have been violated should rather be investigated more deeply and objectively to ascertain the bona-fide.
While the DAs do have a duty (both professional and moral) to protect their officers for the bona-fide decisions taken in the interest of the company, it should be exercised judiciously and not in such clear cut cases where the officer has taken bribe for ensuring decision that cause undue benefits to the party.

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Annual Zonal Review Meetings of Banking & Insurance Sector held on 17/07/2013 at Central Vigilance Commission

Annual Zonal Review Meetings of Commerce, Fertilizers & Textile Sector held on 24/07/2013 at Central Vigilance Commission

- ***The difference between what we do and what we are capable of doing would suffice to solve most of the world's problem.***
- ***You may never know that results come of your action, but if you do nothing there will be no result.***
- ***A 'No' uttered from the deepest conviction is better that a 'Yes' merely uttered to please, or worse, to avoid trouble.***

------------------ Mahatma Gandhi

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