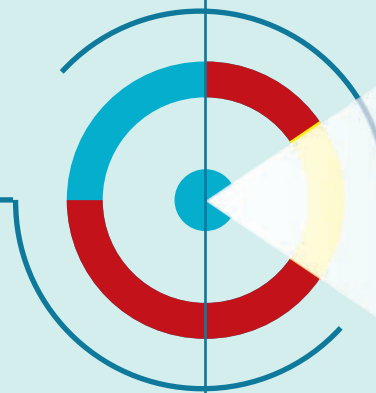




VIGILANCE AWARENESS WEEK 2019

Theme:

“Integrity –A way of life”



HAND BOOK FOR PREVENTING CORRUPTION IN PUBLIC PROCUREMENT

Vigilance Department
BEML LIMITED

No 23/1, 4th Main, S R Nagar,
Bengaluru – 560027 Ph: 080 - 22963249

Vigilance Department
BEML LIMITED

No 23/1, 4th Main, S R Nagar,
Bengaluru – 560027 Ph: 080 - 22963249



Forward

1. Background

Preventive Vigilance is a key tool of good governance in any organization. The guidelines on vigilance, issued by the CVC, are aimed at greater transparency, promoting a culture of honesty and probity in public life and improving the overall administration in the organizations within its purview.

Prevention encompasses policies, procedures, training and communication that curb corruption from occurring. Accordingly BEML vigilance as a part of preventive measure has constantly got the Manuals updated and uploaded on website, instituted a robust Whistle blowing mechanism, proposed systemic improvements to reduce the ambiguity in Rules, identified the risks in system and recommended corrective measures for reducing the scope for corruption.

2. Need for Handbook:


Procurement of goods, works and services on an average amounts to around 30% of GDP of the country. In BEML Ltd, procurement constitutes around 42% of the turnover of the company. Procurement being an area which is more prone to corruption, vigilance has continuously monitored the entire process, reviewed the procedures followed and studied the systems for red flags with their risks.

Some of the major initiatives undertaken as a preventive measure are:

- a) Linking of SAP vendor master to material master which facilitates auto selection of Vendors restricting manual intervention.
- b) Online receipt and refund of EMD
- c) Continuous monitoring is done on avoidable single tender procurement.
- d) Vendor development is continuously followed to increase the vendor base in order to avoid the dependency on few vendors.

Through the vendor development process has been made more transparent and open ended. As a result approved vendor list has increased from 1377 to 1615 in last 3 years.

- e) The open tender procurement has also substantially increased from Rs. 46.94 Crore in 2014-15 (which was 4% of total procurement) to Rs. 683.46 Crore in 2018-19 (which is 45% of total procurement).
- f) E-Procurement has increased from 74% (1333.8 Cr/2015-16) to 83% (1523.63 Cr/ 2018-19)
- g) Bill tracking facility has been made online to vendors for easy access of their Bills.
- h) "BEML Care App" for customer complaint handling system has been developed.

- 
-
- l) CVC circulars have been updated at different stages of procurement for the ease of access to all purchase officers.
 - j) Purchase manual has been revised and put on website for the transparency in procurement processes.
 - k) Standard terms and conditions for various types of procurements have been designed and being circulated for procurement across BEML units.

3. This handbook has been developed to help purchase and vigilance officers to have a broader perspective about the Do's and Dont's in the procurement process with an awareness of the red flags or indicators of potential manipulations at each stage of procurement and the anti corruption measures at each stage to avoid them. The material has been largely taken and reproduced from "Handbook for Curbing Corruption in Public Procurement by Transparency International" 2006.

4. I sincerely hope that this handbook will serve its purpose and make purchase officers and vigilance officers more sensitized and aware about the red flags involved in whole cycle of procurement process and ensure procurement serves value for money and public good.

Vidya Bhushan Kumar, IFS

Chief Vigilance Officer

BEML Ltd

1.0 INTRODUCTION

“Procurement” is defined broadly as the preparation, award and implementation/ administration of contracts for goods, works and other services and thus covers not just the narrow selection of a contract partner by a purchasing body and the actual entering of a contract between the two, but the entire process from need assessment through preparation, award and implementation / administration of contracts for goods, works and other services such as consultant services of a technical, financial, legal or other nature.

“Public procurement” refers to all contracts between a government (government department, publicly owned corporation and other types of agencies) and companies (public or private) or individuals.

1.1 DEFINITION OF CORRUPTION

Transparency International (TI) defines corruption as “the misuse of entrusted power for private gain”. “Private gain” must be interpreted widely, including gains accruing i.e. to an economic actor’s close family members, political party and in some cases to an independent organisation or charitable institution in which the economic actor has a financial or social interest.

1.2 FORMS OF CORRUPTION

Corruption in public procurement can happen in many different ways. These range from the most common form of upfront bribery and facilitation payments to more subtle forms of political corruption.

- 1) Bribes Vs. facilitation payments
- 2) Supply Vs. Demand
- 3) Cartel or Collusion
- 4) Structural Vs. Situational

2.0 MANIFESTATIONS OF CORRUPTION IN PUBLIC PROCUREMENT

2.1 CORRUPTION RISKS AND MANIFESTATIONS ACROSS THE PROCUREMENT CYCLE

Corruption and corruption risks can take place along the entire cycle of public procurement. The cycle includes the following most common phases:





2.1.1 CORRUPTION RISKS AT EACH STAGE:

I. Needs assessment phase/ Demand determination:

- The investment or purchase is unnecessary. Demand is induced so that a particular company can make a deal but is of little or no value to the society.
- Instead of systematic leak detection or grid loss reduction (both of which offer little reward), new capacity is installed (which offers bribe potential).
- The investment is economically unjustified or environmentally damaging.
- Goods or services that are needed are overestimated to favour a particular provider.
- Old political favours or kickbacks are paid by including in the budget a “tagged” contract (budget for a contract with a “certain,” pre arranged contractor).
- Conflicts of interest (revolving doors) are left unmanaged and decision makers decide on the need for contracts that impact their old employers.

II. Preparation phase/Process design & bid documents preparation:

- Bidding documents or terms of reference are designed to favour a particular provider so that in fact, competition is not possible (or restricted).
- Goods or services needed are over estimated or underestimated to favour a particular bidder.
- Unnecessary complexity of bidding documents or terms of reference is used to create confusion to hide corrupt behaviour and make monitoring difficult.
- Design consultants prepare a design that favours a particular bidder.
- Grounds for direct contracting are abused.

III. Contractor selection and award phase:

- Decision makers are biased (bribes, kickbacks, or conflicts of interest are involved).
- Selection criteria are subjective in ways that allow biases to play a role and remain unattended.
- An advantage to a particular bidder is granted through the exchange of confidential information before bid submission or during the clarification period. Clarifications are not shared with all the bidders.
- Confidentiality is abused and extended beyond legally protected information making monitoring and control difficult.





3.0 RISK FACTORS

3.1 Common Risk Factors:

As per TI's handbook, the early and late stages of the procurement cycle are increasingly exposed to corruption.

Among the most important areas of increased risk are

- Limited or restricted access to information;
- Abuse of exceptions to open public bidding;
- Limited or ineffective control and monitoring within the contracting process and particularly during the contract implementation phase; and
- Deficiencies and lack of transparency during the budget phase.

3.2 SPECIAL RISK FACTORS

- "Urgent purchases" at end of fiscal year
- "Emergency" responses to natural disasters and other such events
- Inadequate Access to Information
- Use of Non standard bidding documents
- Preferences to selected bidders
- Participation of official-owned companies
- Participation of front/shell companies

4.0 PREVENTIVE STRATEGIES AND INITIATIVES IN PUBLIC PROCUREMENT

4.1 PREVENTIVE STRATEGIES AND INITIATIVES

4.1.1 GOOD PROCUREMENT PRINCIPLES

- a) Integrity
- b) Transparency
- c) Accountability
- d) Fairness, Economy, and Efficiency

4.1.2 GOOD PROCUREMENT LAW

4.1.3 LAW ENFORCEMENT





4.1.4 INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

4.1.5 PREVENTION

- a) Clear and Transparent Process Rules
- b) Clear Behavioural Rules

4.1.6 CONTROLS AND CONTROL STRUCTURES (INTERNAL AND EXTERNAL)

4.1.7 INFORMATION GATHERING – WHISTLEBLOWING

4.1.8 E-PROCUREMENT

4.2 CRITICAL STEPS FOR TRANSPARENCY ACROSS THE PROCUREMENT CYCLE

4.2.1 Needs Assessment Phase / Demand Determination

In this phase, the critical issues are to make sure that the goods and services to be purchased or the investment to be made is socially and economically justified and that the best of the various alternatives is chosen to meet the assessed need.

During this stage, special attention should be placed into the following questions:

- Are the goods or the services to be acquired needed at this time?
- For investment projects: Is additional capacity truly needed, or could the demand gap be met by better performance on reducing losses or effecting repairs in the existing system?
- Is the planned capacity or quantity or extent of the service actually needed in the foreseeable future (in order to avoid unneeded or oversized project investments)?
- What are the optimal location, capacity and design for the investment?

4.2.2 Preparation phase/Process design & bid documents preparation:

During the process of preparing the design and the bid documents, advertising the process, possibly pre-qualification and the submission of bids, red flags or indicators of potential manipulation could be the following:

- Absence of, or non-compliance with, a procurement plan;
- Contracts for similar goods are not packaged but split;
- Justification for direct contracting not given or a fake one given;
- Deviation from standard bidding documents;
- Technical specifications are weak and do not allow for evaluation of the contractors' quality of performance;

- 
- Bid specifications are narrow or appear tailored; references to work being performed to “National Standard Specifications” in place of more detailed descriptions;
 - Global procurement notice not issued;
 - Restricted advertising or insufficient notice given;
 - Advance release of bid documentation or relevant information to one bidder;
 - Vague or unclear pre-qualification requirements;
 - Insufficiently advertised;
 - Inadequate time given for preparing applications;
 - Lack of publicly known standard evaluation procedures;
 - Exclusion of experienced applicants on minor technicalities;
 - Requirement to be pre-registered on a government-approved roster;
 - Failure to answer requests for clarification in good time;
 - Only selected bidders are informed of the employer’s contract cost estimate;
 - Failure to keep accurate minutes of pre-bid meetings, including questions and answers;
 - Clarification sought by bidders is not answered in writing nor circulated to all bidders;
 - Delay between deadline for submitting bids and opening them;
 - Different location for receiving bids and opening them;
 - Bids submitted and accepted after the submission deadline;
 - Bids not opened in public;
 - Names of attendees, names of bidders and offer prices not recorded at bid opening;
 - Failure to provide secure storage of, and restricted access to, bids received; and
 - Lack of transparent procedures for handling complaints and determining remedies.

4.2.3 The Contractor Selection and Award Phase:

The selection of the supplier / contractor / consultant / licensee should be on the basis of public competition, for larger investments public international competition, as the proven way to obtain the lowest evaluated bid. The “lowest price” is not necessarily the lowest evaluated bid or most economic bid, considering that bidders may bid below their expected cost, in the expectation that once in the job, they will be able to obtain price increase.



A) Things to do before the procurement process starts:

- Debarment: Exclude from bidding processes bidders that have been involved in corrupt deals;
- Implement Integrity pacts before the process has started (ideally starting in phase 1);
- Use open competitive bidding whenever possible. Use non competitive processes (restricted bidding or direct contracting) only where truly justified and fully explained and documented;
- Ensure that during the bidding clarification phase (questions and answers), the questions and the answers given are shared with all the bidders and not just given to a few;
- Restrict or manage contact between bidders and procurement staff or members of the decision committee to avoid unclear situations to both and the other bidders;
- Set up and use a conflict of interests register for officials that allows managing possible conflicts of interests with bidders and officials involved in the selection and decision making processes;

B) Bid Evaluation :

The bid evaluation is one of the most difficult phases to be carried out correctly and fairly, and constitutes one of the most vulnerable steps within the procurement process. It is one of the easiest steps to manipulate if someone wants to tilt an award in the direction of a favoured supplier or contractor. Evaluators can reject unwanted bids on trivial procedural grounds - an erasure, failure to initial a page, or for deviations from specifications that they decide are significant. After bids are examined, if no one prevents them, evaluators may discover/invent entirely new considerations that should be taken into account in choosing the winner. Or the bid evaluation criteria may be so subjective and so lacking in objective qualitative elements that the evaluators' scoring can produce any result they wish. All of this argues for requiring bid evaluation criteria to be spelled out clearly in bid documents and for an impartial review authority to check the reasonableness of the evaluators' actions. The results of the evaluation including the major elements of the evaluation and decision making process should be publicly disclosed, Disclosing the criteria allows bidders to raise objections in advance if they consider the criteria not to be appropriate, and disclosure of the results and the reasons for them provides additional assurance that the evaluation has been conducted properly.



C) Red flags during this stage:

- Bid evaluation committee members do not have the technical expertise necessary to properly evaluate bids;
- “The bidding process is controlled by a small number of persons” in the project management Unit / project implementation unit (PMU/PIU);
- Qualified bidders drop out voluntarily as the bidding process progresses such that only one firm is left in the post-qualification stage;
- Unreasonable delays in evaluating the bids and selecting the winner;
- High number of complaints about bid process and evaluation received from losing bidder, information necessary to evaluate the procurement process is missing;
- Only photocopied documents are available for review;
- Incorrect method of procurement noted during review (e.g. single-source instead of Competitive Bidding);
- Evaluation criteria are amended after receipt of bids;
- Same bidders repeatedly participating in similar types of contracts;
- Same bidder repeatedly winning similar types of contracts;
- A narrow variance between the estimate and the bid amounts received;
- Similarities between competing bids (e.g. format of bid, identical or nearly identical unit prices, identical (mis)spelling, grammatical and/or arithmetic errors, photocopied documents);
- Bid bonds are acquired by competing bidders from the same financial institution;
- Bid bonds have similar date and/or have sequential serial numbers;
- A bidder lists multiple addresses;
- Unit prices in competing bids vary inconsistently by amounts greater than 100%;
- Unit prices in competing bids are identical;
- Bidders propose identical items (e.g. the same make and model);
- Common ownership in the bids of competing bidders;
- The Bid Evaluation Report has been revised or re-issued;
- The Bid Evaluation Report has been performed in an unrealistically short time;
- An arithmetic check of the bid(s) is not performed or results in a bidder being favoured inappropriately;
- An evaluated bidder should have been disqualified based on the information submitted in their bid;
- The lowest bidder is disqualified and the explanation, if any, provided is weak;
- Seeking clarification is used as a cloak for financial negotiations;
- Vested interests or conflict of interest are identified among members of bid evaluation committee;

- Falsification of curricula vitae in consultant services proposals;
- Unreasonable delays in negotiating and executing the contract;
- Contract is not in conformity with bid documents (e.g. specification and quantities);
- Contractor's name differs between Contract and Bid Evaluation Report;
- Contract amount is different from amount in Bid Evaluation Report;
- Contract includes allowances for variations which are not part of the bidding documents;
- Subcontracting requirements are imposed;
- Rigorous system for handling contract variations and evaluating claims is not defined in the contract;
- Staff involved in contract award decisions becomes involved in contract supervision.

D) Things to Do During the Bid Evaluation and Award:

- Bid evaluation criteria should be clear and determined from the outset, and should be made public;
- Ideally, different people should make the bid evaluation and the award decision;
- The award decision should be made by a group of people and not a single individual;
- The evaluation process and the award decision should be publicly available;
- Pro-active disclosure by government agencies of relevant information via website and other means, and openness to requests for information from the public; and
- Regular staff rotation, i.e. no officer or staff may remain in a position long enough to develop improper connections with, or dependencies on, potential bribers.

4.2.4 The Contract implementation phase

It is important to note that this phase is just as vulnerable to corruption as the previous phases.

An example is that the corrupt official would approve frequent price increases, usually in small incremental steps, each of which small enough not to require higher level approval. Or the corrupt official would approve other variation (change) orders under which the corrupt contractor would obtain additional work contracts at high, uncompetitive prices. Such wrongdoing can be avoided by stricter, more frequent and unannounced controls.



A) Potential manipulation indicators during contract implementation phase:

- Contract specifications or scope of work altered after contract awarded;
- Site inspection indicates that work performed was not in accordance with the technical specifications (below-specification civil works, goods and services are accepted);
- Technical specifications of materials provided do not correspond to the specifications agreed upon in the contract;
- Site inspection indicates that project completion is less than that certified or that a completed project is not operational;
- Goods or services not being used, or being used for purposes inconsistent with intended purposes;
- Wrong quantities of goods and materials being delivered;
- Delays in the delivery of goods or services in any part of the project implementation process;
- Replacement of nominated consultant staff by less qualified and inexperienced personnel;
- Frequent changes in key staff of PMU/PIU;
- Changes in PIU/PMU and Bank staff responsible for post procurement verifications;
- Lack, or low level, of oversight of the physical works;
- Absence of or insufficient post-procurement verification of scope of work and physical inspections;
- Site diaries and meeting minutes are not maintained;
- Instructions are not given in writing to contractors;
- Incomplete records in PIU/PMU – significant number of missing documents;
- High frequency of Change Orders to the contract;
- As-built' drawings are photocopies of technical specifications in the bidding documents;
- The detailed drawings, 'as-built' drawings, back-up data sheets contain errors or repetitive entries;
- Failure to pay progress payments and invoices on a timely basis;
- Excessive number of signatures required to approve progress payments;
- Evaluation of contractors' performance not recorded;
- Cost overruns are inadequately explained or justified;
- Customer/Client dissatisfaction with completed facilities.





B) Things to do during the contract implementation:

- Set up an independent monitoring system that will check contract implementation as for compliance with agreed specifications including quality. Random on-site checks prove to be an effective tool;and
- Have clear and pre-established limits for contract change orders. Many procurement laws have them incorporated and they can also be incorporated in the contract without the need of a law.

4.2.5 The Final Accounting and Final Audit Phase

It is most important that the final accounting of a project be carried out by staff who has not been involved in any of the previous phases, so as to avoid any collusion or cover-up of previous wrongdoing during the final accounting phase. An important safeguard, existing in most countries, is the final external audit of an investment. But unlike the usual procedure, under which the audit simply reviews and checks whether the numbers add up, the government should - at least for major investment projects conduct performance audits which will also review the original cost estimate and benefit projections, compare them with the actual final cost of the project and the actual benefits (e.g. projected vs. actual traffic counts etc.), and assess whether the original justification of the project proposal still holds. If major discrepancies are discovered in the process, the reasons and the responsible officials should be investigated and held accountable.



Red Flags or indicators of potential manipulation are the following:

- No control system in place, inadequate or unreliable controls;
- No or inadequate parliamentary control and oversight in force;
- No follow-up to indications, suspicion or accusations of corruption;
- Lack of state or public interest in identifiable or anonymous accusations of corruption and no follow-up;
- Denying the public or legitimate civil society representatives access to documents and information held by the control and audit institutions, and to their proceedings;
- Lack of encouragement for whistle blowers;
- Lack of whistle bower protection system and procedure;
- Lack of audit requirements and system, much delayed audit or superficial/ inconsequential audit;
- Inadequate or delayed publication of the audit report;and
- Lack of impact of a critical audit report (absence of (re-)action e.g. by the legislature, the country's Court of Audit, the judicial authorities and/or the administration).