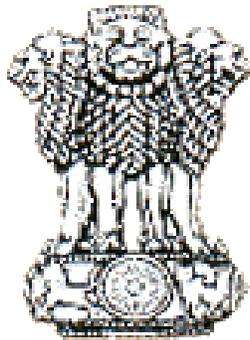


**SHORTCOMINGS/ LAPSES OBSERVED IN STORES /
PURCHASE CONTRACTS PLACED BY PUBLIC SECTOR
BANKS FOR COMPUTERS AND IT RELATED
PRODUCTS AND GUIDELINES FOR IMPROVEMENT IN
THE PROCUREMENT SYSTEM**



सत्यमेव जयते

**Chief Technical Examiner's
Organization**

**Central Vigilance Commission
Government of India
2006**

CONTENTS

Shortcomings / Lapses observed in stores/purchase contracts placed by Public Sector Banks for Computers and IT related products and guidelines for improvement in the procurement system.

S. No.	Description	Page Nos.
1.	Introduction	1
2.	Purchase Manual	1
3.	Filing System	2
4.	Appointment of Consultants	2
5.	Provisioning	4
6.	Estimates	5
7.	Pre-Qualification Criteria	6
8.	Notice Inviting Tender / Tender Documents	6
	• Earnest Money Deposit	9
	• Security Deposit	9
	• Evaluation Criteria	10
9.	Receipt of Tenders	12
10.	Postponement of Tender Opening	13
11.	Opening of Tenders	13
12.	Techno-Commercial Evaluation	14
13.	Price Evaluation	15
14.	Purchase Preference	16
15.	Post Tender Negotiation	16
16.	Reasonableness of Prices	17
17.	Advance Payments and Bank Guarantees	18
18.	Performance Bank Guarantees	18
19.	Payment Terms	19
20.	Post Contract Management	20
	• Pre-dispatch Inspection	21
	• Delivery Period Extension	22
21.	Miscellaneous	22

Shortcomings/Lapses Observed in Stores/Purchase Contracts Placed by Public Sector Banks for Computers and IT related Products and Guidelines for Improvement in The Procurement System.

Introduction

The Chief Technical Examiners Organization (CTEO) in the Central Vigilance Commission is the Technical Wing of the Commission. One of the important functions of the CTEO is to conduct an independent technical examination of various Works/Contracts, reported by the CVOs in their Quarterly Progress Report (QPR). The objective in such examinations is not limited to detection of malpractices and punishment of errant OFFICIALS. It has been our endeavor to help bring in improvement in the systems in these organizations so that recurrence of lapses/irregularities is prevented in future contracts and there is a better Technical & Financial control. Keeping this perspective in view, this booklet on shortcomings/lapses often observed in the award of contracts for Computer Hardware/Software by Public Sector Banks has been compiled, with guidance for improvement in the procurement system.

Purchase Manual

The need to have well documented Policy guidelines in place in an organization to execute the procurement activity in a uniform and well coordinated manner with least time and cost overruns cannot be over-emphasized. It has been observed that some of the Banks do not have detailed Purchase Policy/Manual, which renders the system of procurement quite ad-hoc and arbitrary. This is a very important document required to guide officials in their day to day work.

- It is, therefore, essential that a codified purchase manual containing the detailed purchase procedures, guidelines and also proper delegation of powers is prepared by all the organizations so that there is a systematic and uniform approach in decision making. Such an integrated approach is not only likely to put a cap on corruption but would also ensure smoother and faster decision making.

Filing System

The filing system adopted in most of the organizations is unsatisfactory. Even the files are not being paginated. Part files are opened as and when new action is initiated and these part files are not merged with the main file, which inter-alia results in a break in continuity and arbitrariness in decision making. The decisions / deliberations of the individuals or the Tender Committees are not properly documented or recorded which dilutes the accountability of various officials and may result in the 'interested' officers going scot free, even if serious lapses are established against them.

- In one of the Banks, in a recently conducted inspection, it has been noticed that despite issuing instructions for page numbering in an earlier examination, files were still not being page numbered.
- At times page numbering is done at one go just prior to the intensive examination when an intimation for Intensive examination is received from the Commission.
- 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. Documents should be page numbered as and when they are received and placed in the file and not afterwards. In case of urgency, if opening of part files is unavoidable, the same should thereafter be merged with the main file at the earliest. All the decisions and deliberations of the individuals dealing with the case or the Tender Committee(s) also need to be properly recorded and well documented.

Appointment of Consultant

Despite Commission's guidelines on appointment of Consultants, it has been noticed that Consultants continue to be appointed either without a genuine need or in an arbitrary and non-transparent manner. Once the Consultant is appointed all the responsibility is abdicated to the Consultant. Sometimes even multiple Consultants are appointed without individual well defined responsibilities. The proposals put up by the Consultant(s) are accepted without question or any scrutiny.

- In some of the Banks, Consultants have been appointed after having direct discussions with them in an ad-hoc and non-transparent manner

without going in for any competitive bidding. Reasonableness of rates allowed to the Consultant(s) was not being established. Payments are being made to the Consultant(s) without linking the same with the targets fixed vis-à-vis the progress of the work done by them. Further, the consultancy agreements are being extended repeatedly on one pretext or another.

- One of the Public Sector Banks issued advertised tenders for appointment of Consultants. In response, 75 organizations/individuals had participated and out of them, 38 organizations/individuals were found eligible. However, none of them had been considered for the award of consultancy contract. The Bank after having direct discussions with M/s IDRBT appointed them as Consultant in an ad-hoc and non-transparent manner. It was interesting to note that they had not quoted against the tender invited by the Bank. If the Bank had sufficient reasons for appointing M/s IDRBT as a Consultant on nomination basis, the in fructuous expenditure incurred on advertisement could have been avoided.
- One Bank was already having M/s IDRBT as their Technology consultant. However, another Consultant was appointed by the Bank on Nomination Basis with over-lapping functions.
- In one Bank, after issue of bid documents, Consultant brought in major changes such as, inclusion of Network Monitoring & Management Services and adoption of MPLS-VPN Technology. When the technology called for had undergone a change instead of a re-tender, the Bank issued revised tender documents to the same original vendors who had purchased the initial documents, thus keeping other vendors out of fray and restricting the competition.
- One Bank short-listed vendors for the consultancy services on a retainer basis after making necessary enquiries with other leading Banks. However, after inviting bids from these short listed vendors, they were asked to give presentation .Offer of one vendor was found to have been rejected on grounds of unsatisfactory performance in the past. The feedback reports about their unsatisfactory services from the branches were not placed on the records. If the performance of a vendor is un-satisfactory, tender should not have been issued to them at all.

- For similar nature of services, while one Bank paid Rs. One(1) lakh per month to a Consultant, another Bank paid Rs.three(3) lakhs per month to the same consultant during the same period.
- The appointment of Consultant(s) needs to be done in a transparent manner after following a due competitive bidding process. The role of the Consultant should be well defined. Reasonability of fee to be paid to Consultant(s) should be properly established. Payment to the Consultant(s) should be linked with the progress of work and there should be adequate provisions in the consultancy agreement for penalizing the consultant in case of deficiencies in their service. Further, as per Commission's guidelines circulated vide Office Order No. 75/12/04, the Consultants/Firms hired to provide consultancy services for the preparation or implementation of a project, and any of its affiliates, would be disqualified from subsequently providing goods or works or services related to the initial assignment for the same project.

Provisioning

In the course of inspections by the CTEO, it has been noticed that at times, proposals are initiated and purchases are made by the banking organizations without establishing the need or justification for the quantities being tendered/purchased.

- One Bank had purchased 2 Pass Book Printers and 6 Dot Matrix Printers for each branch which was not required as many other banks had purchased only 1 Pass Book Printer and 3-4 Dot Matrix Printers for each branch. The Bank had also purchased 330 Terminals in excess of their actual requirements. Thus, the Bank had incurred in fructuous expenditure of Rs.172.46 lakh in purchase of additional Pass Book/Dot Matrix Printers and Terminals which was actually not necessary. This not only increased the Bank's inventory but also the danger of the equipments losing their guarantee/warranty even before they were put to use.
- Another bank had issued a tender enquiry for 50 ATMs but placed orders for 72 ATMs thereby increasing the quantity by 44% of the tendered quantity. Generally, a provision to increase/ decrease the quantities is kept in the bidding documents for unexpected/emergent requirements. But no such provision was made in the bidding

documents and the quantity was increased after opening of the tenders in a non-transparent manner indicating favour to the firm. Had the Bank indicated the quantity of 72 ATMs or provided a clause to increase/ decrease the quantities at the time of invitation of bid itself, they might have received lower rates.

- Surprisingly, an additional order for 38 nos. of ATMs was also placed on the firm at the same price, terms and conditions. ATM basically is mostly electronics and the prices of electronic products are decreasing day by day. It was not judicious on the part of the Bank that without ascertaining the current market rate, a repeat order had been placed by them on the firm at higher prices which can only be considered as a favour to the firm.
- One Bank while procuring Computer Hardware for its various branches had also procured web cameras. It was, however, noticed during inspection that these web cameras are not being used in any of the branches. Thus, the Bank has incurred in fructuous expenditure.
- The provisioning of stores needs to be done with utmost care to avoid any surplus purchases. The equipment to be purchased should conform to the latest specifications and technology available in the market.

Estimates

It is noticed during inspections by CTEO that in many Banks estimated rates are either not prepared or the estimates are worked out in an ad-hoc and arbitrary manner without adopting any scientific basis.

- For a networking project, the estimated cost of Rs.59.09 crore for 965 branches/locations was prepared by the Consultant which was very high as the final contract value at the time of award of work for networking 458 branches/locations was Rs.13.65 crores only.
- The estimated rate is a vital element in establishing the reasonableness of the prices being paid and, therefore, it is very important that the same is worked out in a realistic and objective manner on the basis of purchases made by other organizations,

prevailing market rates, the market trend and assessment based on intrinsic value etc.

Pre-Qualification Criteria (PQ)

The pre-qualification criterion is a yardstick to allow or disallow firms to participate in the bids. Pre-qualification criteria should be fixed in such a manner that all competent contractors are brought into competition. It has been observed during intensive examination of various contracts that the prequalification criteria is either not clearly specified or made very stringent / very lax to restrict/facilitate the entry of competent/incompetent bidders.

- Though the value of purchase was Rs.12 crore only in a tender issued by a Bank for purchase of computer hardware, the pre-qualification terms stipulated that the bidder should have a minimum annual sale value of Rs.100 crore and bidder should have in any one of the last 3 years designed, manufactured and supplied the equipments at least upto 300% of the tender quantity.
- In another case, the eligibility conditions stipulated an annual turnover of not less than Rs.100 crore from the sale of Computer hardware alone, in each of the last 3 financial years, though the estimated value of purchase was Rs.4 crore only. The eligibility criterion was stringent and discriminatory, thereby restricting competition.
- The purpose of any selection procedure is to attract the participation of reputed and capable firms with proven track record. It should be ensured that the PQ criteria are exhaustive, yet specific and there is fair and adequate competition. It should be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.

Notice Inviting Tender / Tender Documents

In spite of a number of guidelines issued by the Commission on various aspects of tendering, many Banks continue to go in for limited tendering or advertised tenders with selective publicity and inadequate time for submission of bids. Tender documents are issued in a careless manner incorporating obsolete, vague and conflicting terms and conditions.

Evaluation of offers and short-listing of bidders is carried out in a non-transparent manner based on un-disclosed criteria.

- As against the most preferred and transparent mode of tendering i.e. Global tender enquiry / Advertised tender enquiry, a Bank issued a Limited Tender Enquiry to 3 vendors on the basis of their experience in an earlier limited tender enquiry though the estimated value of the purchase was substantially high (Rs.9.5 crore). The earlier limited tender enquiry was issued to only 4 vendors on grounds of unconvincing reasons so as to save time and cost of releasing tender notice in leading newspapers while they were aware that there were 28 vendors worldwide. By issuing a limited tender enquiry to only 3 vendors, the competition had been restricted and possibility of paying higher prices cannot be ruled out.
- One Bank issued Advertised tender enquiry inviting bids only from their empanelled vendors. Bank in such a case, could have resorted to limited mode of tendering, thereby avoiding in fructuous expenditure towards cost of advertisement etc. when only their empanelled vendors could participate. Further, in order to give wide publicity, it is desirable to send a copy of tender notice to all the registered / past / likely and known supplier in the form of advance intimation. But in this case though invitation to bid was restricted to empanelled vendors, no advance intimation by way of drawing their attention to the tender was given to the empanelled vendors.
- In one Public Sector Bank for procurement of computer hardware, while the approval was taken from Competent Authority for inviting quotations from the panel of approved vendors, the officials instead of floating a limited tender enquiry, issued an advertised tender enquiry. Moreover, as against the normal time of four to six weeks, only six day's time was given to the intending bidders to submit their bids, which was grossly insufficient. The important clause relating to earnest money deposit was not incorporated in the bidding document, which is essentially required to protect the interest of the organization to some extent in the event of withdrawal of offer by firms who are non-serious bidders or non-submission of performance security by the successful bidder. The quantity of the hardware required was also not indicated in the tender enquiry and thus, the benefit of most economic prices due to bulking of requirement could also not be availed by the Bank.

- For appointment of service provider for conducting online reverse auction, one Bank invited quotations from 4 vendors only thereby restricting the competition. Further, time of hardly one day was given for submission of quotations. One of the vendors even requested for some more time for submission of their proposal but the same was not acceded to and the Bank went ahead with the offers of the rest three.
- Normally tenders are kept open for sale till the date of opening or just one day prior to the date of tender opening. However, in one case, sale of tender documents was closed 21 days in advance of tender opening thereby, effectively giving a time period of only 14 days to the bidders for purchase of tender documents.
- Some of the Banks are not specifying tender opening date in the bid documents.
- In some of the cases, tenders are also not being published in Indian Trade Journal, Kolkata which is a Government publication and is regarded as the standard medium for advertising tender notice in India. Further, in case of global tenders, copies of tender notices are not being sent to Indian Missions/Embassies of major trading countries to generate enough competition.
- In one case for procurement of Computer Hardware, bids were invited under the Single-bid system. After opening of bids, two offers were ignored during technical evaluation. In such a case Bank should have better followed the two-bid system and opened the financial bids of only those firms whose offers were technically acceptable. The same Bank was found following two-bid system for procurement of UPS etc.. The Bank had no convincing reasons to forward as to why this was not followed in the procurement of Computer Hardware.
- In a tender enquiry floated in the year as late as 2004-05, a Bank advised vendors to certify that the hardware & software being supplied would be Y2K compliant, a confirmation that was considered necessary prior to the year 2000 clearly indicating that tender documents are being just mechanically copied from earlier tenders for similar tenders without any application of mind. Such

type of vague clauses should not form a part of the bidding documents.

- In one of the tenders, as per bid conditions, Bank had reserved its right to award contract to the next lowest evaluated bidder in the event of failure of the successful bidder to sign the contract and furnish performance security. This is against the Commission's guideline which prescribes that if L-1 party backs out, there should be a re-tendering in a fair and transparent manner.
- While as per Commission's guidelines, negotiations have been banned except with L-1 bidder, but in one of the cases, a provision was made by a Bank that the Bank reserves the right to negotiate with any or all the bidders at its discretion.

Earnest Money Deposit

- In one case, though the estimated value of the subject purchase was Rs.9.5 crore, a very small amount of Rs.1 lakh only was asked for as Earnest Money Deposit (EMD) by the Bank. In yet another case, no provision of EMD was made in the bidding documents.
- In one case, approval of competent authority was obtained but the placement of purchase orders got delayed and were not placed immediately. In the meanwhile one of the bidders, who had been recommended for placement of an order, regretted to execute the order/likely order. As no bid security/earnest money deposit was asked for in the tender, Bank was not in a position to forfeit any money or take action against the firm who had withdrawn its offer within the validity. Thus in the absence of adequate provisions for safe guard in the tender, firm could get away without attracting any penalty.

Security Deposit

- One Bank had asked for a maximum security deposit of Rs.5 lakhs though the value of contract in some cases was in crores of rupees. In yet another case, no provision of security deposit was made in the purchase order.

Evaluation Criteria

- In one case, though as per Bank's purchase policy, the evaluation/loading criteria on account of acceptable range of deviations in the important terms like, payment terms, delivery period, performance B.G. etc. having financial implications were to be specified in unambiguous terms in the bid document but no such criteria was specified. One of the bidders had quoted a different payment term than specified in the bid documents but no loading was done by the Bank leading to incorrect evaluation.
- Despite Bank's policy to distribute order between L1, L2 and L3 vendors in 50:30:20 ratio, bid document stipulated that placement of order shall be on L1 vendor only. However, Bank had neither followed their own policy to distribute order in 50:30:20 ratio nor placement of order on L1 vendor only as specified in the bid document but instead awarded contracts to L1 and L2 vendors in the ratio 60:40. Moreover, the above policy to distribute order between L1, L2 and L3 vendors in 50:30:20 ratio, was to be reviewed after the 1st phase of computerization but records indicated that no such review had been carried out.
- In another case, a Bank reserved the right to split the order amongst L1, L2 & L3 vendors (or even L4 vendor or higher, if the need arose). But the ratio in which the ordered quantity was to be distributed among L1 and other higher quoting bidders was neither pre-decided nor disclosed in the bid documents. After the opening of the bids, it was initially decided to distribute the order in the ratio of 50:30:20 among L1, L2 & L3 which was subsequently changed to 40:40:20. However finally the order was placed on two firms only in the ratio of 55:45. Thus the basic concepts of transparency and objectivity were not followed and the order was distributed in a discretionary and non-transparent manner.
- In one case, bidders were asked to quote a minimum 6% of the cost of hardware and software as Annual Maintenance Charges for the post warranty period. With such a stipulation in the tender enquiry, no tenderer would quote AMC charges less than 6% per annum, even if he wanted to quote a lower value. By incorporating such a condition in the tender enquiry Bank had prompted the tenderers to

quote higher AMC charges rather than market prices which could be lower, thereby causing a loss to the Bank.

- Advertised / Global tender enquiries should be issued as far as possible and published in Indian Trade Journal, Kolkata, leading newspapers and websites. The copies of the tender notices should be sent to all the registered/past/likely suppliers and also to the Indian Missions /Embassies of major trading countries in case of imported stores.
- With a view to have wider, fair and adequate competition, it is important that sufficient time of say 4 - 6 weeks in case of Advertised / Global tenders and 3 - 4 weeks in case of limited tenders is allowed. The tenders should be kept open for sale till the date of tender opening or just till one day prior to the date of tender opening. The date and time of tender opening should be clearly specified in the bid documents.
- Unwanted, obsolete, vague provisions should not be incorporated in the bid documents. Wherever required, two bid system should be followed and financial bids of techno-commercially acceptable bidders should only be opened. Provisions which are in violation of Govt. policy / CVC guidelines should not be incorporated in the bid documents.
- Some reasonable amount of EMD should always be asked for from the bidders in a tender to ensure that the Bank's interest is protected to some extent in the event of withdrawal or modification of the offers by any firm within the validity of offers or non-submission of security deposit / performance guarantee by the firm on whom the contract is placed. A reasonable amount of security deposit should also be taken from the successful bidders for due performance of the contract.
- The Evaluation / Loading criteria with respect to the important terms. like Payment terms, Delivery period, Performance Bank Guarantee etc. having financial implications should 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. The comparative assessment of offers in the true sense would be complete only if it is made on an equal

footing taking into account the financial implications for the deviations in terms and conditions, in line with unequivocal evaluation criteria specified in the bidding documents. Wherever it is intended to distribute the order between more than one bidder, the ratio and manner in which the quantity is to be distributed should be pre-decided and disclosed in the bid documents and followed without fail. Contracts should be awarded in a transparent and objective manner .

Receipt of Tenders

Despite Commission's guidelines emphasizing need to maintain transparency in receipt and opening of the tenders and to make suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located Tender Boxes, it is noted that tenders are not being received through Tender Boxes. This procedure is highly objectionable and against the sanctity of tendering system. The possibility of tampering and interpolation of offers cannot be ruled out in such cases.

- In one PSU Bank tender receipt register was not being maintained and hence it was not possible to check whether the bids from the empanelled vendors were received within the stipulated period, mentioned in the tender enquiry. Further, the Bank had not made any arrangements to receive the tender through conspicuously located tender boxes.
- Another Bank did not have any tender box for receipt of tenders at scheduled time and date. Tenders were received by hand from the tenderers.
- Another Bank was having a tender box for receipt of tenders but the tenders were not being received through the tender box. Such a procedure is highly objectionable and against the sanctity of tender system.
- A proper arrangement for the receipt of tenders at scheduled date and time through tender box needs to be adopted. In cases where the tenders are required to be submitted by hand due to the bulky size of the tender documents, it is to be ensured that the names and designations of at least two officers are mentioned in the bid documents for receiving the tenders by hand. The information about

these officers should also be displayed at the entrance/reception of the premises where the tenders are to be deposited so as to ensure a convenient approach for the bidders.

Postponement of Tender Opening

Wherever extension to the date of tender opening is done due to reasons like change in the specifications or on the basis of request of the vendors etc., it has been noticed that firstly, sufficient time to submit the bids as per the revised specifications and secondly, the intimation of tender opening extension is not being sent to all the bidders who had purchased the bidding documents. Also such notice of extension is also not being published in newspapers / ITJ.

- ❑ In order to give equal opportunity to all the bidders and to maintain the sanctity of tendering system, it is of paramount importance that any change in the tender terms & conditions, specifications and tender opening date etc. is notified to all the bidders, sufficiently in advance of the revised tender opening date.

Opening of Tenders

Some of the Banks are not opening the tenders, particularly technical bids, in public i.e. in presence of the Firms' representatives. The system of not opening the tenders in public is against the sanctity of tender system, and is a non-transparent method of handling tenders. There could be a possibility of tampering and interpolation of offers in such cases.

- In one of the Banks, the tenders were opened after a lapse of 3 days from bid submission date. Further, the tenders were also not opened in the presence of the Firms' representatives. The procedure adopted by the Bank was totally non-transparent and against the sanctity of tender system as there is every possibility of tampering with and interpolation of offers in such cases.
- ❑ Opening of tenders in the presence of trade representatives should be scrupulously followed. While opening the tenders by the tender opening officer / committee, each tender should be numbered serially, initialed and dated on the first page. Each page of the tender should also be initialed with date and particularly, the prices, important terms and conditions etc. should be encircled and initialed

by the tender opening officer /committee. Alterations in tenders, if any, made by the firms, should be initialed legibly to make it perfectly clear that such alteration, erasing or cutting was present on the tender at the time of tender opening and this fact be also recorded by the tender opening officer / committee.

Techno-Commercial Evaluation of Tenders

It is noticed in some of the Banks that techno-commercial evaluation is not being done properly. Various requirements specified in the bid documents are not being checked / verified by the tender committee while making recommendations.

- In one case, the evaluation of technical bids was not carried out properly. Only a tabulated statement indicating compliance to hardware configuration / specification as indicated by firms was prepared. No recommendations indicating technical suitability or otherwise of the various offers received against this tender were made. Important requirement like ISO 9001 & 14001 certification and Microsoft, Novell, Linux and Unix/SCO certification for Servers and PCs were not checked.
- In another case for procurement of computer hardware consisting of several individual items, the offer of a firm was rejected as the 'Server' quoted was not meeting the specified requirements. Similarly, the offer of another firm was rejected as the 'Client Desktop' quoted by them was not as per specified requirement. Though only one individual item was unacceptable in both the offers, the entire offer of both the firms was rejected despite there being no such condition in the tender that disqualification in one item would result in disqualification of the tender as a whole.
- In yet another case, though all the bidders were meeting the basic eligibility criteria but the offers were further evaluated based on an Evaluation matrix, details of which/scoring pattern was not disclosed in the bid document. Further, no cut-off marks were indicated for short-listing bidders and only top three scoring bidders out of the eligible bidders were only short-listed for commercial evaluation. Short-listing only top three scoring bidders out of all the eligible bidders was neither disclosed in the bid document nor decided prior to the tender opening. It was done only after carrying out the

technical evaluation of the bids as per Evaluation matrix prepared after bid opening.

- Techno-commercial evaluation of offers should be carried out as per laid down criteria in a transparent manner. Once it has been established that the offers meet the laid down specifications, there should not be any further 'grading' or 'pick and choose'. The contract needs to be awarded to the lowest bidder meeting the laid down specifications.

Price Evaluation

It is noticed that in some of the Banks, the evaluation of prices is not being done properly. The bids are evaluated by taking into account various elements / factors which were not specified in the bid documents. In cases where procurement is made for a number of items, the rates quoted by overall L1 bidder is counter-offered to higher quoting firms which at times results in counter offering a higher rate for individual item to these firms than what is quoted by them.

- In one of the banks, right was reserved to take cost of selected optional items into account during financial evaluation. The set of options so taken into account and the weight assigned to each option was decided internally by the bank prior to opening of financial offers. They also decided that it would be their discretion whether to take into account the net present value of possible future payments or merely add them to the capital expenditure to get the overall cost of ownership. All these factors were decided by the Bank after opening of technical bids but however, before opening of financial bids. Instead of incorporating the specific loading criteria in the tender enquiry, Bank had incorporated a vague criterion.
- In another case, L1 was determined on the basis of total financial implication of seven items consisting of servers, client desktops, web cameras, port switches and laser printers. The rates quoted by the overall L1 bidder for individual items were counter offered to other higher quoting firms. As overall L1 bidder was not lowest for all the seven items, an anomalous situation was created whereby some of the bidders were asked to match a higher rate for individual items. For example, for laser printer, two firm, who had quoted a price of Rs.17,390/- and Rs.18,763/- were asked to match the price of

Rs.19,500/- as quoted by the overall L1 bidder. This has resulted into extra expenditure of Rs.37,32,923/-.

- The specific loading criteria should be incorporated in the tender enquiry in unequivocal terms and evaluation of offers should be done on the basis of laid down criteria so that the sanctity and transparency in the tender system could be maintained. It should be ensured that under no circumstances, a bidder is counter offered a rate higher than what has been quoted by him.

Purchase Preference

The applicable purchase preference to public sector enterprises as per the guidelines circulated by Department of Public Enterprises is also not being incorporated in the bid documents leading to a lot of complaints.

- As per Govt. policy of purchase preference to Public Sector Enterprises, where the quoted prices of public sector enterprises is within 10% of the lowest price, other things being equal, purchase preference may be granted to the Public Enterprise at the lowest valid price bid. In one case, the rates quoted by a Central PSU were within 10% of the rates quoted by L-1 but no purchase preference was allowed to the Central PSU in violation of Govt. policy.
- The Government instructions on purchase preference to PSUs need to be incorporated in bid documents.

Post-Tender Negotiations

Commission has issued various guidelines on post tender negotiations. Despite this, it has been noticed that still repeated negotiations with the select / all the vendors are being carried out by some of the Banks in gross violation of these instructions.

- As per CVC guidelines negotiations are banned except with L1 bidder. In one case of a Bank that was examined, a provision was kept in the bid documents reserving the right to negotiate with any or all the bidders.
- In another case, negotiations were held with L-2 bidder also on the plea of distribution of order between L-1 and L-2. The criteria for

distribution of order were not specified in the bid documents and, therefore, the method adopted was non-transparent and subjective. Though the L2 bidders had matched the L1 price, but they were not considered for final placement of order for which no reasons have been recorded..

- Though negotiations are to be resorted to in exceptional circumstances/cases only, but in one of the cases repeated negotiations were carried out with the L1 bidders without the approval of the Competent Authority. Details of firms/representatives present during negotiation meetings and minutes of negotiation meetings were also not recorded.
- The guidelines circulated by CVC on post tender negotiations should be strictly followed. Govt. of India has a purchase preference policy so far as the public sector enterprises are concerned. It is clarified that the ban on the post tender negotiations does not mean that the policy of the Govt. of India for purchase preference for public sector should not be implemented.

Reasonableness of Prices

It has been noticed that the purchases are being made by some of the Banks in an ad hoc and arbitrary manner without satisfying the prime requirement of establishing the reasonableness of rates in relation to the estimated rates, last purchase prices or the prevailing market rates.

- For its Networking project, One Bank had placed a contract on a firm allowing Network Management and maintenance charges @ Rs.24 lakhs per year for 241 Leased Lines without establishing the reasonableness of the prices being paid. It is seen that in the same tender a Public Sector Enterprise had quoted a rate of Rs.2,23,000 only per year for the same services.
- Another Bank had issued limited tender enquiry to only 3 vendors. In response, only 2 offers were received. Therefore, there was little competition. No estimated rates were worked out by the Bank in a realistic and objective manner taking the prevailing market rates. Therefore, Bank had accepted the rates without establishing the reasonableness of the prices and possibility of paying higher prices cannot be ruled out.

- It is very important to establish the reasonableness of prices on the basis of estimated rates, prevailing market rates, last purchase prices, economic indices of the raw material / labour, other input costs and intrinsic value etc., before award of the contract.

Advance Payments & Bank Guarantees

As per CVC guidelines circulated vide Office Memorandum No.NU/POL/19 dated 08.12.97 and 4CC-1-CTE-2 dated 8.6.2004, it has been brought out that only mobilization advance should be allowed in cases of select works and that it should also be interest bearing so that the contractor does not draw undue benefit or misuse the funds. However, it has been noticed that some of the Banks are quite liberal in allowing the advance payments even in supply contracts where no mobilization of equipment is required and that too, totally interest free.

- It is seen that some of the Banks have been giving interest free advance up to 25% in supply contracts in contravention of the Commission's guidelines.
- The advance payments need to be generally discouraged except in specific cases where mobilization of equipment is required at site. 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 Govt. interest. Wherever interest free advance has been granted, monitoring its recovery has to be more meticulous and at a sufficiently higher level.

Performance Bank Guarantees

Most of the Banks are not stipulating the requirement of Performance Bank Guarantee while others are stipulating different amounts of Security deposit / Performance Bond. In some cases, it has been noted that the amount of PBG is too low in comparison to the contract value.

- One Bank had incorporated a provision of 5% performance security in the contract instead of 10% performance security offered by the supplier in their offer, giving an undue benefit of interest on 5% performance security for a period of more than 3 years to the firm.

- In order to safeguard the Govt. interest, it would be appropriate to take reasonable amount of Performance Bank Guarantee valid up to warranty period for due performance of the contract. The genuineness and validity of the Bank Guarantees needs to be carefully checked and monitored and whenever extension in the delivery period is granted, the validity of the Bank Guarantee should also be appropriately got extended so as to protect the Govt. interest. The genuineness of the BGs and the wordings should be checked from the issuing bank to be in order without fail.

Payment Terms

It is noticed during inspections by CTEO that in some cases, the payment terms are amended favourable to the suppliers thereby giving undue benefit to the suppliers.

- In one of the Banks, as per payment terms stipulated in the tender documents, 90% payment was to be released on completion of delivery, installation, commissioning and completion of inspection and acceptance test. Balance 10% payment was to be released within 12 months from acceptance test or within 2 months on production of a performance bank guarantee for the 10% amount. However, in the purchase orders, the payment terms were relaxed as 90% on delivery and balance 10% on installation of items at the site. No justification was given for relaxing the payment terms in favour of the firms and also no performance bank guarantee was obtained from the suppliers to safeguard the purchaser's interest during the warranty period.
- In another case, the payment terms stipulated in the tender were 90% on satisfactory installation and 10% after completion of warranty or against submission of Bank Guarantee for one year from the date of installation. If the installation is not made due to the reason "Site Not Ready", 75% payment was to be released after 15 days from the date of delivery of the systems. However, in the purchase orders 75% payment has been allowed to be released after 15 days from the date of delivery, 15% payment on successful installation and 10% after completion of warranty or against submission of Bank Guarantee for one year from the date of installation. Thus the

payment terms were relaxed in favour of the firms without any request from them.

- Another Bank had released 20% balance payment against Bank Guarantee without completion of installation and final acceptance though as per contract the balance 20% payment was to be made only against final acceptance certificate issued by the purchaser.
- The payment terms should be defined unequivocally and should not be changed after award of the contract. As far as possible, the payments terms should be so structured that the payments made to the contractors are linked and are commensurate with the actual progress supplies / installation / commissioning.

Post Contract Management

After award of the contract, amendments/modifications having financial implications are authorized in the contract terms/specifications giving undue benefit to the suppliers e.g. the specifications are diluted, the Pre-dispatch inspection though was incorporated in the contracts but, the same was subsequently waived without recording any reasons, log books are not being maintained for determination of downtime of equipments etc. It has also been noticed that even the materials are being accepted and payments are being released as and when the supplier makes the supplies. There is utter disregard to the contracting norms relating to delivery period, which is the essence of the contract. In some of the cases, it has been observed that Liquidated damages for delay in supplies are not being levied and recovered from the suppliers.

- In one case, one of the bidders offered to provide Computer Server with 6 hot swappable drive bays and 3 non-swappable drive bays as against the tender requirement of servers with 5 hot swappable drive bays and 3 non-swappable drive bays. However, after placement of purchase order, Bank on the request of the firm had amended the order as servers with 5 hot swappable bays instead of 6 bays on the plea that there is no change from original specification as per Bank's bidding documents and the reduction will not affect the performance in any manner. The purchase order was amended without taking financial implications into consideration and thereby giving undue benefit to the firm.

- In another case, supplies were delayed beyond the stipulated delivery schedule. Further, no time period for installation/commissioning was specified in the purchase order. The equipments were not installed/commissioned by the firm in several branches for a considerable period of time after supplying the same. In the absence of any deadline for completion of installation/commissioning, no liquidated damages was legally recoverable from the firm for the delay.
- In yet another case, as per contractual provisions, a penalty of US \$ 200 per day was leviable if the system is not rectified within 5 days of notifying the breakdown. On going through the records, it was seen that in respect of some systems, the breakdown was more than 5 days but no penalty was recovered from the firm.
- It was seen during inspections that log books were not being maintained for ATMs and other equipments for recording details such as time and date of failure, nature of failure, time of reporting failure, time of restoration, details of repair, acknowledgement by the purchaser that the failure is rectified etc. In the absence of the same, Bank may not be able to work out the downtime and claim penalty from the contractor for not maintaining the prescribed uptime.
- In another case, the supplies and installation of various equipments were completed by the firm much beyond the scheduled delivery period. No delivery period extension was granted after expiry of the original delivery period and the equipments were accepted by the Bank as and when supplied by contractor. So time was not kept as the essence of the contract.

Pre-dispatch Inspection

- It is noticed during inspections that though contracts provide for pre-delivery/dispatch inspection of equipment at firm's premises, no such inspections were being carried out. This way the quality aspect of the various equipments had been totally ignored by the Bank.
- In one case, it was found that there was no inspection stamp of the Inspection Agency on the equipments such as Servers, PC Work Stations, Dot Matrix Printers & High Speed Printers as a proof of having inspected the same by them. Bank has accepted these

equipments without satisfying themselves about the receipt of the same equipments which were inspected / accepted by the Inspection Agency.

Delivery Period Extension

- In one case, the delivery, installation and operationalisation of network was to be completed in 100 days from the date of purchase order. However, on the request of the firm, the delivery schedule was reckoned from the date of acceptance of order by the firm instead of date of purchase order. Bank had also not issued any formal amendment in the contract in this respect. The approval of Bank for change in delivery schedule was not in order as the date of delivery is to be counted from the date of purchase order and not from the date of acceptance of the the order. Bank should also have issued amendment extending delivery period with liquidated damages as per contractual terms.
- One Bank was accepting the equipments as and when supplied by the firm. Therefore, time as the essence of the contract has not been kept by the Bank. Though, there was delay in supply and installation by the firm but no liquidated damages were recovered from the firm.
- After conclusion of the contract, any relaxation in the contract terms / specifications should be severely discouraged. However, in exceptional cases where the modifications/amendments are considered to be absolutely essential, the same should be allowed after taking into account the financial implications for the same. The delivery period should be extended on bonafide request and not in a routine and casual manner. In case of delay in supplies by the supplier, the liquidated damages should be recovered. In a nutshell, there is a need to discipline the suppliers so that the non-performers could be weeded out and the suppliers who can be relied upon with consistent performance, in terms of quality and delivery schedule are encouraged.

Miscellaneous

Some other irregularities/deficiencies in award of contracts noticed during inspections are illustrated below.

- In one of the Banks, a General Manager had exceeded his delegated financial powers in approving a proposal for the procurement of Computer Hardware though the competent authority for approving such proposal was CMD.
- In another case, Executive Committee of the Bank decided not to implement Bank's proposal to purchase LCD monitors but Bank had placed orders for PCs with LCD monitors without referring the case back to the Executive Committee for its approval.
- One of the Banks while purchasing hardware, had not specified the system serial nos./Part nos. of Servers, Supervisory Work Stations and Terminals; make, model, Part nos./serial nos. of Mother Board, Memory (RAM), Hard Disc and Floppy Drive, Display Card, DAT drive and Key Board of Servers, Workstations and Terminals; and make, model, Part Nos./Sl.Nos. of CD ROM Drive in the Server in the purchase order. Therefore, the firm had supplied the same as per their own choice and an undue benefit had been passed on to the firm.
- In yet another case, bid conditions provided for a Guaranteed Uptime of at least 99.9%. In response, three vendors represented against stringent provision of up time which was practically not possible. The Bank considered the same and uptime was amended to 99.5% calculated on a monthly basis. However in the contract awarded to another firm, 99.5% and 99% uptime were allowed for core and remaining network respectively. Thus, even the amended condition of 99.5% uptime was very stringent and the same was relaxed by the Bank while placing the contract.
- There was no provision in the contract for the firm to submit the documents like, Bill of Lading, Custom duty paid etc. in regard to hardware materials imported and supplied by them. In the absence of these documents, genuineness of the equipments imported/supplied by the firm could not be verified.
- In some cases, Banks are not promptly generating the ATM failed transaction report on a day to day basis leading to late debiting/non-debiting of cash withdrawn by account holders. Such instances leading to huge over-drawings in SB/CC/ ODCC accounts were also

reported, putting the Bank under poor image and difficulty in recovering over-dues.

- In one of the Banks, though ATM Cards had been received in many branches but the same were lying undelivered to the customers thereby defeating the very purpose of installing the ATM machines that is to facilitate increase in transactions and make ATM economically viable.
 - In one case, instead of asking 90 days bid validity as per Purchase Policy, only 60 days validity was asked for in the bid document. Bank had taken about 2½ months in technical evaluation only and opened the financial bids when the prices were no more valid. Further, validity of EMD, Bank guarantee submitted by two of the bidders had already expired before the finalization of the tender. Bank did not take any action to get the validity of bids and bid security extended. In such a situation there was possibility of the firm declining to honour the contractual obligations resulting in a void contract with no recourse to the Bank even to forfeit the bid security.
 - In another case, though the firm had clearly indicated in their offer that prices are inclusive of entry tax and in the purchase order also no entry tax was payable extra, Purchase order was later amended allowing reimbursement of entry tax on actual basis on the request made by the firm.
 - One Bank placed an order for a particular model of currency verification and processing system having 6 pockets. However, benchmark testing was conducted on a different model having 4 pockets only.
 - As per Ministry of Surface Transport (MOST) instructions, the contract for import is to be awarded on F.O.B. basis until the permission has been granted by them to conclude the contract on C&F basis. Although no permission as per provisions was obtained by a Bank to conclude the contract on CIF basis still they had concluded the contract on CIF basis.
- The aim of this booklet is to know the pit falls and serve as a ready reckoner for the concerned officials of the Banks to help them in

effective and timely procurement of various goods and services in a fair, transparent and objective manner.

