

Engagement of Consultants: Latest Guidelines from CVC

If one can isolate the single most systemic deficiency observed in Public Sector Setting it would perhaps be the area of Consultancy Contract. Coupled with the area of Nomination Contract they form the biggest chunk of CVC cases in many organizations.

It is for that reason measures are required to be taken to improve the existing practice and procedures followed in finalization of contracts for “*Engagement of Consultants*” for implementation. In fact the situation has undergone a radical change after CVC issued their circular No **CVC’s Circular No 01/01/2017 dated 23/01/2017 regarding Engagement of Consultants.**

The following points are of particular concern:

1. CVC has stated the fact that the employer (organization which engages the Consultant) has a definite share of accountability in accepting the advice/service rendered by a consultant.
2. In turn, the Consultant is also responsible and accountable for the services rendered /advice given by him/her since such advice/service is the result of contractual relations between the consultant and the employer. To ensure (1) & (2), CVC has advised incorporation of suitable terms and conditions for apportioning accountability between the employer and the consultant.

[Para (b) of CVC’s letter]

CVC’s above advice dispels an oft-held notion that Consultants are not accountable in any manner for the advice rendered them. Taken with Para (a) & 2(d) of the circular, discussed below, this assumes even greater clarity.

3. CVC has advised that all organizations should explore the possibility of using in-house expertise before arriving at a decision to engage consultant and accepting the advice/service rendered by such consultant. [Para (d) of CVC’s letter]
4. CVC had advised that while engaging a Consultant their attention should be attracted to the need for their advice to be compliant with provisions of GFR, CVC Guidelines and Instruction of GoI etc. as applicable to the subject matter. [Para (a) of CVC’s letter]
5. CVC has advised to ensure that a consultant must avoid any conflict of interest while discharging contractual obligation and bring, before hand, any possible instance of conflict of interest to the knowledge of the employer. Further a consultant is expected to undertake an assignment /project only in areas of its expertise and where it has capability to deliver efficient and effective advice/service.

[Para (C) of CVC’s letter]

The subject of avoidance of conflict of interest in consultancy contracts had been elaborated in detail by CVC in an earlier circular of 2011 which has also been enclosed with the current circular.

6. However, perhaps, two of the most important advices of CVC are contained at Para 2(c) and 2 (d) of the aforesaid circular. At para 2(c) CVC directs that an advisory should be issued to the consultant’s to keep in view transparency, competitiveness, economy, efficiency and equal opportunity to all prospective renderers of the bidders while rendering any advise public

services to the employer in regard to selection of technology, determination of design and specification of the subject matter, with bid eligibility criteria, bid evaluation criteria, more of tendering, tender notification etc.

It is not difficult to observe the resemblance of this particular advice to provision 160 and 161 of GFR which enumerate the fundamental principles of public procurement required to be followed by government procuring authorities. The implication of 2 (c) is that these principles are also required to be adhered to by the consultant/consulting body which need not be a government entity.

7. CVC's advice Vide 2(d) is aimed at ensuring the co-operation of consulting entity , through special provision, with any legitimately provided /constituted investigative body in the event of an enquiry related to execution of the consultancy contract.

It is pertinent to note here that many a times when an enquiry is held in the unfortunate event of detection of irregularities/fraud etc. in a consultancy contract awarded to a private entity, such entity may refuse to cooperate or refrain from extending full cooperation to the vigilance Department of the employer or a body/committee constituted by the executive branch(s) of the employer tasked to conduct such a probe. It is in such an eventuality that incorporation of a prior-provision, as advised by CVC, can be a potent legal/contractual tool to ensure full co-operation from the consulting entity.

8. *Given the inherently intangible nature of consultancy service, such tenders/contracts are more prone to potential irregularity/pitfalls/abuse than the normal contracting process. In recognition of the same, CVC has issued a number of Circulars in past on the subject. The GFR, which guides the procurement process of PSU and Autonomous Bodies, devotes a number of provisions on this topic. These instructions on Consultancy Contract also find place in the Delegation of Power issued by Ministry of Shipping in 2015.*

While the above CVC circular will have immediate effect and needs to be adhered to by any authority engaging in consultancy tenders/contracts, a Comprehensive Administrative Order regarding manner of implementation of the various advices/instruction contained in this CVC Circular is under preparation. Since such an exercise will involve addition of new clauses /conditionality in the bid document/Agreement pertaining to procurement of consultancy services the same will be intimated in shortly.
