आलोक
Aloke

Vigilance

Kolkata Port Trust

2018

Integrity Pledge

I believe that corruption has been one of the major obstacles to economic, political and social progress of our country. I believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

I realise that every citizen should be vigilant and commit to highest standards of honesty and integrity at all times and support the fight against corruption.

I, therefore, pledge:

- To follow probity and rule of law in all walks of life;
- To neither take nor offer bribe;
- To perform all tasks in an honest and transparent manner;
- To act in public interest;
- To lead by example exhibiting integrity in personal behavior;
- To report any incident of corruption to the appropriate agency.

विनीत कुमार , आई.आर.एस.ई.
अध्यक्ष
VINIT KUMAR, IRSEE
Chairman

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MESSAGE

I am happy to learn that Vigilance Awareness Week 2018 is going to be celebrated in Kolkata Port Trust from 29th October to 3rd November 2018. On the eve of this celebration whose theme is "Eradicate Corruption-Build a New India", Vigilance Department is bringing out the 2nd edition of "ALOKE". The booklet contains highly informative articles, System Improvement initiatives and important CVC circulars for generating awareness among Port officials. I am sure the content of the booklet will help to streamline port processes making all aware that might be exist. During the year the various analytical study and resulting systemic suggestions have been instrumental in making huge all round contribution to the Port. Many of these suggestions actually have relevance not to KoPT but for the sector as a whole. The fact that Cargo handling and Revenue generation in KoPT broke all previous records in 2017-18 does owe its success in no small measure to the insight gained from all such analytical studies or systems and procedures undertaken by Vigilance Wing and their enthusiastic implementation by Management.

I whole-heartedly congratulate the Vigilance Department for the above effort and wish them all the best in their activities.

23th October, 2018

(Vinit Kumar)
Chairman

Shri Saroj Kumar Sadangi, IRSS
Chief Vigilance Officer,
Kolkata Port Trust.

"The only thing necessary for the triumph of evil is that good men should do nothing."

.. Edmund Burke, 18th Century English Author and Philosopher

FROM THE EDITOR'S DESK

It gives me great pleasure to inform our friends in Kolkata Port Trust that we have been able to bring out the 2nd edition of "ALOKE". It contains articles, analytical studies, systemic suggestion and important circulars and guidelines, which would help everyone contribute, in their own little ways, to realize the thematic goal behind Vigilance Awareness Week - 2018 : "***Eradicate Corruption - Build a New India***". The role of Vigilance in building such a "New India" is all but indispensable. However, despite a ubiquitous presence of Vigilance Departments across most public institutions of the country, "Vigilance" remains a much misunderstood term.

Oxford dictionary defines "Vigilance" as **"*The action or state of keeping careful watch for possible danger or difficulties"***. The exact etymology of this word is rather uncertain: being either from the Latin word "*vigilantia*" or from the French "*vigilare*" meaning '**keep awake'**.

The word came into usage in the late16th century. It is during this century that the West started to rise above Asia, Spain and Portugal explored the world's seas and opened unexplored oceanic trade routes, the New World was conquered by Spanish and the Portuguese became the masters of the sea routes to Asia and Africa. It was an era of war and uncertainties among groups, nations and cultures. It is therefore no surprise that the word "Vigilance" gained currency in the literature of such a period. Those who kept "vigil" perhaps survived and prospered while those who didn't went down.

"Preventive Vigilance" is essentially about this literal dictionary meaning of the very word "vigilance", i.e., "***keeping careful watch for possible danger or difficulties****"*. It is about serving as an early warning system and to ward off possible danger to the Organization. In that sense nothing is perhaps more integral or inalienable to the Organization than this part. So much is the need for such a function that the Irish orator, John Philpot Curran, is supposed to have said in 1790: "***Eternal Vigilance is the price of freedom***". Nothing thus can be farther from the image of Vigilance as an external overbearing big brother with an intention to punish helpless misunderstood employees.

That is why in Vigilance Department of Kolkata Port Trust, we strive continuously to make you feel that we are part and parcel of your existence, because we are here:

- To find ***Facts*** and not ***Faults***
- To ***Guide*** and not ***Chide***
- To extend a **helping hand** and not **point fingers**
- To ***Demonstrate*** and not ***Remonstrate***
- To be ***Corrective*** and not ***Coercive***
- To "***Be Aware"*** instead of saying "***Beware"***
- To distinguish ***bonafide*** from ***malafide***

The above 7 Principles underscore our core values. They can be termed as our Vision Statement.

S. K. Sadangi
Chief Vigilance Officer, KoPT

"The Darkest Places in Hell are reserved for those who maintain their neutrality in times of Moral Crisis."

.. Dante Alighieri, 13th Century
Italian Philosopher

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No thank you. This is anti-corruption week!

"*Competitors are our Friends, Customers the Enemy*": Cartels, Corruption & WMD

… By S. K. Sadangi

"***Competitors are our friends, customers the enemy***" : these were the words by which Michael Andreas, son of Chairman of Archer Daniels Midland Co.(ADM), USA, summed up his business philosophy before a small group of executives on a lazy afternoon of March,1994 inside a luxury hotel in the remote Island of Hawaii. Those who had assembled were no ordinary persons. They represented two giant Japanese companies, Ajinomoto Co. & Kiowa Hakko Inc., and the Korean food behemoth, Cheil Jedang Co. Together, they accounted for nearly the entire global production of an item called *Lysine*: an amino *acid* extracted from corn and used as an essential additive in breads, pork and poultry feed. The purpose of the gathering? - to sustain global lysine prices at artificially higher level while posing as rivals and competitors to the world outside so that their already enormous bottom line could be further fattened at the expense of countless customers.

What these gentlemen did not know was that Mark Whitacre, President of the Bioproducts Division of AMD and colleague of Michael Andreas, had switched on a transmitter hidden beneath his coat and was busy recording the pearls of business wisdom flowing from Andrea's lips. Unknown to them, Whitacre had long turned an informant to FBI, saddened by the crass manipulation of his employer in search of ever increasing profits. The tiny transmitter he was wearing on his skin for two long years had been provided by FBI to snoop on such price-fixation meetings that took place in different locations around the globe - like Tokyo, Paris, Mexico City, and Hong Kong - for reasons of secrecy.

Two years down the line, Whitacre's action would lead to the first ever successful prosecution of an international cartel by the U.S. Department of Justice in more than 40 years, a massive $305 million fine for ADM Co. and jail terms for three high-ranking executives of the company. The blow-up of the Lysine-cartel would also reveal to the America public how they had been taken for a ride in what they pay for everyday food items ranging from orange juice to the bread on their breakfast table. During the entire process, Whitacre would turn increasingly psychotic, lose his whistle blower immunity and end up in jail for 8 years for not speaking the "*whole truth*" to FBI. The twists and turns of this international intrigue by a cartel of powerful corporations, its undoing by a top executive-turned-whistleblower like Whitacre and finally the self-destruction of the hero himself would be too attractive an opportunity to pass by for Hollywood who converts it into a 2009 blockbuster, aptly called, "***The Informant"***.

On 2nd March, 2010, half the world away from Hawaii**,** a similar meeting was in the progress in the Sahara Star Hotel of Mumbai. In attendance were representatives from

12 business houses of India who manufactured 14.2 Kg-steel cylinders, an item that affects the price of one of the most essential commodity for India's poor - the Liquefied Petroleum Gas or LPG. The purpose of the gathering? : To "discuss" bidding price for an up-coming tender for procurement of 105 lakhs of such LPG cylinders, to be opened on the next day by IOCL, an Oil PSU. The fact that the price of LPG cylinder were routinely being fixed by 50-odd companies came into light when Competition Commission of India (CCI), an institution created in 2002 to act as the fair-trade watchdog, investigated into their murky dealings revealing that the price for gas that you and I pay are artificially determined by this group. 48 out of the 50 cylinder makers were fined by CCI a total sum of 165 Crores of rupees for engaging in price-fixing, bid rigging, and market sharing. **Two years later, in 2012**, even more shockwaves rocked the life of Indian consumers. This time it was Cement - the stuff that goes into the heart of infrastructure and urban housing. It is also the stuff that determines the price of a decent 750 Square feet house, the lifelong dream of the great Indian Salaried Class. CCI found that 11 major Cement Companies had formed a collusive cartel to fix the price of cement at inflated level across the country and created artificial shortage by cutting down production. The fine imposed by CCI was a whopping Rs 6,307 Crores. Among the cartel were such household company names of India as Jaiprakash Associates, Ultratech Cements, Ambuja Cements and ACC bearing penalties of Rs 1,323.6 Crores, Rs 1,175.49 Crores, Rs 1163.91 Crores & Rs 1,147.59 Crores respectively.

But unlike the architects of Lysine-Cartel in USA, none involved in the LPG Cartel or Cement Cartel of India went to jail.

The reason: Under the Sherman Act of USA which regards Anti-competitive business behavior as both Civil and Criminal offence, the Competition Act, 2002 of India treats such activities as only Civil Offenses, to be punished with monetary fines. *Section 27(b)* of the Act stipulates that the maximum penalty for indulging in Anti-Competitive Agreements [Defined under *Section 3 of the Act]* or Abuse of dominant position [*Section 4 of the Act*] shall be up to 3 times of its profit for each year of continuance of such agreement or 10% of its turnover for each such year, whichever is higher. In fact while the Sherman Act of USA, regarded as the single most powerful Act to ensure the health of America's market economy, has been around since 1890, our Competition Act has come rather late in the day in 2002. It got some teeth only when cartelized behaviour was explicitly defined by way an amendment in 2009 through **Section 3** (Prohibition of Anti-competitive Agreements), **Section 4** (Prohibition of Abuse of dominant position). **Section 5** on Combination and Merger came into force in June 2011 - a full 20 years after India started her economic liberalization in 1991 by embracing LPG [Liberalization, Privatization and Globalization]

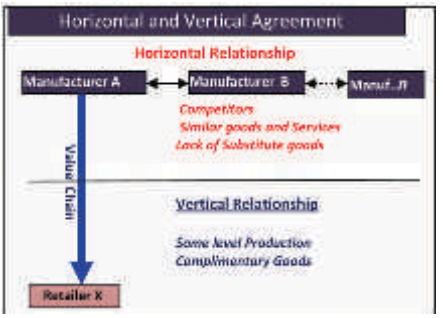
What exactly is a Cartel and how do they operate? Section 2(c) of Competition Act, 2002 defines "Cartel" as ".. *any association of produces, sellers, distributors,*

traders or service providers who, by ***agreement*** *amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services*". Such agreements are also termed as "Horizontal Agreements" through which Cartels unleash their distortionary influence by agreeing to do one or more of the following anti-competitive behavior as defined under Section 3(3) of the Act:

- **Price fixing:** Price fixing occurs when two or more competing sellers agree on what prices to charge, such as by agreeing that they will increase prices a certain amount or that they won't sell below a certain price.
- **Bid rigging:** Also called collusive bidding. It can mean agreeing to submit identical bids. To pre-arrange who shall submit the winning bid, not to bid against each other, submit cover bids (voluntarily inflated bids), adopting common norms to calculate prices, specifying common terms typically for local, State, or Federal Government contracts.
- **Customer allocation:** Customer-allocation agreements involve some arrangement between competitors to split up customers, such as by geographic area, to reduce or eliminate competition by preventing new entrants.

Contrary to common perception that only Cartels comprising multiple members (manufacturing/trading identical goods & services and indulging in anti-competitive actions) can only be prosecuted under Competition Act, even a single company/entity can be prosecuted if he/she imposes, directly or indirectly, unfair or discriminatory conditions/prices in purchase or sale. This is called "*Abuse of dominant Position*" which is prohibited under Section 4(1) and 4(2) (a) of Competition Act. Such abuse can happen through "Vertical Agreements" which can one or more of the following form:

- Tie-in arrangement [Purchaser of goods A forced to also purchase goods B]. Recall famous Microsoft Anti-Trust where buyers of Windows-95 were also forced to buy Internet Explorer.
- Exclusive Distribution Arrangement [Restriction of Market or Production]
- Refusal to deal
- Resale Price Maintenance [Seller X to sell to Buyer Y on condition that Y re-sales it in price dictated by X]



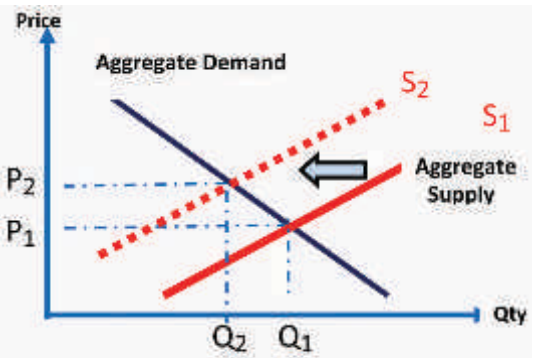
It is pertinent to note that "Agreement" between Cartels members referred under Section 3 need not be "formal" or "written" in nature. This is stated at the very beginning of the Act under Section 2(c). The existence of such agreement is often deduced by CCI

from strong circumstantial evidence like Price Parallelism(Quoting equal rates or equal increase in rates), quoting inexplicable prices that defies business rationale, Market dominance, Concerted biding behavior, Creating Barrier to entry, lack of substitute products etc. In fact, direct evidence in the form of written agreement among cartel members should not be expected at all. In the words of Lord Denning, possibly the most famous English Judge of 20th Century:

> *"People who combine together to keep up prices do not shout it from the housetops. They keep it quiet. They make their own arrangements in the cellar where no one can see. They will not put anything into writing nor even into words. A nod or wink will do. Parliament as well is aware of this. So it included not only an 'agreement' properly so called, but any 'arrangement', however informal"* [RRTA v. W.H.Smith and Sons Ltd.]

Since offense under the Act are "civil" in nature, charges under Section3 (3) can be sustained on the principle of *"preponderance of probability"* or "*liaison of intention*" rather than on the strict premises of "*evidence beyond reasonable doubt*" required for criminal conviction. This is a major strength of Competition Act.

Why are Cartels so dangerous? Cartels hit the very soul of a market-driven economy by undermining "competition". It is well known that the efficiency of market economy stems from prices of goods and services being determined by market forces rather than government regulation as was the case in earlier Command Economies. After the fall of Berlin Wall in 1989, most countries around the world including India abandoned their belief in government control of major sectors of economy and tilted towards a fully fledged market-economy model. But the vaunted efficiency of market-economy-model depends on one basic thing: "unfettered and unhindered competition" among market players. It is competition which ensures optimal pricing for goods and services leading to right resource allocation of economic resources. Neither the theories of free-market-evangelist like Milton Friedman (who advocated minimal government control in economy) nor that of John Maynard Keynes (who prescribed major governmental intervention to regulate business cycle) would work if "**competition**" itself gets artificially controlled or compromised. In absence of competition, the public monopoly of Command-economy simply transforms into private-monopolies or oligopolies. By attacking and undermining competition, Cartels act as **Weapons of Market Destruction** (WMD).



An Output-Restricting Cartel *(Like the Cement Cartel detected by CCI or the OPEC oil Cartel)* drives up Price by shifting Aggregate Supply Curve for a product left-ward

Although cartels can persist in diverse sectors of economy like import and export. But their pernicious effect becomes most visible in one particular sphere of economy: **The procurement sector**. They become especially destructive to economies of developing world who by nearly third of their GDP through Public Procurement by Federal, State and local authorities. As for India, the volume of Public Procurement is believed to be varying from 20% of GDP (As per WTO estimate) to 30% of GDP (OECD quick estimate). Thus with a 2014-15 GDP at $2.1 trillion or Rs. 126 lakh Crores, even the lower limit of 20% takes Public Procurement to nearly Rs 25 lakhs Crores annually i.e. nearly 4 times the Income Tax collected from citizens and corporate in 2013-14. According to a meta-study in US, the average overcharging by American Cartels (domestic and international) is 25%. We can safely assume that to be the lower limit of Cartel-distortion in developing countries where competition laws are not as strict as the Sherman Act of USA.

So how much of Indian Public Procurement volume could be going out as undue gain to cartels? The answer will depend upon (a) how rational and pure our procurement system is and (b) how much of it is affected by cartel? To get an idea about (a) one need not go much farther than the first paragraph of the "Report on Public Procurement" authored by the ten-member high powered Committee . This committee had been constituted by Cabinet Secretariat in 2011 to study procurement in government sectors and for the purpose of creating a Procurement Law which India does not yet posses. The said paragraph reads as follows:

> *"In India, public perception about the quality, credibility and probity of public procurement is generally poor. There is a general feeling that corrupt practices abound, and the system is by and large inefficient and wasteful. A few high profile scandals that have erupted recently have further heightened public disenchantment and distrust of Government procurement systems. As a result, public procurement is often perceived as the soft underbelly of the governance structure."*

And to guess about (b) i.e. the prevalence of Cartel in procurement, one may examine a particular sector like Railways which is second to only Defence Sector in procurement volume. In past few years, CCI investigation Again Chapter-11 of the same Report offers some insight in the following words:

> *"A quick review of the procurement practices followed in the Indian Railways suggests a system that has potential for respective, inefficient and costly outcomes which may lack in robust competition and transparency. It is, therefore, necessary to reform the ongoing procurement practices in the Railways with a view to promoting transparency, efficiency, economy and competition."*

Analysis of vendor directory of 358 mechanical items for 2009-10 by the Committee

showed that nearly 67% are procured from pre-approved panel having not more than 3 companies.

In fact past investigation by CIC into Railway procurement of PVC Flooring Sheet & ERC Clips show how bidders had acted in consort even going to the extent of filling up tender enquiries by a single agent. If there is still any doubt on the pervasiveness of cartels, let us turn to Page 103 of the One Man Committee Report submitted very recently by Sri E.Sreedharan:

> *"Committee heard views of senior officials- "Procurement is through Cartel only", "List of approved Sources and Cartels are synonymous" and "**there is no item in which there is no cartel"**. Committee feels that vendors thus continue to fleece at will and bureaucracy remains satisfied that it has been doing its bit. Cartels not only result in purchases at unreasonably high rates but also in delay in finalization of purchases."*

So what should be done India? Perhaps we should follow what a 2004 - OECD Policy brief advocates:

> *"In our view, only a criminal sanction adequately expresses society's disapproval of naked horizontal agreements. A criminal sanction makes clear that these unambiguously harmful agreements are not merely technical infractions, but are morally wrong and simply will not be tolerated by a civilized society. These are crimes of deceit and fraud that cannot be justified by any business rationale or excuse. They are serious crimes that involve theft from consumers — theft that is more egregious because the victims often don't even know they have been robbed. There is no reason not to treat these offenses as seriously as any other white collar offense."*

Perhaps that is the reason why USA, after nearly a century of experience of anti-trust law, increased the prison term for cartel offenses from 3 years to 10 years after 2004. What can not be cured need not be endured any more.

Ref: Report of Dhal Committee on Indian Procurement, Report of One Man Committee, OECD Policy Brief No DAF/COMP(2004)39, Study on Cartel by Robert H. Lande, Baltimore School of Law and J.M.Connor, American Anti-Trust Institute, DOJ News Bulletins, CCI Website

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Small but Significant Steps towards Good Governance

.... G. Senthilvel,
Deputy Chairman, H.D.C.

When I first joined on 8th August 2016 as the Deputy Chairman in Haldia Dock Complex, I started getting inputs from several quarters that there were several issues regarding governance that required immediate attention of the executive.

In the initial period, it was impressed upon me that Haldia was a very difficult place from the administrative angle, and every issue acquired a political colour. However, from my previous experience in the port sector, I had come to believe that it is much better to take small but definite steps towards improving governance which would result in significant improvement of the overall administrative climate. On critical issues I have consulted the Vigilance Wing and sought their advice, in order to ensure there is no discrepancy.

Work allocation:

I found that the work allocation among departments were not best suited for port operations and immediately I rationalised the work allocation which started showing tremendous improvement in cargo handling. The Traffic throughput growth was substantial and during 2017-18, HDC registered the highest growth among all major ports.

Speedy disposal of proposals and bills:

I observed that proposals and bills were being disposed without any time limit and certain important proposals were unduly delayed. There was a tendency among some officials not to follow-up the proposals or bills and this unduly delayed the decision-making. To set an example I disposed off the files either in the same working day and if preoccupied with other work within a few working days. Then I started demanding the same from all other officials. Weekly pendency reports helped me to monitor and ensure timely decision-making.

Employees' role:

In order to get the best from the employees, I had discussions with the Unions and addressed many of their grievances. One of them was promotions/MACPs. I was told that the delay is due to ACRs not being written by the respective departments. On my insistence the same was completed within the stipulated time and the promotions/ MACPs issue was resolved. Another major grievance was that the retired officials being re-engaged denied employment opportunities and I have issued orders not to re-engage any retired official and in unavoidable circumstances the same to be done only with my approval. Another major issue was the engagement of workers through a contractor is

not only yielding results but also financially not beneficial. This issue also was addressed and all engagements thereafter were directly engaged by the Port on contractual basis. The response of the workers can be seen in the growth of Traffic. At the same time in order to ensure seriousness and discipline, no employee was spared in the cases of negligence or any misconduct. Suspensions and disciplinary actions were taken for ensuring performance.

It came to my knowledge that about 40 odd employees were lying idle in the G.C. Berth without any work. These were the equipment operators of various grades who used to handle the equipment during cargo handling operation in G.C. Berth. Gradually, the machines and equipment had ceased to operate and were condemned, and consequently, these employees without any work for the last 8 to 9 years. I was given to understand by that redeploying these employees may create a huge industrial unrest and the earlier attempts were not successful. I decided to immediately redeploy these employees to places where there was a genuine shortage of man-power and took the decision to transfer these employees to various Divisions, like Shipping, Marine, I&CF and even Administration. Some educated employees were adjusted against clerical posts also. Though initially there was some opposition to the move citing various reasons, later these employees joined their respective places of redeployment. This decision proved to be off huge benefit to Shipping Division, which was really short of manpower, besides reducing a substantive unproductive expenditure of the Dock.

An issue that was highlighted to me was the near nothing being charged by HDC for meals being provided by the Departmental Canteens. As a result almost the entire cost of running the Departmental Canteens, including staff salary, electric bills, gas charges, utensils cost, procurement of food items, etc. was being paid for by HDC, with little or no return. Due to the cheap prices of food items, e.g. a full meal would cost Rs. 1.50, so many outsiders would also routinely take their meals from these canteens. It was once calculated that HDC would spend an amount of nearly Rs. 4.5 crore per year on the Departmental canteens, while earning only Rs. 1.5 lakh from the sale of food items. I ordered an across the board increase in the price of food items many-folds. There was indeed a huge agitation and even the officers were prevented from entering the office on one day. But seeing me determined and when the issues were explained to the Unions in detail, they saw reason, agreed to substantial amount of hike in the price. Finally, it was decided that a full meal, that initially cost Rs. 1.50 would now cost Rs. 10.00, instead of Rs. 15.00 that I had decided. This has reduced subsidy outgo on Departmental canteens to a substantial extent.

Consultation of Port users:

Frequent interactions with the Port users helped in understanding their problems and resolving them within the framework of the rules.

Land issues:

I have ordered that all allotments outside the custom-bound area may be allotted on licence basis for 5 years through tender cum auction mode as per the Land Policy Guidelines issued by the Ministry of Shipping.

I have also ordered engagement of a consultant for optimum utilisation of the vacant plots which has been done and the report of the consultant is being placed before the November, 2018 Board for acceptance and implementation.

On a complaint I have initiated legal action against unauthorised occupations and have won a positive order from the Hon'ble High Court of Kolkata.

Safety :

Safety meetings were conducted regularly and many decisions were taken in this regard. It is pertinent to state that HDC has won awards from the Government of India.

Swachch initiatives:

Ever since my joining at HDC I have initiated many cleanliness measures. Heads of departments were asked to remove unwanted records, furniture, computer wastes, etc. The G.C. berth office was functioning in a very polluted atmosphere and was not conducive for proper working. I have ordered to construct a new office for them which is under process. The main office at Jawahar Tower is being modernised with uniform furniture to create a better working atmosphere. All the quarters are being painted and improved with tiling at kitchen and toilets. I feel proud that for 2016-17, HDC secured the first place in Swachch Bharat award of the Ministry of Shipping.

In addition to the above decisions, several other decisions were also taken by me, including following-up on the pending legal / arbitration cases, reduction of the number of buses used to transport employees, including route rationalization of buses, that resulted in certain decrease in expenditure.

I have tried to take these steps to ensure that administration is vigilant and tight which I believe has resulted in certain improvements in governance of HDC, though I am sure that a lot remains to be done, and it is my endeavour to significantly address these issues in the remaining days.

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TO BLOW OR NOT TO BLOW THE WHISTLE?

By S. K. Sadangi

Breaking the eerie silence that hung over the sea, a voice rang out from the depth of darkness: ***Is there anybody out there*****?** A narrow beam of light, from a silhouette perched on a boat, scanned dozens of bodies floating on icy cold water, searching for signs of life. But they were dead, all of them, possibly long before the saviours came. Suddenly, the faint sound of a whistle rang out at a distance. The rescuer rowed the boat towards the survivor. And the life of the whistle blower was saved from certain death.

Does the scene appear familiar? Have you seen this somewhere before?

Yes, you must have. It was the iconic last scene from the 1997 block-buster movie – "Titanic". The whistle blower in question was British Actress, Kate Winslet, in the role of "Rose Dewitt", the lucky survivor from the infamous shipwreck. If the rescue act depicted in the movie had really happened on that fateful night of 15th April, 1912, when the Titanic sank on her maiden journey, then this must be **one of the very few occasions when "blowing a whistle" actually saved the "whistle blower**".

In real life though, the consequence of blowing a whistle could unfold differently – especially in societies where corruption is endemic. In fact, the exact opposite can happen in countries where greed is good and corruption possesses divine powers. With the Corrupt being Omni-present, Omnipotent and Omniscient, blowing the whistle - a common metaphor for raising voice against evil and injustice - may actually cost the whistle-blower his/her own life, unlike what happened in the Titanic movie scene.

Examples of being blown away because of blowing a whistle are not rare. In a country like India, where almost every facet of governance appears contaminated with the evil of corruption, it happens rather frequently. Starting from Satyendranath Dubey, who blew the whistle against the network of corrupt in the multi-crore rupees Highway Project in Bihar and ended up losing his life, murder of dozens of RTI activists across the country are a clear testament to the risk of exposing corruption. Like the soldiers on our frontiers, it is these righteous individuals who try to take it upon themselves the risky job of preventing corruption in a society, where select groups and individuals have already cornered vast wealth and resources, depriving millions of disadvantaged citizens a "right to decent life".

UN Human Rights has an interesting name for such courageous individuals who defend the rights of people against the corrupt usurper of these rights. They refer them as **HRDs or Human Right Defenders**. It is now a well-known fact that pervasive corruption in any society finally results in deprivation of essential human right for the majority of that society – be it right for food, education or justice. The First Quarterly Journal for Human Rights, 2011 laments the threatening situation by stating that **Indian HRDs** have become virtual **"Sitting ducks**" for the corrupt.

How can corruption snatch human right of individuals? A telling example was the recent national debate on legislation for ensuring "Right to Food" - a basic right of any human being on the planet. Although enactment of a specific act for this is a recent phenomenon, effort to ensure the same is decades old. The first PDS of food grains had started following the critical food crisis in 1960s. When it did not yield the desired result, **RPDS** (Revamped Public Distribution System) was conceived in 1992. When that too failed and the number of hungry and malnourished in India threatened to exceed the level of Sub-Saharan Africa, the Central Government started the **TPDS** (Targeted Public Distribution System) in 1997. It was the largest distribution system of its kind anywhere in the world, comprising 5.5 Lakh fair price shops cris-crossing the length and breadth of the country, with crores of poor and hungry as its intended beneficiaries.

Why did such huge efforts fail to solve the problem, thus necessitating the enactment of a legally binding legislation? Eight years after the scheme was launched, in 2005, the Planning Commission had provided the answer in a tell-all report. The reason, in simple terms, according to this report, lies in the "**Governance Deficit**" in the Public Distribution System (PDS) and the public officials managing procurement, storage, transport and distribution of millions of tons of food grains. What is ***Governance Deficit***? Well, in polite and politically correct language used in air-conditioned management seminars, it is a euphemism for the good old "**corruption**". In an astonishing report addressed to the Prime Minister of India, the then Deputy Chairman of Planning Commission wrote the following at that time:

> *"The study finds that about **58 per cent of the subsidized food grains issued from the Central Pool do not reach the BPL families** because of identification errors, **nontransparent operation and unethical practices** in the implementation of TPDS. The cost of handling of food grains by public agencies is also very high. According to the study, for one rupee worth of income transfer to the poor, **the GOI (Government of India) spends Rs. 3.65, indicating that one rupee of budgetary consumer subsidy is worth only 27 paisa to the poor.** The results obtained deserve careful consideration. The study has also suggested some measures for improvement, which would help in finding better ways of ensuring food security for the poor".* **(Extract from the 2005-study on PDS by Planning Commission)**

Apart from familiar words like "non-transparent operation" and "unethical practice" in the above quote, doing a vanishing trick for 58% of food grains, the other striking feature of this Report was the monumental inefficiency of governance of PDS architecture, which consumed Rs. 3.65 for transferring Rs. 1.00 of subsidy to the poor. The bizarre findings prompted one noted policy expert to comment that few Helicopters, carrying bags of cash and dropping the same over villages, could have been

a more cost-effective way for transferring the benefits to the poor. If you think such a damning revelation changed the situation, you are wrong! A year later, Supreme Court felt compelled to constitute a separate body called CVC (Central Vigilance Committee) saying *"...We are giving this unusual direction in view of the almost accepted fact that large scale corruption is involved and there is hardly any remedial step taken to put an end to this. The ultimate victim is the poor citizen who is deprived of his legitimate entitlement of food grains."* Again, you will be wrong to think that change must have happened. But No! It continues unabated, as is evidenced from the death of the 43 year old Ramdas Ghadegavkar of Maharastra in 2010, for trying to expose the same old PDS irregularity through RTI. That Ramdas's death came just weeks after the murder of RTI activist Amit Jethwa, who was shot for exposing illegal mining in the Gir forest region, may not come as a matter of surprise. As late as in 2013, a major news channel was again running an expose under the tagline "*The great grain robbery*", showing how trucks carrying PDS grains were being diverted to private flour mills, not in some rural hinterland, but right in the heart of Delhi, the national capital. Needless to say the success of the national food security legislation, aimed to eradicate hunger and malnutrition, will depend a lot on how we manage corruption rather than food grains.

Who detected the real problem behind the failure of TPDS? Well, it was largely due to the risk taken by a few brave HRDs, who exposed its inner working behind the facade of paperwork. PDS is just one example. From Coal Block Allocation to demise of Air India, from illegal mining under your feet to illegal spectrum above your head, the omnipotence of corruption is too discernible to any careful observer.

Today if you pick up a newspaper in any given month, you can come across the story of somebody, somewhere, who tried to raise his/her voice against injustice and corruption and paid a heavy price for it. Not only in India, the story is the same in other countries that score low in Transparency International's Corruption Perception Index. Like in Indonesia, where there is common saying that *"Corruption is like a bus. You either sit inside or watch it pass by you. But never ever try to stand in front of it"*. Or in Ghana, where the famous anti-corruption activist Anas (full name Anas Aremeyaw Anas), who has exposed countless frauds and corrupt deals in several African countries, always wears a mask. Very few in Ghana, who benefit from Anas's work to improve governance, through anti-corruption, have ever seen him without a mask. The daring activist, whose courage and sacrifice inspired US President Obama during his Africa visit, wears this mask, even while addressing his audience before International fora.

The determined efforts of such people have been instrumental, not just in ensuring good governance in their countries but sometimes in changing the very course of history. Take the example of Dr. Daniel Elseberg, who exposed the Pentagon's Papers related to Vietnam War, causing an International uproar. Labeled as the "Most dangerous Man in America" by Henry Kissinger, he was jailed for 115 years, but

became a hero soon after the Vietnam War stopped and the conspiracy to implicate him became public. Or for that matter, scientist Dr. Jeffrey Wigand, whose whistle-blowing about the *"Anatomy of the Cigarette"* brought the international Tobacco Cartel to the knees, resulting in an unprecedented USD $ 206 Billion penalty in 1997. Such was the moral force of his exposure that the Vanity Fair Magazine had described him in 1996 as *"The Man who knew Too Much"*. Three years later, Russel Crowe played Wigand's character in a 7-academy-awards-nominated movie *"The Insider*", with superstar Al Pacino playing the reel life version of another great investigative journalist of our times, Lowell Bergman, nicknamed the "Truth Spiller ".

Not only the "Providers" of Information (such as RTI activists and Whistle Blowers) are exposed to great risk, but even the people inside Government, who are tasked to "process this information" (such as investigators and interrogators), often become the object of attack, despite their seemingly safe official position. As long as an anti-corruption unit limits itself to routine investigation or catching the proverbial "*small fry*", all seems well. But, the moment they take up a really big case or go after a "*big fish*" or even a fish of moderate size, they too entail serious risk.

Daniel Kauffman, a leading authority in governance and anti-corruption and once Director of World Bank Institute, had remarked "***In today's environment there has been a Risk Inversion. Today Anti-corruption carries more Risk than Corruption."***

Not just while undertaking high profile cases, one Vigilance Officer received telephonic threat to him and his family even while preparing routine "Vigilance Comments" in a case that happened nearly 10 years ago! In fact, many in Vigilance feel that they may be spending more time in defending themselves from the corrupt than offending them. Is that why there are so few takers for anti-corruption posts like that of Lokayukta [For instance, Assam Lokayukta Office became functional in 1986, but till 2013 the post lay vacant] in the country? A pointer to the reluctance to "really" take on the corrupt can be seen in every sector. For example, in a particular Railway Zone, an Officer became so much aggrieved with his posting in Vigilance Department that he decided to move CAT against the highest authority of Railway Vigilance. His grouse was why he has been discriminated and relegated to ***such a post*** while his illustrious seniors had been spared!

That brings us to a peculiar question. Who is afraid of Vigilance?

Some say that Vigilance intimidates people and creates obstacle in genuine work. ***But, in today's environment, an anti-corruption personnel is more intimidated than intimidating, more hampered in his/her work than hampering other's***. If one makes an honest survey among Officers of a performing Vigilance Unit, they would testify to the numerous direct and implied threats they faced, especially during investigation of high profile cases!

But for a committed graft-fighter, these very obstacles serve as the incentive to move forward with more determination. The challenges from the corrupt act as elixir for his daily life. The threats are confirmation of the fact that he is on some real high-value and worthy target. Notwithstanding the risk of going against corruption, it is a great service to the nation. After all, it is not to be forgotten that only in India, all Government employees, a population of the size of Australia, **take two special official oaths every year -** once to act against "**Terrorism**" and the second to act against "**Corruption**" (or "**financial terrorism**")!

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The beast for me is greed. Whether you read Dante, Swift, or any of these guys, it always boils down to the same thing: the corruption of the soul.

Ben Nicholson, British Painter

Exploring New Avenues of Revenue Augmentation (Stevedoring & Shore Handling Services in Ports)

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Every organisation, which is conscious of its financial prospects, remains forever on the lookout to explore new sources of revenue augmentation. Exploring new markets, re-engineering an existing business process, utilisation of material inventory and at times, re-deployment of personnel can be a new area for such revenue augmentation exercise. Take, for instance, the re-pricing of meals at Canteens in Haldia Dock Complex (HDC), commensurate with the factor inputs, which is reported to have yielded extra revenue to the tune of certain Crores of rupees. Take another example of resorting to contracts for mechanised cargo handling at various Berths, through competitive bidding exercise, which is already known to have tremendous potential for revenue augmentation, the benefit of which has become evident in the recent past, especially in Container handling activities in KDS as well as HDC. It is in the context of exploring new avenues of revenue augmentation that pricing of various types of services availed by Port Users, within Port premises, such as stevedoring and shore handling, assume greater importance, in the backdrop of anticipated implementation of the new Stevedoring & Shore Handling Policy, 2016.

1.0 The Regulatory Framework for Stevedoring and Shore Handling:

A Stevedore typically undertakes loading and unloading of cargo from the ship. A Handling Agent engages in shifting of cargo on shore/wharf, transporting cargo within Port area to storage sheds/plots, etc. The main regulatory plank for Maritime and Port activities in India is the **Major Port Trust Act, 1963**. **Section 42** of this Act is about "***Performance of services by Board or other person***". As provided under **Sub-section 1** of this Section, services like *"landing, shipping or transhipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board; receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises"* come within the powers of the Board of Trustees of a Port.

Sub-section 3 of this Section states that

"*…the Board may, with the* ***previous sanction of the Central Government****, authorize any person to perform any of the services mentioned in Sub-section (1)* ***on such terms and conditions*** *as may be agreed upon*."

The simple meaning from the above is that the Board of Trustees of a Port can

undertake stevedoring and shore handling activities, either by themselves or can assign it to a third party. However, such authorization to Agents should be done with "prior permission" of Central Government.

But, what is important to emphasize here is that while assigning such work to a third party, power is vested with Board to frame their own "terms and conditions" to govern the modalities of outsourcing such functions. Because of existence of these very words in Section 42(3), such "terms and conditions" would not precluded creating a "condition" seeking sharing of revenue realized by such Agents/third parties (from Importers/Exporters/Port Users, etc.) with the Port.

1.1 The prior attempts to regulate Stevedoring Service: There is another Section of the MPT Act which is also of relevance to the above narrated issues. It is **Section 123**, dealing with the subject of "***General Power of Board to make Regulation***", which empowers the Board of Trustees to make Regulation in regard to

"*reception, porterage, storage and removal of goods brought within the premises for the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, railways, tramways, buildings and other works constructed or acquired by, vested in, the Board.*"

Using the power of this Section, various Ports enacted Regulations for Stevedoring and Handling Agents. Such Regulation for Kolkata Port Trust was effected through the "**Calcutta Port Trust (Licensing of Stevedores) Regulation, 1987**". **Section 3 of this Regulation dealt with the subject of "*issue of Stevedoring License*" and empowered Chairman to issue Stevedoring License** for a period of 2 (two) years, on application, to persons for acting as Stevedoring Agent at the Port. The licensing fee for Stevedoring, as per the said Regulation, is Rs. 4,500/-, with an additional Rs. 5000/- as Earnest Money, to be refunded if license ceases to operate. However, this Regulation of 1987 **neither stipulated any "condition" for revenue-sharing between Port and such Agents (by way of Royalty or otherwise) nor did it speak about subjecting such Agents to any ceiling rate (to be charged to Importers/Exporters) for services to be performed by them.** In other words, these Agents had full freedom to decide rates for any service to the Importers/Exporters and were not bound to disclose such rates to Port Authorities.

1.2 The Legal basis of Ceiling Rate/SoR for Authorized Agents: A question that

arises here is whenever a Port decides to outsource such activities, i.e., Stevedoring/Shore Handling to a third party/Agent, under the ambit of Section 42(1), what charges are to be allowed to be levied on the end-users (like Importers/Exporters) by such Authorized Agents? Can they be allowed to decide any amount they wish to levy for such services or there should be an upper limit? **This is answered by Section 48 (1) of the MPT Act, 1963**, which says the following:

*The **Authority** shall from time to time, by notification in the Official Gazette, frame **a Scale of Rates** at which and a statement of conditions under which any of the services specified hereunder shall be performed by a Board or any other person authorised under Section 42 at or in relation to the port or port approaches.*

The above Sub-section was substituted by Port Laws (Amdt.) Act, 1997, with effect from 09.01.1997. The word "Authority", in the above Sub-section, means **TAMP (Tariff Authority for Major Ports).** TAMP was constituted in April 1997 to provide for an independent Authority to regulate all tariffs, both vessel related and cargo related, and rates for lease of properties in respect of Major Port Trusts and the Private Operators located therein. An important word in this Sub-section is "a scale of rate", which means that the said Regulatory Authority was supposed to fix separate "Scales" of "Rates" for Ports as well as for those entities authorized by Ports to perform such Stevedoring and Shore Handling services. **Unfortunately, no separate "Scale of Rates", as envisaged in the above Sub-section, was created for such Stevedoring and Handling Agents by TAMP till 2016 (when a new Stevedoring Policy was formulated by Ministry)** although such "scale of rates" were being regularly made since the year 2000 for Private BoT Operators who were handed over Berths, through competitive PPP tendering routes, after TAMP came into effect. Not only are these Operators subjected to ceiling rates specified in their respective SoR (Scale of Rates), but they are also required to share a tender-determined portion of revenue earned from Port Users.

The above situation was not unique to Kolkata Port Trust, but identical to all the Major Port Trusts. As such, Stevedoring and Handling Agents continued to operate within the Ports, against payment of a paltry amount towards License Fees, and in turn, handling millions of tonnes of cargo and earning huge revenue, without having to share any revenue or Royalty with the concerned Port. In fact, the Ports had no mechanism in place to ascertain even the amount being charged

by Stevedoring and Handling Agents from the Exporters/Importers for rendering Stevedoring and Handling services. Thus, there existed no official information as to whether the pricing by these Agents were actually optimal from the point of view of Importers/Exporters, who are the ultimate stakeholders and towards whose benefit & convenience the Port is expected to be attuned to.

The above state of affairs continued for a prolonged period of time [since 1964 (when MPT Act was given effect) till 2016] due to a policy vacuum in an area where considerable scope for revenue augmentation exists. However, the issue of revenue sharing/Royalty upon the numerous Stevedoring Agents/Handling Agents continued to garner serious attention by policy makers over time. In fact, not only the Ports, but even the Ministry and IPA had been engaged with this matter for quite some time. Meanwhile, some Ports had experimented with various models of revenue sharing/Royalty.

2.0 Latest policy change in 2016 and introduction of Royalty Scheme:

The policy vacuum in the arena of Stevedoring and Handling Agencies was finally addressed, in a centralized manner, when **Ministry of Shipping** notified on their Website the new "**Stevedoring and Shore Handling Policy"** in **June 2016**. This Policy document provides for not only levying **Royalty** (per MT of cargo serviced) but also fixing a **ceiling tariff** for various Stevedoring and Shore Handling services (above which the Licensed Agents are not permitted to charge users). In addition, the Policy lays down provisions to stipulate **performance norms** (the level of cargo handling output to be achieved by such Agents). Pursuant to the above Policy document, KoPT prepared their own Stevedoring and Shore Handling Regulation, got it approved by Board, notified in the local Gazette and lastly forwarded it to the Ministry for Notification in the Gazette of India. The last leg of the activities prior to actual implementation of this policy, i.e., approval of Central Government and publication in Gazette of India, is currently awaited. Similarly, KoPT also prepared a draft Scale of Rates, containing the ceiling tariff for various cargo handling services, to be applicable to the Stevedores and Shore Handling Agents, who will get License under the latest Policy of 2016, after it finally gets published in the Gazette of India.

The current Policy envisages 2 (two) new aspects, which did not exist earlier (a) Creation of "ceiling tariffs" for various Stevedoring and Shore Handling activities and (b) levying of Royalty on S & SH Agents by Ports.

Aspect	Earlier Policy situation	New Policy of 2016
Provision for any "Ceiling Tariff" for S & SH Agents	Although MPT Act mentioned that the licensed agents should not charge more than the prescribed "Scale of Rates", no such "Scale of Rates", applicable to S & H activities, were made during 1975 - 1996 by any Port. The same situation persisted during 1997-2016 after TAMP was created in 1997 as the sole Authority for fixation of such Rates. During this period Ports were not aware of what the S&H Agents were charging to final stake holders (Importers/ Exporters) for rendering their service nor did they demand such information from them. In other words the only obligation these agents had was to pay the annual license fee/renewal fee for continuing their business within Port.	The Policy directs Ports to create a Ceiling Tariff and send it for approval and notification by TAMP. Any S & SH agent is prohibited from charging more than this TAMP - Approved "Ceiling Tariff" or "Scale of Rates" for that activity to Importers/ Exporters or their agents.
Provision for any "Revenue-sharing Mechanism"	Although it was stated in the MPT Act that when a Port decides to authorize a third person to undertake cargo-related services they can also frame a "terms and conditions" for operation of such authorized agents within port. However no specific direction for demanding "revenue-sharing" from licensed agents as a pre-condition for issue of licenses (except collection of License Fee) were made by any Port during 1975-1996 nor did TAMP insist upon the same after its creation in1997.	The current policy envisages collection of such "Royalty" from S & SH Agents. However, it has left the determination of quantum of "royalty" to be levied on such licensed agents on a "per ton" basis to individual Ports. It does not indicate any particular methodology for Ports to follow while deciding the level of royalty

2.1 Determining the Optimal Royalty Amount? Alternative models for revenue augmentation

As mentioned above, no definite mechanism has been envisaged in the New Policy of 2016 for determination of quantum of Royalty to be taken from the Authorized Stevedores/Agents. This has been left to the individual Ports themselves. The currently proposed level of Royalty differs from Port to Port (for Kolkata Dock System, it is Rs. 5/- per MT) and will come into effect only after the 2016 Stevedoring Policy gets notified in the Gazette. However, it is obvious that

an optimal level of Royalty will depend upon the factor cost sustained by a Stevedoring/Handling Agent for providing the service and his profitability. Authentic official data on what such Agents charge and what profits they generate is not available, since Ports never collected such information from them. Thus, price discovery of such privately rendered services becomes very important.

Was there ever a price discovery?

At present, there are mainly 5 (five) distinct modes of undertaking such Stevedoring and Handling Services within a Port, with varying levels of price discovery, as follows:

Sl. No.	Agency for Operation	Level of Price Discovery
1	By Port using Port's own manpower and equipment	Price discovery not needed as Port is the direct service provider.
2	Through Licensed S & H Agents with only License fees	Undiscovered and unmonitored Price discovery. No revenue generation potential.
3	Through Licensed S & H Agents with License fees, ceiling tariff and Port-determined Royalty	No Price discovery, Minimal Revenue Generation Potential
4	By BOT Operators with pre-determined Revenue-Sharing arrangement with or without Private Investment	Integrated Price discovery, moderate to significant Revenue-generation potential.
5	Mechanized Handling Contract for on-board and on-shore activities through competitive tendering	Perfect Price discovery for constituent services and optimal revenue-generation potential

The first model is no longer prevalent in most Ports. The second model, which was prevalent till 2016, has no revenue potential, since the only income to Ports was the license fees. The third one has limited generation potential since the Royalty is not determined through competitive tendering mode. However, the last 2 (two) models have been quite beneficial to KoPT in recent times, especially the last model. Interestingly, it is only in HDC where a proper price discovery could take place, as a result of competitive tendering in two Berths.

2.2 The ABG tender and discovery of Stevedoring price: Now, let us look at the **price discovery for Stevedoring and Handling Services through competitive tendering**. HDC perhaps made the first ever attempt to discover the actual cost of Stevedoring and Handling Services, through a competitive tendering

mechanism, whose outcome was very revealing. The finalized rate on ABG was Rs. 80.25 per MT in Berth Number 2 and Rs. 69.05 per MT in Berth No. 8 for performing Stevedoring & Handling activities and that too, by using sophisticated equipment like Mobile Harbour Cranes. As against these contracted service rates, HDC was entitled to collect fees from Importers/Exporters as stipulated in their own TAMP-approved SoR, i.e., at a much higher rate of Rs. 231 per MT for such standard services. The difference between this rate (Rs. 231) and the rate which HDC was paying to the Contractor (Rs. 80.25 and Rs. 69.05) thus landed in the lap of HDC as huge net surplus. During the 2 (two) year period that ABG worked in HDC (**from 11/09/2010 to 22/09/2012**), HDC handled around 10.19 million MT of cargo in these 2 Berths, resulting in a **net revenue gain of Rs. 165 Crores in just 2 (two) years!**

2.3 Tender-determined Royalty Model : The Optimal Solution?

After the ABG contract collapsed in Haldia in the year 2012, the HDC Authorities floated a tender in July 2014 for shore handling operations in the Port, for dry bulk commodities. The successful bidder in this tender was required to be the one who quoted the highest quantum of Royalty, to be paid to Port, without exceeding the SOR prescribed for HDC for such operations. For instance, the SOR of Haldia prescribed a rate of Rs. 119.48/- for Shore Handling activity of bulk cargo. The prospective bidders were asked to quote a definite sum, which they should pay to HDC as "Royalty" for every tonne of cargo handled by them, while charging their users, i.e., the Importers /Exporters a rate not exceeding Rs. 119.48 / MT. The successful bidder quoted a maximum Royalty rate of Rs. 14.77 per MT at that time. As per tender condition, the bidders who match the said rate and agree to pay such Royalty were to be allowed to undertake shore handling service inside the Port. Several agreed to pay (which resulting a panel of 8 such firms), while several others legally challenged the imposition of Royalty on the Shore Handling Agents on the basis of a tender before Calcutta High Court. However, HDC authority continued to levy and collects such Royalty throughout the subsequent Judicial pendency. It is a well known fact that the cost of doing business in the Port area at HDC is generally more than that in Kolkata (as noticed in several important tenders of identical scope in KDS and HDC). The revenue gain, even from such tendering mode, has been quite substantial in various Berths of HDC. In the event of such ground reality, the proposed fixation of Rs. 5 per ton as Royalty in KDS area in 2018 does appear incongruous to a level of Royalty of Rs. 14.77 per ton in HDC and may require to be revisited in due course.

2.4 The arguments against a tender-determined Royalty model:

2.4.1 The Economy of Scale Argument: Some Officials, during informal discussion, were of the opinion that the total bulk cargo handling volume

in KDS (after discounting the Containerised cargo volume, where operation is handled through a pure-contracting model) is rather low, i.e., of the order of 7 to 8 million tons. Therefore, a level of Royalty higher than Rs. 5.00 / Ton may not be justified. However, JNPT also handles predominantly Containerised cargo and little bulk cargo. In 2016-17, out of a total of 62.15 MMT of cargo handled by JNPT, Containers accounted for 54.53 MMT while non-containerised cargo volume was hardly 7.62 MMT - a situation not very different from KDS. However, the Royalty decided by JNPT is reported to be Rs. 20.00 per MT, i.e., a level that is 400% of Royalty determined for KDS. Further, the rate of Royalty approved by Board of Trustees of Kolkata Port Trust in HDC stands currently at Rs. 14.77 / MT, which represents 12.36% of HDC's SoR for shore handling. Thus, the current level of Royalty proposed for KDS is difficult to be explained by the "economy of scale" logic.

2.4.2 Royalty-burdened Service Providers may adversely impact cargo volume: Another opinion is expressed that imposition of Royalty can be burdensome on these Agents and dissuade them from taking initiative to bring more cargo to a Port. Here again, the cargo statistics of HDC in Post-Royalty period does not support such assumption. On the contrary, after the Royalty of Rs. 14.77 / MT was imposed upon the Shore Handling Agents, by way of tender in late 2015 and early 2016, much to their dislike and protest, the growth in cargo volume in HDC had increased by a larger margin than the earlier period (Cargo volume in HDC increased from a level of 34.14 MMT in 2016-17 to 40.49 MMT in 2017-18, representing one of highest YoY growth in recent times). These figures, at the least, belie any presumption of any direct negative correlation between imposition of Royalty and cargo volume in a Port.

2.4.3 The "Brink of Profitability" Argument revisited: That the burden of excessive Royalty will ultimately be passed over to the last stakeholders (Importers and Exporters) in the logistic chain, and will not be shouldered by the S & SH Agents themselves, presumes that these Agents are actually operating in the "**brink-of-profitability-region**" of their business operation and hence cannot absorb any "Royalty" imposed upon them. Verifying this would require knowledge of the "income" received by them from their customers and "expense" sustained by them for carrying out their services. The "income" received by these Agents would depend on what "Rates" they charge to the Importers/Exporters for standard on-board and on-shore operation per ton of cargo handled. While "cost of the services" offered by these Agents has been discovered in past from several competitive tendering process (such as the ABG tender of 2010 for bulk

handling, the tenders of 2014 for Container Handling, etc.), authentic data on "income" is hard to come by as these Agents do not disclose to Port Authorities the "rates" they charge to their customers for their stevedoring/handling services. The Ports, in turn, have never insisted upon these Agents for disclosing the "rates" charged by these Agents to trade. It needs to be remembered that as per the relevant provision of MPT Act, when a Port authorizes a third person (such as these licensed agents) to carry out cargo related services, the Agents should not charge a rate in excess of the "Scale of Rates". Since such a Scale of Rates applicable to Stevedores and Handling Agents has never materialized till 2016, these Agents had no policy-restriction on charging any price they wished to the Importers/Exporters for services rendered by them.

For instance, in the Container handling contract in KDS, operational since 2014, the actual cost of rendering Container handling service was discovered to be Rs. 1,748/- per TEU, while the Scale of Rates for KoPT for the same service was in the region of nearly Rs. 5,200/- per TEU. After the above contract came into existence, KoPT have been charging this rate (Rs. 5,000 – 5,200/- per TEU) to Importers/Exporters and reaping the differential as net-surplus. From this, it is clear that the real cost of the Container operation at KDS is Rs. 1,748/-, which would have been sustained by a Licensed Agent, had they been handling the Containers instead of the Contractor. But, the question here is what they would have charged to their customers in past? Were they more likely to charge their customers the SoR rate of Port or something lesser? Actually, there is no reason to believe that they would have charged anything lesser than Port's SoR, when there was no binding Policy provision in past to restrain them.

2.4.4 Such a view also finds confirmation from another authentic source - a Tata Group Company, which operates Berth No. 12 in HDC under a 30-Year BoT Contract (operational since 2002), with a "Royalty" share of 10.85% from revenue earned by the Company. This was what was found from their latest "Segregated Berth Specific Financial Result":

Profitability of BoT Operator during 2016-17	
Cargo Handled	1.36 MMT
Revenue earned from Cargo handling at Berth No 12	Rs 74.33 Crores
Total Expense incurred (includes Royalty of Rs 7.909 Crores paid to Port)	Rs 55.00 Crore
Profit Before Tax	Rs 19.32 Crores
PBT as % of Total Revenue	26%

From the above, it can be seen that even after paying Royalty of 10.85%, the Company's Profit Before Tax (PBT) still works out to 26% of the revenue earned from the Berth from just 1.36 MMT of cargo. Although revenue earned depends on the type of commodity handled, the above financials are a good enough indication that the Private Stevedoring and Handling Operators do not have a very thin profit margin and have been enjoying more than decent profitability as compared to other business sectors.

Documentary evidence in past records of KoPT actually state that these Licensed Agents, in the past, might have been charging exorbitantly to their customer, to the consternation of Port Authorties. This evidence comes from a letter written by KoPT to Ministry, when Ministry sought their comment on Stevedoring charges during a previous attempt in formulation of a Stevedoring Policy in 2007-2009. In this letter, KoPT expressed their view in the following words (in their letter vide no. Admn./7343/STV dated 13th March, 2008):

"**Stevedoring charges**:*It is proposed that the Stevedores' margin of profit should be regulated by TAMP. The Stevedoring market at present is not sufficiently competitive.* ***As a result, the Stevedores enjoy much greater market power vis-a-vis their customers and there are many allegations that they exploit their customers through competition of exorbitantly high charges, making the transaction cost at the Port unduly high****. In fact, under the law, the Stevedores are required to be appointed under Section 42(3) of MPT Act, 1963 and their rates are also to be determined by TAMP*."

2.3.1 Apprehension of business-capture:

In the context of imposition of Royalty, through tendering mechanism, sometimes apprehension is expressed that such a process can lead to a single/dominant party capturing all shore handling/stevedoring contracts, by choosing to quote a very high Royalty (which, in any case, he may pass on to the eventual stakeholders, i.e., Importers and Exporters). Such a scenario can lead to a monopoly service provider, who can bring down the Port to a halt. However, such apprehensions can be eliminated in various ways - (a) the bid can stipulate a limiting number of Terminals where any successful bidder can operate, even if he emerges as the highest bidder of Royalty, (b) creating a panel of Agents who must be unrelated parties and who match the highest Royalty bidder (as done in the above HDC example), etc. However, it must be borne in mind that success of determination of optimum level of Royalty, through a tendering

mechanism, is critically dependent upon a cartel-free bidding process. This is so because although there appear to be a number of such S & SH Agents in various Ports, the cargo handling business in Major Ports appear to be dominated by a very few large service providers.

3.0 Conclusion: The collected data and their analysis above appear to support the view that a more rigorous and uniform approach is required for determination of the Royalty, not only in KoPT but also in the Port sector as a whole. The tender-driven Royalty model, prevalent in HDC, can serve as a relatively more robust mechanism for optimal determination of the Royalty. Notwithstanding the present Policy orientation, to collect Royalty as a form of revenue sharing, the "pure-contracting model" for such services currently followed - for Container handling in KoPT and bulk handling at several Berths of HDC - appear to have a substantial edge in Financial terms. Vigilance is in the process of collecting more data, so as to be able to contribute to Port Management more in their continued quest for an optimal solution.

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"If money help a man to do good to others, it is of some value; but if not, it is simply a mass of evil, and the sooner it is got rid of, the better."

Swami Vivekananda

Farewell to Comptometer: *The Machine that slowed the Process*

By R. Minima Basu,
AVO, Vigilance Department

The "Comptometer" was world's first commercially successful **key-driven "adding machine" and hence the ancestor of modern day "calculator".** It was invented 130 Years ago in 1887 by an American, Dorr Eugene Felt, and was patented by Felt and Tarrant Manufacturing Company of Chicago. A device where an operator is required to simply type the digits of various numbers he wants to add without the need to insert a "+" symbol in between, it can be actually faster than a modern day calculator as far as the mathematical operation of "addition" is concerned. It became a rage in US and Europe immediately after its invention spawning a separate industry of its own like that of printing press and typewriters. But after World War – II as more advanced electronic calculators made their way in to the market, the old generation "Comptometers" lost the race. By 1970s and 80s these devices had almost vanished except being vintage objects displayed in technical museums of the World.

However when Vigilance undertook a study of the bill passing process in Kolkata Dock System they were surprised to see two of these technological relics still in action. There were even sanctioned posts of "comptometer operators" and regular recruitments were being conducted to fill up these posts. These two machines, popularly known as "***Compto***" in Port-Contractor-Circle, were being used to **check the arithmetical accuracy of figures contained in contractor's bills by the Civil Engineering and Finance Dept. of KDS (Kolkata Dock System)**.

When UK embarked on a major governance reform in 1990s an analysis was made on the various types/categories of government jobs and their functional justification. It was then discovered that posts created in 16th Century to warn British people about the invading Spanish Armada through a system of flaming beacons perched on coastal highland were still continuing with the same job specification. The existence of such techno-relics as "comptometer" in Kolkata Port Trust in the 21st Century is no less hilarious an example.

Enquiry revealed that the use of Comptometer to verify calculations in contractor's bill has been abandoned by HDC (Haldia Dock Complex) authorities, functioning under the same KoPT administration, years ago!

How many Checks does a bill need before being cleared for payment?

The basis of bill preparation in an engineering contract is the MB [Measurement Book] where progress of completion of each items of work of BOQ is continuously recorded along with the rate and the rupee-value of an activity in progress. In most organizations, normally, entries made in MB are checked and certified by field level supervisor, an entry level officer and the contractor. The details of the measurement

book are extracted from time to time and presented by Contractor in the form of a bill for periodic disbursal of payment. The constituents of bill are certified by one or more officers of the department.

In KDS, entries made in the MB are first verified and certified by 3 Port level officers and the contractor. The first officer is called "Measuring Officer"; the second "Check Measuring Officer" and the third is an officer at Superintendent Engineer level. While these officers are responsible for conducting varying percentages of test checks on the completed items, their check was actually limited to quantitative aspects only. The second part i.e. the multiplication of quantity and rate and arriving at the "rupee value" of the completed item in MB was being left to the specialized "comptometer operator". This was found to be continuing even today.

Once these 4 entities (3 Port Officers+ Contractor) and the "Comptometer" operator complete their job in MB, an abstract is prepared for making the contractor's bill. This abstract, again signed by the same 4 entities, not only contains the quantity, rate and value of the completed items but also the excess/extra items undertaken by the contractor. Thus before the bill of contractor is ready for journey to finance wing, it already bears 9 signatures.

The peculiar aspect of processing in KDS is that while another set of officials of finance wing verify the entries in the abstract, they leave the checking of numerical accuracy to their own "comptometer operator". In other words for checking the accuracy of A x B=C [A being the quantity, B the rate and C the total value] several graduate engineers (some with even higher degree) and two compto-operators were being pressed into service. Such repetitive accounting /arithmetic work can be enormously reduced by a single Excel Sheet which has been on the scene since 1995 (as elaborated below). The insistence of mandatory checking of numbers by two comptometers at two stages not only leads to undue delay in bill passing but harms the ease of doing business in the port. Sample check by Vigilance wing in one civil engineering section has indicated that a contractor's bill gets delayed by an average of 21 days on the desk of the Comptometer operator. If one observes such convoluted manner of verification for simple calculation with the use of long obsolete Comptometer machine, one is inclined to think that modern IT advancement has somehow bypassed Kolkata Port Trust.

Two of the important preventive functions prescribed for a Vigilance Unit in the latest Vigilance Manual are

> *"To review the regulatory functions to see whether all of them are strictly necessary and whether the method of discharge of those functions is capable of improvement" and "To leverage technology for making preventive vigilance function effective". Weeding out unnecessary and repetitive steps should be regular executive exercise for improving governance and ease of doing business.*

Keeping this in view, Vigilance department suggested the following improvements to Port management:-

System Improvement Suggested:

1. The format of the abstract bill which is filled up by the contractor and signed by 3/4 Port officials; can be recreated in an Excel Sheet with cell-protected formulae for value, subtotal & total. Such an Excel template can be put in the website to be downloaded and used by the Contractors. The same template can be kept with executive department and finance department. Once submitted by the Contractor the variable data can be copied to the equivalent cells of the template kept at Port end which will automatically detect arithmetic errors if any.

2. Use of such Excel Sheet has the advantage of immediate implement ability and reduces the time consumed for repetitive checks to an instant. One need not wait for a fully automated software system that incorporates the entire tender-to-bill passing system which can come later. The capability of the aforesaid Excel Sheet can further been enhanced by introducing a few Macro / VBA Programme-snippets. The expertise available in the EDP Cell of KoPT would be enough to design such feature-rich Excel Template. It is also understood that many officers manning the EDP Cell have undergone extensive computer training and are proficient even with high-end data base and coding language like PL/SQL. Hence design of such an excel sheet will be a simple task for such in-house experts.

3. Even if it is decided to retain such comptometer operator posts, they can be gainfully redeployed at some other area where there might be urgent requirements of manpower.

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Corruption, the greatest single bane of our society today.

Olusegun Obasanjo, former President of Nigeria

Diving deep to explore the right vendor in times of emergency [Best Practice Story from Haldia Dock Complex]

By Debananda Dasgupta,
Asst. Manager, Vigilance Unit, HDC

Haldia Dock Complex (HDC), under Kolkata Port Trust (KoPT), is a Riverine Port located on the Right Bank of River Hooghly. A Lock System, comprising 2 (two) Lock Gates [Inner and Outer Lock Gates], separates the Impounded Dock of HDC from the River. There are 14 (fourteen) Berths within the Impounded Dock of HDC, wherein major part of cargo handling takes place.

In August 2014, during a night shift, operation of the Outer Lock Gate suddenly halted. After underwater inspection by Port Divers, it was found that 3 (three) Base Plates, which are the bottom-most part of any Lock Gate, had been dislodged and entangled with the Outer Lock Gate. At about 63 feet below water level, Base Plates of Lock Gate move over fixed Sliding Ways and the Lock Gate itself rests on the Base Plates when it is not moving.

Although the Port Divers and other operational staff somehow managed to keep the Outer Lock Gate operational, each Lock operation involved huge uncertainty and in case of failure of Lock Gate, the entire operation within the Impounded Dock was bound to be jeopardized. Smooth functioning of the Lock Gates can be said to be the heart of Port operation in HDC. If these Gates do not function, then entire HDC could come to a standstill and merchandize export to/import from entire Eastern India would be hampered.

There was no solution available to overcome this unprecedented problem, which HDC had never faced since its inception in 1977. As per recommendation of the Design Consultant of HDC Lock, Base Plate replacement could be done in dewatered condition. However, dewatering the Impounded Dock means a complete stop to vessel movement and cessation of cargo handling operations inside Impounded Dock for prolonged time, with hard-to-imagine consequences. Therefore, the only solution was to conduct an underwater welding & repair operation 63 feet below water level! It is pertinent to note that underwater welding at such depth is a technically complex job. It needs Divers who are certified to work at that level below water. Considering the gravity of the situation, the immediate need was to locate some vendor who could provide such a solution. Fortunately, a well-known Mumbai-based firm, who was working at KoPT, readily agreed to carry out such underwater repairing work, at a lump-sum cost of Rs. 1.47 Crore. At that time, no detailed drawing or sketch was available. Consequently, the quote was of "lump sum" nature. In other words, it was a solution-seeking (or outcome-based) quote, with details of actual repair left to the vendor.

The Nomination Situation: Initially, it was thought that the said Mumbai-based

firm would be engaged on **nomination basis** to carry out the underwater repairing of Outer Lock Gate, with minimum effect on vessel movement through Lock. The extreme urgency and the technically complex nature of the job was justification enough for finalizing the quote on "nomination" basis. Moreover, since no detailed drawing could be made ready immediately, the precise scope of the work was unknown. Nomination mode of contracting to overcome a critical and complex situation, where no technical solution is available (especially in view of recommendation of the Design Consultant of Lock) is not a prohibited option. Under the aforesaid scenario, had the authorities gone for a "nomination mode" award on the vendor, the cost itself could not have raised any eyebrow. But there was a small technical problem. Even at a cost of doing the job at Rs. 1.47 Crore, the firm refused to provide any guarantee for the underwater repairing work, which meant that recurrence of the problem could not be ruled out with any degree of confidence.

Exploring technical solutions and preparing the scope of work: Instead of awarding the work on nomination basis, without any guarantee, the HDC authorities started thinking on open competitive bid. They realized that the first thing they would need for an open bidding process was to have a definite "scope" for the intended repair work. The concerned Officers of Plant & Equipment (Mechanical & Electrical Engineering) Division, HDC decided to meet this technical challenge head-on. They examined various options, interacted with various professionals across industry (without spending anything) and finally explored an alternate solution of Mechanical jointing for the said repairing work. Accordingly, scope of work, with relevant sketches / drawings, was developed and a replica of the Mechanical Joint was also created. The underwater repairing was needed to be done in-situ, with minimal effect on vessel movement through Lock. Almost within a fortnight after dropping the idea of nomination contract, an open tender was invited (with the shortest possible notice for opening) for carrying out underwater repairing of Outer Lock Gate as well as for other underwater jobs at Lock Entrance, with a defined scope.

Exploring the right vendors: Specifying a definite scope was not the end of all problems. One has still to find a company who had skilled Divers to work at such depth and undertake such critical and complex repairing work. It was a general perception that most of the diving agencies are available in coastal regions, i.e., with work experience in Port projects or Navy. The Engineers sent information to all such authorities and got the tender published in their bulletin board. But when tender was opened, a Guwahati-based firm quoted the lowest - an unbelievable sum of Rs. 3 Lakh for underwater repairing of Outer Lock Gate. How could a firm in Assam, which has no Sea Port experience, carry out underwater repair work at 63 feet depth was the question in everyone's mind at first. But, few knew that the North East region has many Hydro-electric projects (Dams), where such underwater repair work is regularly required, at much deeper level than 63 feet. This firm, indeed, had vast experience in several complex and critical underwater

repairing work under higher water column, in such Hydro-electric Power projects in hilly regions. **But the surprise was their quote – Rs. 3 Lakh – and that too with guarantee!** Of course, in such a situation, workability of quoted rate becomes a question. Consequently, reasonableness of their quoted prices was examined by a committee of Officers and found to be in order, after comparing the cost break-up with their earlier executed work, assigned by another Government agency, in the recent past.

The firm deployed experienced Divers and other personnel, with sophisticated modern equipment, to execute the work. They had utilized the non-operational time of Lock for carrying out the underwater repairing work of Outer Lock Gate and successfully completed the same, with minimum effect on vessel movement through Lock. Till date, the repaired portion of Outer Lock Gate is functioning without any problem. A situation, where a nomination contract at significant cost without any guarantee seemed like a certainty, could be avoided, only because of exercise of in-house technical expertise and diligence, coupled with recognizing the potential of the right vendor.

At this point of time, it is worth remembering what CVC had stated in an Office Memorandum issued in the year 2002:

> *".. The consultants are still appointed in an ad-hoc and arbitrary manner without inviting tenders and without collecting adequate data about their performance, capability and experience. In some cases, the consultants were appointed after holding direct discussions with only one firm without clearly indicating the job-content and consultation fee payable to them. Often the scope of work entrusted to the consultants is either not defined property or the consultants are given a free hand to handle the case due to which they experiment with impractical, fanciful and exotic ideas resulting in unwarranted costs. The organizations display an over-dependence on consultants and invariably abdicate their responsibility completely to the latter."*

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PROCUREMENT under URGENCY:
Lessons from the forgotten Commonwealth Games (CWG) 2010

By Sandip Banerjee,
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It is an undeniable fact that every organisation encounters situations involving urgency/emergency/catastrophe/disaster management. However, it is also a matter of fact that such situations happen to be exceptions rather than rule, except in organisations exclusively dealing with emergency services/disaster management, etc. Under such emergent situations, it is obvious that following normal rules may prove counter-productive to meet organisational needs. On the other hand, citing situations of urgency (or even creating them at times) to resort to procurement short-cuts and sacrificing due diligence may adversely affect the organisation itself - in terms of transparency, institutional faith and even revenue in the long run. The instant topic deals with such kind of procurement under situation of urgency/emergency/ catastrophe/disaster management in an organisation and whether urgency can be treated as the one-word-justification to circumvent normal tendering process [Open Tender Enquiry (OTE)] and propriety of public buying.

The Government has duly recognised that there may well be urgent/emergent/ catastrophic/disaster management situations, when an organisation needs to handle procurement of goods and/or services in a somewhat different manner (from normal tendering activities) to cater to such situations.

For instance, **Clause No. 8.2** of the **Manual for Procurement of Goods 2017** of **Department of Expenditure**, **Ministry of Finance** provides for the following:

8.2 Handling procurement in urgencies/emergencies and Disaster Management

There are sufficient fast track procurement modalities to tackle procurements in urgent/emergent and Disaster Management situations. Enhanced delegations of procurement powers in SoPP may be considered to handle such situations. Use of following modes of procurements may be utilised in order of speed (under Disaster Management situations, threshold limits of modes of procurement may be increased for higher level of officers, with the sanction of Secretary of the Department):

i) Direct Procurement Without Quotation

ii) Direct Procurement by Purchase Committee

iii) SLTE/Limited/Single Tender Enquiry, with reduced time for submission of Bids

Similarly, several Rules of the **General Financial Rules 2017** of **Department of Expenditure**, **Ministry of Finance** provide as follows:

Rule 162 Limited Tender Enquiry.

"(iii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty-five Lakhs, in the following circumstances. (a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated."

Rule 166 Single Tender Enquiry.

Procurement from a single source may be resorted to in the following circumstances:

"(ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained."

Rule 194 Single Source Selection/Consultancy by nomination.

The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

"(ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance."

It emanates from the above that although provisions have been kept for Limited Tender Enquiry (LTE), Single Tender Enquiry (STE), Nomination, etc., for handling procurement in urgencies, it is essential that the same may only be resorted to, where adequate justification is available for such LTE/STE/Nomination. It is also necessary that full justification for such LTE/STE/Nomination should be recorded in the file and approval of the competent authority obtained before resorting to such modalities of procurement.

Unfortunately, more often than not, it has been observed that procuring entity circumvents normal tendering process [Open Tender Enquiry (OTE)] and propriety of public buying of goods and/or services, citing overwhelming urgency/emergency as the justification to take recourse to LTE/STE/Nomination. For instance, delays in ascertaining the need of procurement of goods/services delays generation of the Indent for procurement and can precipitate a situation of urgency itself. This situation may adversely affect the organisation in several ways, including, but not limited to, the following:

i) Adoption of shortcut procurement procedures that dilute transparency, thereby paving the way for unscrupulous practices.

ii) Delays in delivery of the intended goods and / or services, resulting in hampering of the functioning of the organisation.

iii) Goods/services procured through LTE/STE/Nomination mode, citing extreme urgency/emergency, may end up not being utilised for months, even years altogether, thus defeating the very purpose of resorting to shortcut procurement modalities.

iv) Lack of reasonableness/workability of rates and justified simply on the ground of urgency, leading to revenue loss (in case of high rates) and contract failure (in case of unworkable rates).

v) An overall chaos and irrationality in decision making, when many such "urgent procurements" take place within a project.

Case Study 1 :: **Self-created Urgency** : One of the worst examples of the above situations came to wider public awareness during the Commonwealth Games (CWG) of 2010. Although it was known way back in 2004 that India was going to host the game in 2010, there was tremendous delay in pre-tender preparations, leading to self-created urgency. The **CAG Audit Report on XIXth CWG 2010** [**Report No. 6 of 2011-12**] is replete with observations pertaining to irregularities brought about by short-cut procurement practices followed, citing the argument of urgency. A few illustrative ones are reproduced hereunder:

> *"There was enormous bunching of high value contracts in 2010, particularly in the second and third quarters.* ***The argument of urgency was used to obviate the regular process of tendering for award of contracts****. We found numerous instances of single tendering, award on "nomination basis", award of contracts to ineligible vendors, inconsistent use of restrictive Pre-Qualification (PQ) conditions to limit competition to favour particular vendors, inadequate time for bidding, cancellation and re-tendering of contracts, and inexplicable delays in contract finalization,* ***all of which seriously compromised transparency and economy****. Further, there were numerous deficiencies in the appointment of external consultants and advisors and management of the multiplicity of contracts thereof."* **[Ref.: Page No. 9 of the CAG Report]**
>
> *"While healthcare for the athletes and the Games Family was ensured, we found that the delayed finalization of the HAP, compounded by further delays during tendering/ award, was used to facilitate deviations from stipulated procurement procedures for ensuring transparency and competition on purported grounds of urgency."* **[Ref.: Page No. 32 of the CAG Report]**

The extent of chaos that may result from such procurement short-cuts, undertaken on grounds of purported urgency, is mind-boggling. A small compilation of procurements that took place with different rates across vendors and across clusters located in the

same city, even for well-known off-the-shelf items, paints the chaotic nature of resulting decision making:

Items	Lowest Rate contracted by the Organizing Committee of CWG (Rs.)	Highest Rate contracted (Rs.)
Tissue Paper Towels	62	3,751
Tissue Rolls	22	3,751
Garbage Solid Waste Bags	4	3,068
Water Jug	152	1,944
Disposable Glasses	1	37

Outcomes like the above compelled the CAG to make terse observations as follows:

> *"The modus operandi observed over the entire gamut of activities leading to the conduct of the Games was: inexplicable delays in decision making, which put pressure on timelines and thereby led to the* ***creation of an artificial or consciously created sense of urgency****. Since the target date was immovable, such delays could only be overcome by seeking, and liberally granting, waivers in laid down governmental procedures.* ***In doing so, contracting procedures became a very obvious casualty****. Many contracts were then entertained based on single bids, and in fact, some of them were even awarded on nomination basis. Taking liberties with governmental procedures of the aforementioned kind led to elimination of competition.* ***A conclusion from such action which seems obvious is that this could indeed have even been an intended objective! Eliminating competition led to huge avoidable extra burden on the exchequer****. It can most confidently be concluded that due to the perceived sense of urgency and resultant lack of competition, the country had to pay a higher price for the same activities, equipment and infrastructure. Further, it is yet to be conclusively established that the end product was of the desired quality."*

The hapless procedure for procurement adopted in the CWG 2010, putting up justification of purported urgency, led the CAG to adopt an even more acerbic tone as follows:

> *"A basic canon of financial propriety is that the expenditure should not prima facie be more than what the occasion demands, and officials charged with stewardship of Government funds must exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money. Further, not only should transparency and fair play be exercised, the public at large should perceive that Government monies have been expended in a fair and transparent*

manner and officials will be held accountable for lapses. Government needs to take appropriate measures to live up to the high expectations in this regard."

Case Study 2 :: **Genuine Urgency** : However, not everything is bad about resorting to LTE/STE/Nomination mode in genuinely urgent/emergent/catastrophic situations, since the same can result in effective and intended outcomes. For instance, not so long ago, a dry bulk material handling equipment had accidentally been derailed, thereby adversely affecting Iron Ore handling through a particular Conveyor route. Keeping in view that productivity of the plant was at stake and the Port lacked adequate infrastructure for the remedial work, it was administratively decided to engage a renowned EPC company, which had been engaged in a separate project inside the same Port, to undertake necessary work to commission the equipment. The work was executed by the EPC company, within a very short time (a few days), at a cost of a few Lakhs. This not only restored the optimal productivity of the plant in a very short span, but avoided exporters from diverting the cargo elsewhere, thereby ensuring valuable revenue for the Port, running into Crores.

Now, coming to the conclusion, what is the way out? The answer lies in the various Government guidelines, rules and regulations already discussed earlier. The following are only a few illustrative pointers:

1. Need assessment should be done sufficiently in advance of the time when goods/services are required. This is likely to eliminate "man made urgency/emergency".
2. In case or urgent requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.
3. In case of genuine urgency/emergency/catastrophe/disaster management, it needs to be carefully weighed whether OTE (or at least LTE) mode, maybe with reasonably reduced deadlines related to submission of bids, can be adopted for the procurement process necessary to address the situation. However, in this regard, the overall interest of the organisation should also be given appropriate weightage.

To conclude, it is worthwhile to keep in mind that there is no one-size-fits-all solution to procurement under urgency. Rather, individual cases are to be dealt on merit, for the overall organization interest. However, actions executed with transparency and appropriate justification, with due approval from the competent authority, need not raise Vigilance concern on the part of the executive.

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CASE STUDY ON PUNITIVE VIGILANCE

By Miss Mitali Ghose
Kolkata Port Trust

1. Introduction

1.1 A works contract was awarded by an organization to a Contractor, to undertake a Civil Engineering work - resurfacing of specified surface area and pathway, using paver blocks. The cost of work was Rs. 500 Lakhs (approx). A Technical Examination of the work was conducted by the Vigilance Wing of the organization, during which certain irregularities were noticed.

2. Irregularities noticed during Technical Examination - Deviations from technical specifications given in contract

2.1.1 As per the Tender Document, the specification of Item X stipulated providing M-10 ready mixed lean concrete of required thickness as per design mix in proper level, grade compacting adequate and curing complete with all materials, concrete admixture (if required) transportation by agitating transit mixer (if required), labour etc as per specification, drawing and direction of Engineer-in-Charge complete in all respect.

2.1.2 It was found in the Technical Examination that though at the site batching plant was set up for supplying ready mix concrete but instead of design mix only nominal mix was used by the contractor for executing the work. This was done without any permission from the Engineer of the contract. The department failed to conduct a complete and thorough review of mix design and proportioning for QC/QA of concrete.

2.2.1 As per the Tender Document, the specification of Item Y stipulated that supplying ready mixed concrete of M-20 grade with well graded stone chips of maximum size 20mm containing designed quantity of cement per Cu.M. of wet concrete, produced in computerized batching plant under controlled condition using approved super plasticizer designing concrete mix following IS 10262 & IS 456.

2.2.2 It was found that Nominal Mix of M20 produced by a batching plant commissioned at site was used, deviating from the contract stipulation. The instant contract, was an item rate and the description of item Y was in accordance with item No. 9B (a) of PWD schedule. However, the description of item actually done at site closely resembled item 6(a) of

PWD schedule ,the rate for which was less than that of item 9B(a).Moreover, proper recording of concreting like the use of Pour Card was not followed in the work to have a better control on site. Though there was deviation from the contract specifications, full payment in rates was made in the on account bill.

2.3.1 The size of samples taken during casting of concrete both in case of M10 & M20 concrete, in a number of occasions, failed to meet the criteria set by IS 456-2000 regarding sampling. The executing agency did not closely supervise the execution of the work by the Contractor.

2.4.1 As a part of physical tests, 4 (four) Lots of Paver Blocks [each lot containing 8 (eight) samples] were sent to a recognized test centre for testing of physical dimension, water absorption & compressive strength. The results revealed that the average compressive strength of Lot A, Lot B, Lot C & Lot D was 55.06 N/mm2, 54.50 N/mm2, 54.44 N/mm2 and 42.19 N/mm2 respectively. As such, the average compressive strength of Lot A , B & C failed to comply the acceptance criteria of Paver Block of grade M 50 in terms of compressive strength by a narrow margin. However, the compressive strength of Lot D, taken from a particular area, failed to comply with IS15658-2006 by a very large margin. An average compressive strength of 42.19 N/mm2 was recorded in the laboratory test, as against stipulated average compressive strength of 57.14 N/mm2.

3. Irregularities noticed during Technical Examination – Procedural deviations from Civil Engineering Manual of the organization

3.1 Rail and other materials required for the job were issued by the department on basis of a letter instead of proper indents.

3.2 While certifying the payments in Measurement Book (MB), the Measuring, Check Measuring and Countersigning Officers did not follow the procedure given in the Civil Engineering Manual of the organization. The officers should have declared “measured by me”/ “check measured by me”/ “check measured and countersigned by me” while signing the MB, but this was not done. Although, the Officers signed, they did not give the declarations as stated above .

3.3 As per the Civil Engineering Manual, the Passing Officer shall be responsible for the overall accuracy of the bill sent for payment and various levels were prescribed as to who should be the Passing Officer. In the instant case since the Chief Executive Officer of the organization was the tender sanctioning authority, the head of Civil Engineering Dept (who was the Engineer of the contract) or his deputy should have been the

Passing Officer for certification of payment. However, the sectional officer responsible for execution and implementation of the work had been allowed to act as Passing Officer.

4. Recommendations given by Vigilance

Sl. No.	Irregularities observed by TE	Recommendations of Vigilance
1	Instead of Design Mix concrete of M10 and M20 stipulated in tender specifications only nominal mix was used by the contractor in executing the work.	Work was not executed as per tender specifications. At the site batching plant was set up for supplying ready mix concrete but instead of design mix only nominal mix was used without any permission from the Engineer of the contract. The Civil Engineering Dept was advised to take appropriate steps to protect the interests of the organization.
2	The size of samples taken during casting of concrete both in case of M10 & M20 concrete, in a number of occasions, failed to meet the criteria set by IS 456-2000 .	Execution and implementation of the work was not in accordance with set criteria because less number of cubes were tested than stipulated. Therefore there was deviation from the contract, for which remedial measures to be taken.
3	The compressive strength of Paver Blocks, in a particular area failed to comply with IS15658-2006 by a very large margin	The fact that compressive strength of Paver Blocks (sample Lot D), taken from a particular area, failed to comply with the acceptance criteria of Paver Block of grade M 50, indicated deviation from tender stipulations and neglect in the execution of the work. The Civil Engineering Dept was advised to take suitable measures.
4	**Procedural Irregularities** (a) While certifying the payments in Measurement Book (MB), the Measuring, Check Measuring, and Countersigning Officers did not follow the procedure given in the Civil Engineering Manual. (b) Deviations in procedure adopted towards the certification of bill vis-a-vis that described in the Civil Engineering Manual (c) Rail and other materials required for the job issued by departmental engineers on basis of a letter.	(a) Corrective action should be taken for complying with provision of manual. (b) Corrective actions should be taken for deviations in procedure described in the Civil Engineering Manual for certification of bill. (c) Materials should have been issued through Challans / Journals against indents for the materials.

5. Action taken by the organization

5.1 Technical examination had clearly brought out that the work was not executed as per contract specifications. Recoveries were made by the organization from the final bill of the contractor.

5.2 It was the responsibility of the Department's officers to take adequate steps to ensure that the work was executed as per contract stipulations. Therefore, appropriate action against the departmental officers was taken by their respective Disciplinary Authorities.

6. Conclusion

6.1 Contracts are primarily between executing agency and the Contractor. Technical Examinations are held by Vigilance Wings of organizations to see to whether the compliance of contracts are observed by the Executives of the executing agency based on checking of samples at random and bring to the notice to the executing agency, if there is any shortfall to take appropriate action. The responsibility to observance of the compliance of contracts and any recovery, in case of any shortfall, lies with the executing agency.

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Where do the evils like corruption arise from? It comes from the never-ending greed. The fight for corruption-free ethical society will have to be fought against this greed and replace it with 'what can I give' spirit.

A.P. J. Abdul Kalam

The Port Immortals
[*A Demographic Analysis of Pensioner Database of Kolkata Dock System*]

By S. K. Sadangi

The discharge of pension liability to retired employees remains a major expenditure worry for several Govt. organizations. This is more so for old organization like KoPT where regular pensioners and family pensioners vastly outnumbered the serving employee pool with pension disbursement constituting huge portion of the annual expenditure. As against 5320 employed with KoPT, the pensioner and family pensioners having "Life Certificates" totalled 14832 in number. The situation gets further execrated as life expectancy of citizens continues to increase with increased national prosperity extending payable time-span for pension. The following figures related to the pension outgo from KoPT in 2016-17 puts the situation in perspective:

Pension disbursement and Fund Creation	**Amount (in Crores)**
Pension disbursal	284.42
Annuity Purchase	063.04
Superannuation Fund	332.33
Total	679.79

Total Vessel Related Charges collected by KoPT (2016-17) = 689.42 Crores

Total KoPT Earning (2016-17) = 1940.76 Crores

Prior to 2004 a Govt. employee who retired was eligible for pension till death after which his dependents were eligible to draw family pension. After 2004 LIC-Annuity-scheme came into existence where the organization purchases a fixed sum of Annuity from LIC depending on the salary of the employee on the eve of superannuation. Thereafter, LIC discharges the pension liability towards the said employee. For any enhancement of pension during the lifetime of the pensioner or for disbursement of family pension after his death , KoPT has to buy additional Annuity.

As per recent Govt. scheme, pensioners are to be paid additional quantum of "pension amount" depending on their age. For instance while the normal pension get around 50% of his pay at the time of retirement, he can now claim an additional 20% if he lives to the 80-85 year age bracket. Such additional pension progressively increases beyond 80 being 100% of the basic pension if the said employee lives beyond 100 years.

If the employee expires, family pension is required to be paid to his widow, if alive. If the widow expires family pension is required to be paid to his

unmarried/widowed/divorced daughter if they are also alive. The pension liability can be transmitted from one daughter to another daughter of the deceased employee. Consider a hypothetical scenario where an employee expires after attaining the age of 90 years but leaves behind a widow (5 years junior to him) and 3 unmarried daughters (20, 25 & 30 years junior to their mother respectively). If each of these dependents lives her full life, the pension liability can stretch to 65 Year after the employee retires(30 Years regular pension for the employee+5 Years family pension for the widow+30 years' of family pension for the daughters) . This is a huge burden that Govt. undertakes for the welfare of its aging employees and their families. However, considering the huge financial repercussion for such a long time, every organization has to be alert to prevent any irregularity in this area.

Demographic Analysis of Pensioner Database*:* Keeping the above in perspective, a statistical demographic analysis of "live" pensioners of Kolkata Dock System (KDS) was conducted after refining the existing database. This threw up azotising revelations. The sample size for the analysis was all "Normal" pensioners alive and drawing "regular" pension after superannuation from Kolkata Dock System prior to 2004 (when LIC-Annuity Scheme got implemented). This number, as in April-2018, amounted to 9985 after discounting a few erroneous data entry.

- The first revelation was the number of pensioners over 100 Years of age , supposedly "alive" and drawing pension , was 70 with many of them in the age bracket of 100-115 years. i.e0.8% of the Normal-Pensioner population. There was even a 126 Year old live pensioner.
- The data seemed more bizarre when we calculate the % of pensioners living beyond 80 and 90 years which were 23.85% and 64.10% respectively of the live-pensioner-universe. The bizarreness becomes immediately obvious when we consider that according to the latest WHO data published in 2018 life expectancy in India is: Male 67.4, female 70.3 and total life expectancy is 68.8. It means that on an average one can expect an Indian citizen to live an average of 68.8 Years. But this is just an "average" and does not preclude a large number of population living beyond this "average" age. Anyone familiar with the peculiarity of interpreting statically data knows that one has to be careful in coming to a conclusion based on such analysis.

Fortunately life-expectancy probability of general population is meticulously maintained by Census conducting authorities and is available for different age-brackets. Given below is the age-wise distribution of general population according to 2011 census:

Table1.5. Age-wise distribution of population

Age (in years)	Total			Rural	Urban
	Person	Female	Male		
0-4	9.3	9.2	9.4	10.0	7.9
5-9	10.5	10.3	10.6	11.3	8.8
10-14	11.0	10.8	11.1	11.6	9.5
15-19	10.0	9.6	10.3	10.1	9.7
20-24	9.2	9.2	9.2	8.9	10.0
25-29	8.4	8.5	8.2	7.9	9.4
30-34	7.3	7.5	7.2	6.9	8.1
35-39	7.0	7.2	6.9	6.7	7.7
40-44	6.0	5.9	6.0	5.7	6.6
45-49	5.1	5.1	5.2	4.9	5.7
50-54	4.1	4.0	4.1	3.8	4.5
55-59	3.2	3.4	3.1	3.1	3.5
60-64	3.1	3.2	3.0	3.2	3.0
65-69	2.2	2.3	2.1	2.3	2.0
70-74	1.6	1.6	1.5	1.7	1.4
75-79	0.8	0.8	0.7	0.8	0.8
80+	0.9	1.0	0.8	0.9	0.9
Age not stated	0.4	0.4	0.4	0.3	0.4
all	100	100	100	100	100

Source: Population Census 2011*

* The figures include the estimated population of Mao Maram, Paomata and Purul sub-divisions of Senapati district of Manipur.

From the above it is seen that the probability that an average citizen of India will live up to 90 Years of age or more is only 0.4% in urban area and 0.3% in rural area. This is far less than the figure of 64% found in the KoPT Pensioner Database. Could it be possible that due to special conditions attached to government job (secured job , less worry and a relative financial comfort) these pensioners live longer ? **But age beyond 100 years for so many retirees sounds like some kind of inexplicable immortality for retired employees of thePort** ?

So it was decided to juxtapose these results with the comparative demography in Chennai Port Trust. The databases were quite comparable in terms of size (the normal pensioner database size of ChPT was 6920) and Chennai Port was also an old port with similar rules and regulations. Given below is the resulting Frequency Analysis.

ChPT Pension Database - Frequency Analysis

Age	**Age-Frequency**	**Frequency (%)**	Cumulative Frequency (%)
100	0	0.00%	0.00%
99	1	0.014%	0.014%
98	0	0.000%	0.014%
97	2	0.029%	0.043%
96	1	0.014%	0.058%
95	2	0.029%	0.087%
94	5	0.072%	0.159%
93	10	0.145%	0.303%
92	14	0.202%	0.506%
91	6	0.087%	0.592%
90	14	0.202%	0.795%
89	19	0.275%	1.069%
88	21	0.303%	1.373%
87	26	0.376%	1.749%
86	37	0.535%	2.283%
85	72	1.040%	3.324%
84	114	1.647%	4.971%
83	102	1.474%	6.445%
82	131	1.893%	8.338%
81	148	2.139%	10.477%
80	157	2.269%	12.746%
Total Live Pensioner who Retired after age 60	**6920**	100%	

This shows that there is not even a single pensioner in Chennai Port Trust living beyond 100 Years of age. Pensioners beyond 90 Years of age were only 0.795 of the pensioner population. The contrast between this % with that of Kolkata Port Trust (23.85%) could not be starker. This implied that a pensioner of Kolkata Port Trust is 30 times more likely to live beyond 90 Years as compared to the pensioner of Chennai Port Trust. Similar verbal queries to State Bank Of India, Kolkata Units indicated that they too do not have any pensioner beyond 100 Years in their Kolkata Circle which too has pensioner database of comparable size.

Certain other peculiar aspects in the database were also detected as below and the port management was advised of specific system improvements in this highly significant area.

i) *There were glaring inconsistencies in the database. For a huge number of live non-LIC pensioners, "date of birth field" remains vacant. Similarly, the date of death in case of a large number of "expired pensioners" [against which family pensioners are currently drawing pension] are missing. Even more puzzling is the absence of "date of retirement" field for nearly 200 of pensioners.*

ii) *When the software vendor was queried as to how such crucial fields could be absent in Master Table of the Pension Software Utility, he informed that this has been the case since the date of computerization of pension data started in 2004. This legacy data base continues to be in such a state even now.*

iii) *Spot verification of "address" of some pensioners with seemingly-impossible age conducted by Vigilance in recent past does point to existence of some kind of fraud. In a few cases, check by Vigilance Department have already revealed that such pensioners never lived in the address found in KoPT record. Inquiries from neighbourhood could not also trace existence of such pensioners so far. However this needs to be cross-checked against the address maintained by the disbursing banks. Moreover, there is also the possibility that the pensioner might have moved to a location different from what is found in KoPT database.*

iv) *During detailed interaction with Pension Section officials it was given to understand that although the pension amount against all pensioners in the database are generated by the computer system, actual payment to the disbursing bank is made by KoPT only in respect of those pensioners for whom latest and current LC (Life Certificate) is available. The existence of latest Life Certificate (LC) for a pensioner as intimated by the disbursing bank is known to be a vital pre-condition for any Organization to credit pension amount. Vigilance is verifying as to the exact policy followed by KoPT in this regard. Presently KoPT pension-database for "live" pensioners contains non-availability of LC in nearly 40% of cases (3969 out of total live pensioners of 9885 Nos.)*

v) *Interestingly, after Vigilance started to focus their preventive-vigilance-spot light on this area 5 months ago, a good number of such over-aged live pensioners appear to have been unable to get LC leading to stoppage of their pension.*

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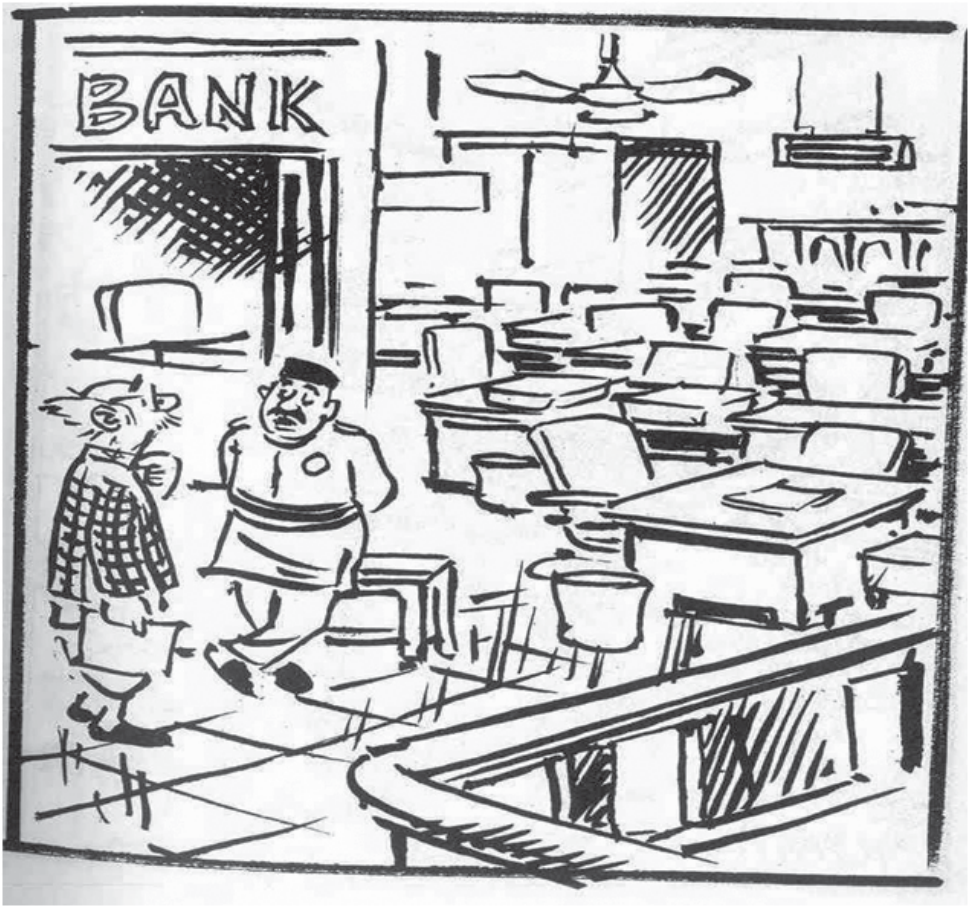

No, Not a holiday! It's a full working day. But some are in police custody, some under suspension , some under vigilance interrogation and some…

Analytical Study and Systemic Improvements

…….. and other thing that made happy was I learnt corruption was a global phenomenon not peculiar only to our country.

The Bill Gates of KDS:

A study of the existing IT System for bill processing and HR Management in Kolkata Dock System.

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Some of the preventive functions prescribed by CVC (in their latest Vigilance Manual) for the Vigilance Wing of an Organization state the following:

> "*To undertake study of existing procedures and practices prevailing in his Organisation with a view to identify those procedures or practices which provide a scope for corruption and require modification; to identify the areas in his Organisation which are prone to corruption and to ensure that Officers of proven integrity only are posted in those areas; to ensure that well-defined internal processes as well as corresponding controls with clear responsibilities, for different kind of activities, are set out;"*[Chapter–II, Para 2.13 of Vigilance Manual 2017]

In pursuance of the above objective and consequent to a recent Vigilance Investigation into alleged electronic manipulation of salary & allowance by an officer of KoPT, a study was undertaken on the existing IT modules that deal with bill processing and HR Management functions of Kolkata Dock System. The study revealed vulnerabilities of such fundamental nature that it defies imagination as to how they could have remained undetected for years in modules that deal with Crores of rupees of financial disbursements to thousands of employees and record their critical career progression data. Following the investigation a series of systemic improvements was suggested by Vigilance Department which was approved by Chairman for immediate implementation.

Case – I : Fraud in passing Medical Bills in the Pre-Computer Era

In June 2017, an alert Finance Officer of Fringe Benefit (Medical) Section, attached to the Centenary Hospital of Kolkata Port Trust, accidentally detected a false claim for Medical reimbursement submitted by another senior Finance Officer. It is this Section which processes the Medical reimbursement claims of employees of KDS, after verifying relevant documents like Doctor's prescription, medicine purchase invoices, etc. A preliminary probe by Finance Department, prima facie, found the said Officer's Medical claim to be based on forged/fabricated Doctor's Prescription, had the said Officer suspended and referred the case to Vigilance for detailed investigation. The case appeared peculiar because only a couple of years ago, the said Officer himself headed the FB (Medical) Section and functioned as "Medical Bill Passing Officer" of the other employees of KDS. A question, therefore, arose whether the very authority, who was passing the bill of all employees, would do such manipulation in his own case?

Investigation found that such irregularities were not restricted to 2017 alone and had been going on for years. The nature of fraud was not only limited to production of forged Doctor's prescription, but a spectrum of similar irregularities. One of the detected irregularities deserve special attention from systemic point of view. It is concerning manipulation of a document called "Advice Summary". This "Summary", in pre-Computerization days, contained a list of names of employees and amount of Medical reimbursement passed against them, after due verification of claim papers submitted to FB(Medical) Section. It used to be prepared in 2 (two) copies. While 1 (one) copy used to be retained in the FB (Section), along with the claim papers, the other copy used to be sent to Pre-audit Section of HQ Finance, for inclusion in the monthly salary. For several months, the said Officer simply used to enter an amount, by hand, in the Pre-audit copy of "Advice Summary" for that month. Since the certified "Advice Summary" was supposed to come to Pre-Audit Section after due verification of all relevant documents submitted by the concerned employees, the Pre-audit Section used to incorporate the same in that month's salary. By this simple method, the suspected Officer could get Medical allowances, without submitting any claim related papers. A comparison between the copies kept in Pre-audit and FB(Medical) clearly established this easy manipulation that had gone undetected month after month, which was seemed to have been further helped by absence any kind of Post-audit of salary and allowances disbursed to employees.

Case – II : The largest billing fraud by an individual employee

Way back in 2006, a stunning Medical fraud of similar nature was noticed in Haldia Dock Complex (HDC) for a very large amount, nearly Rs. 42 Lakh. This was perpetrated by a single employee, who submitted a series of false Medical claims, immediately after retirement, for medicines prescribed by Tata Cancer Memorial Hospital, Mumbai and purchased from outside shops.**The "present value" of the defrauded amount would easily surpass the total drug – reimbursement expenditure for all employees in KDS in 2016-17, which happens be only Rs. 0.74 Crore.** The case came to light when accidentally, 1 (one) bill was put up to a Finance Officer, who was different from the chain of Officers who used to pass the earlier bills. The case, investigated by both Vigilance and CBI, resulted in Disciplinary Action against 7 (seven) Officials of HDC's Finance Wing. Following this, the process of Medical bill passing in HDC underwent total overhaul. It is, indeed, surprising that such a high profile case and the changes it brought about in HDC did not trigger any systemic change in the same process at KDS, even though both units are under the common administration of KoPT.

And now the case that triggered the above study.

Case – III : Salary/Allowance *Bill Processing Module with gates left ajar!*

In 2017, the Port Administration came across a case of attempted Electronic manipulation, by an Officer, to inflate his monthly salary, by making fictitious entries of allowances into the Computer system. What made the case ironical is that the same Officer was in charge of scrutinizing and passing salary bills of all employees of Kolkata Dock System (KDS) and enjoyed sweeping access-rights to the relevant Computer modules. After a preliminary Departmental probe, the Port Administration suspended the Officer and handed over the case to Vigilance for a detailed investigation.

What initially seemed to Vigilance like a stray case of individual indiscretion, soon widened as more and more irregularities started cropping up. It was found that the Officer in question had made many such fictitious allowance entries into the Computer system in the past – almost at will – to defraud Port Trust for his pecuniary gain. As the investigation progressed further, it revealed a Computer system riddled with such basic deficiencies and faultiness that not just the aforesaid Officer, but anyone having access to these Modules, could have altered anything relating to salary, allowance or even service particulars, without leaving any meaningful Electronic footprint!

Indiscriminate sharing of User ID & Passwords that had powerful data rights in a system, through which Crores of Rupees were being disbursed, seemed to be the order of the day. Passwords of employees long transferred out of the Section still floated around, as no deactivation instruction had been issued to EDP, thereby leaving the system wide open to easy external manipulation. Ghost Passwords created in the system, on request of Finance Department, appeared to have remained inexplicably unused. Such a compromised system was further weakened by an "**Audit Trail Programme**" that had limited capability and did not preserve the "Original Data" once it got overwritten. Any system, so vulnerable and lacking basic internal controls, would naturally be a tempting target for any malicious user. While the manipulation by the Officer in question could be detected, given such a compromised system, a disturbing question emerges - *whether anyone else had made similar manipulation in the past and if so, how much Financial injury could have been sustained by KoPT in the years since these Modules came into existence? That such frauds went on to happen, even after the billing process got Computerized, with Salary Module and associated Sub-modules for entering various Fringe Benefit allowances, goes on to support the age old proverb "**the more the things change, the more they remain same.**"*

As the probe into serial Electronic manipulations made by the said Officer was drawing to a close, fresh complaint arrived with a startling allegation, i.e., that the very induction of the said Officer into KoPT service, through the died-in-harness route, as an LD Clerk, had been an act of identity-fraud perpetrated by him. When documents relating to his recruitment from his Personal File were called for, Finance Department informed that no such Personal File existed for him and so, no document – not even his

appointment letter - could be produced to Vigilance (*It was later reported to Vigilance that no Personal File existed for almost all employees of Finance Department, numbering more than a hundred*).

Just when the investigation on the issue of fraudulent entry was about to hit a dead-end, information arrived that the very same allegation had been investigated by Vigilance Department years ago. A thorough search in Vigilance archives and a fortuitous retrieval of a 35-year old file revealed that indeed, these allegations had been investigated by Vigilance Department almost immediately after the Officer joined service in 1980. Vigilance had proved the fraud and the same had also been upheld in a Disciplinary Proceeding instituted subsequently by Port Administration. **Despite such proven serious charges, the Officer had been let off with an inconsequential punishment, under very questionable circumstances.**

The same state of affairs continued even after a second Vigilance investigation proved the act of fraud and impersonation by the Officer in 2005. At that time also, lack of Personal File for the concerned Officer in Finance Department had been noticed by the then Vigilance Wing, prompting them to issue system improvement, in this regard. As latest investigation shows, the situation, instead of improving, has actually worsened over the years, necessitating the present system improvement. As for the Officer concerned, escape from any deterrent punishment from 2 (two)Vigilance investigations and a Disciplinary Proceeding that had intended to remove him from service, did not convert him to a repentant or reformed servant of the Trustee. Rather, after getting promoted to Officer cadre in 2013, he felt bold enough to upgrade his manipulative skills to the field of Electronic forgery, until he was accidentally caught and suspended.

SUGGESTED SYSTEM IMPROVEMENTS

1.0 Sweeping access-rights to unworthy users: In the present system, many employees lower down at the data-processing chain have been allotted rights to alter/delete/insert even master level data. In a processing flow, the access-rights should be commensurate with the level of the user. Rights to insert/update/delete sensitive data cannot be allowed to lower-level users. The requirement of rights vis-à-vis role of an employee in a given module must be immediately undertaken by EDP, in consultation with Finance.

2.0 Improper access-rights assigned to Pre-audit personnel to change Sub-module level data without proper authorization: One of the basic features of any Software system, which handles Financially sensitive information, is that the data created by one user should not be altered/deleted by another user, without appropriate higher level authorization and/or confirmation by the original data creator. In the present system, users in the main Payroll Module have been given rights to insert/update/delete the allowance that are sent from various Sub-modules like LTC and Medical reimbursement. In the present Business Process,

employees first send their original documents related to their LTC or Medical reimbursement claim to the LTC/Medical reimbursement desk of the respective Sections. The personnel manning such desks verify the original claim papers and then enter the amount admissible to the employee into their respective allowance Sub-module. Thus, while the original claim documents remain in this Section after verification, the admissible amount entered into the Sub-module is transmitted to the main Payroll Module operated by Pre-audit Section for eventual incorporation into salary for the month. However, the Pre-audit Users have been given edit/insert right to the Sub-module level, without needing any authorization from that Section who first created this data. As a result, such a higher level user can simply insert any amount of "Allowance" for anyone, without any papers related to his allowance claim having been submitted to the respective allowance Sections. In fact, investigation has revealed that since Passwords/User IDs were being shared among many users of Pre-audit Section, the Officer in question used other's Password to change Sub-module level data. Therefore, edit/insert right to Pre-audit Section for data created by downstream Sub-modules must be withdrawn, as there is no such need. If such correction is required in some exceptional situation, then a change request to the original data-creator must be sent and change is to be effected, only after confirmation by Sub-module users.

3.0 Absence of multi-level confirmation for modifying/inserting sensitive Payroll/ESR Module Data: A very common feature of any Software that processes sensitive/Financial data is that higher level user(s) is/are required to confirm a change made by a lower level user for data not created by him/her. This is a must for ESR Module. Otherwise, anyone having a Password with insert/edit rights (and presently even lower level users have such rights) can alter anyone's service data. This will be impossible to detect in cases where there is no Personal File available for the employee. Hence, this feature should be immediately introduced.

4.0 Validation with Digitally signed order/document: Right now, many key fields related to career progression data of an employee, in ESR Module, can be altered by some Users in the Pre-audit Section. Since the existing Audit-trail utility does not preserve the original data once it gets changed, assigning such rights to a ESR-Module-User, without "rock-solid-validation", can create huge vulnerability, where the service record of an employee can be permanently changed, without verifiability. Hence, necessary validation for insert/update/delete of key fields in ESR module should be allowed to be effected, only when appropriate authority uploads a Digitally signed authority document into a text/OLE field. For instance, if an employee's pay in ESR is to be changed, then a pdf file of the circular/administrative order, Digitally signed by

an appropriate authority, must be uploaded into the relevant validation field. Such Digitally signed document pertaining to career progression mile stones and bio-data of the employee can be assigned unique Document ID and can be linked to/stored in a Digital document vault to be securely stored in the Server.

5.0 Indiscriminate sharing of User IDs and Passwords: Sharing of Password/User ID, in a casual and irresponsible manner, which leads to loss of confidentiality and security, should be strictly forbidden. A total lack of awareness among users, about importance and confidentiality of User ID and Password, has been noticed during investigation. For instance, even though the data manipulation fraud by the Officer, described in the case study, came to light in June 2017, even after lapse of 6 (six) months, some employees examined by Vigilance were completely unaware of the need to maintain proper confidentiality of User ID/Password.

6.0 Free-floating Passwords, without deactivation and **Ghost User IDs in circulation**: It was observed during the investigations that User IDs and Passwords are generated by the Pre-audit Section and they are not deactivated, even after the concerned employee has been transferred from the Section long back. In a statement given to Vigilance, an employee has stated that he has never used an User ID and Password, but the documents show that an User ID and Password was created in his name and it has not been deactivated, although he has been transferred from the Pre-audit Section long back. Hence, all old User IDs/Passwords created in the system for transferred/retired users must be withdrawn by EDP.

7.0 Inadequate Audit trail utility, lacking elementary security feature: The Audit-trail features of the present Payroll and ESR Software Module are highly inadequate as they do not preserve "complete history" of changes made to the Master Data. For instance, if someone makes changes to an existing data field, say the "Date of joining" in the ESR Module, it would preserve the "Altered date of joining" and not the "Original date of joining". Thus, in case of suspected manipulation, the original data will never be known. Similarly, the present Audit-trail feature does not capture the Machine ID/Node ID from which the "change" might have been made by a malicious user. Enhancement of the existing Audit-trail utility, to capture detailed "change-history", including the Node/Machine Number, is not at all difficult and is, in fact, a common feature in all modern RDBMS like Oracle. **Since Salary/ESR Modules also use Oracle and KoPT has a Software Maintenance Contract worth Rs. 1.31 Crore, which includes "Module revamping", finalized in 2016, it is not understood why such a deficient Audit-trail utility has been allowed to continue for such a long time.**

8.0 Immediate formulation of a proper IT Security Policy: There should be a definite IT Security Policy circulated by EDP for covering generation of new

Passwords, a secure channel for their communication to the intended users, deactivation procedure, etc. A Security Audit of the Computer Modules should be made once in every 3 (three) to 4 (four) years, either by competent EDP Officers having adequate professional expertise or by hiring an outside expert, if the former is not possible.

Taking lessons from the above investigation and case study, HoDs were advised to examine whether any IT System in their Department was being used for sensitive processes and to find out whether flaws of above nature exist in the same.

9.0 Non-existence of Personal File for employees of Finance Department: It is unfortunate that the above aspect had been noticed by Vigilance 13 (thirteen) years ago and system improvement advice had been given to FA&CAO, when allegation about impersonation by the Officer described in the case study was being investigated for the second time. At that time, Finance Department had informed that they do not maintain Personal Files for their employees. After 13 (thirteen) years, the present investigation finds that not only for the particular Officer, but for almost all employees of Finance Department, the same is true. A serious time-bound effort is, therefore, needed to be made by Port Administration in general and Finance Department in particular, to collect their employees' KYC (Appointment Letter, Date of Birth, Educational Qualification, Career Progression Records, Disciplinary Proceeding History, etc.) and build the corresponding Personal Files.

10.0 No checks for FD Card: The Family Declaration Card for the Officer, described in the case study, included 11 (eleven) members as "Dependent" family members. In fact, although the Officer in question was supposed to have been inducted through the died-in-harness route, his father was included in the FD Card and no one noticed it. In view of this, a detailed mechanism must be laid down by LA&IR Davison for verification at the time of introduction of "Dependent" member.

11.0 Rotational transfer of employees in sensitive posts: One aspect that needs immediate attention by the Apex Management is non-implementation of rotational policy in its true spirit. The case of passing fraudulent Medical bills in KDS, detected in 2017, was possible as 2(two) involved Supervisors of FB(Medical) Section, who were supposed to conduct verification of bill-related documents of claimant employees, were posted in Financially sensitive positions for 14 (fourteen) years and 10 (ten) years at a stretch. The suspected Officer, whose manipulated bills were detected, remained in a single post for 7 (seven) long years and in the same Section for 9 (nine) years. Frauds of the above nature are possible when employees remain entrenched in the same post/Section for

long durations. It is only when a new person gets posted that possibility of any entrenched-fraud-chain getting broken arises. Banks are known to implement such policy with missionary zeal. In fact, Reserve Bank had implemented a "Mandatory Leave" policy since 2015, wherein employees in sensitive posts are required to compulsorily avail leave for a few days, in a single spell, every year and a new employee is made to work in his/her place. The idea being when a new person takes the seat, then he is likely to raise question about any suspicious irregular process, if persisting there. In Port Trust, often infeasibility of rotational transfer in many posts are pointed out, citing lack of sufficient number of domain experts required for specialized jobs. However, the same is not always true, especially for Finance Department. For instance, the total manpower of KDS Finance Department is 152 in KDS, while the same is 56 for HDC. There is great asymmetry, when one compares these2 (two) units in terms of cargo handled and revenue earned [Cargo volume in 2016-17: KDS = 16.80 MT ; HDC = 34.14 MT ;; Revenue earned: KDS = Rs.674 Crores; HDC = Rs. 1293 Crores]. While a direct correlation between manpower of a Department in KDS with that in HDC may not be fair, given their respective functional specialties, rotational transfer of employees manning sensitive posts of Financial importance, within and across these 2 (two)units, may not be altogether impossible.

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The fight for justice against corruption is never easy. It never has been and never will be. It exacts a toll on our self, our families, our friends, and especially our children. In the end, I believe, as in my case, the price we pay is well worth holding on to our dignity.

Frank Serpico, Whistle Blower on Police corruption

The Birth and untimely Death of 3 High Value Cranes in Chennai

[Importance of providing appropriate Payment, Inspection and Rejection terms in High Value M & P Contracts]

A. CONCEPT NOTE

1.1 Procurement and Non-utilization of 3 High Value Cranes in ChPT

In the year 1996, Chennai Port Trust (ChPT) initiated a proposal to procure three high-value Rail Mounted electric Gantry Cranes, in expectation of heavy future growth in cargo volume.The cranes to be procured were supposed to be technically sophisticated and versatile in nature, to cater to diverse type of commoditieswith longer reach, for loading/unloading cargo into large vessels, thus justifying a very high level of investment by the Port (nearly **Rs 38 Crores** at that time). After the tendering process, a contract was placed on a company and the cranes were delivered during FY 2000-2001. However, within a very short period followingtheir arrival,these cranes were found to be unsuitable forport-use as envisaged earlier. While one of the three cranes did not work even for a single day, the other two fell out of operation very quickly, leading to their eventual disposal as scrap, through auction, after a few years.

1.2 Case Analysis :

While negotiating a Contract for procurement of high value Machinery & Plant (M & P) items, one of the critical areas where greatcare is required to be exercised is the design of an appropriate "payment clause". If the M & P item intended to be procured is of technicallycomplexnature,the inspection, testing, erection and commissioning activities automatically assume huge significance. In such cases, adoption of a calibrated / staggered payment clauseis a must. Otherwise, if an unduly large payout is made to the Vendor/Contractor before successful testing, erection and commissioning, then such vendor would have less incentive to complete these activities, which are more complexthana simple delivery.

Study of the above case shows that the contract for the three gantry cranes envisaged a payment term that was highly detrimental to both technical and financial interest of Chennai Port Trust. This clause envisaged release of nearly 90% of the total contract consideration to the vendor before successful commissioning or even testing of these high value cranes. Even within this 90%, payment of 80% was meant for "imported components", to be released merely on establishment of aLetter of Credit. In the subject case, overwhelming portion of the contract-value was meant forimported components. Even for the indigenous components, 85% of purchase value was envisaged to be paid merely against the proof of dispatch, without any quality inspection.

With such defective and one-sided payment terms, the incentive for a vendor to complete the technically complex part of testing / erection / commissioning (and

thereby discharge their full contractual obligation) was very low, since theystood to corner almost the entire payment,simply on delivery. This is exactly what happened later.

Records reveal that immediately after the delivery, information on non-supply of spare parts, technical defects and non-commissioning of the project started pouring in from the user department. Out of the 3 Cranes, the concerned authorities could issue a proper "Commissioning Certificate" for the one crane which was the first to arrive. Even after issue of a successful commissioning certificate, this crane was never put to use for a single day.As for the two remaining cranes, no commissioning couldbe done. Repeated correspondence by Port authorities with the vendor for rectifying the technical deficiencies of these two cranes fell into deaf earsas the vendor had already receivednearly 90% paymenton or before delivery.

A subsequent audit report revealed that parts of the first crane had actually been cannibalized, to make the other two cranes operational to some extent, for a limited time. Even for this, the Port Authorities claimed that a sum of Rs 3.65 Crores had been spent for rectifying defectswhich the vendor did not attend during the warranty period,and towards procurement of required spares. In spite of such additional expense, these two cranes had handled a cargo of just 20 ships in 3 years of operation amounting to hardly 0.2 Million Tons before being reduced to a totally inoperative state. The cargo handled by these 2 cranes represented a handling rate of 0.022 Million Tons per Year, i.e.just 3% of the 0.75 Million Ton /Year handling envisaged at project justification stage. Although improper supply, technical defects and non-supply of spare parts (as claimed by Port), led to near-total non-utilization of these costly cranes, ChPT authorities could only hold back 10% of the Contract Value, since 90% of order value had already been released to the vendor before commissioning. But even this 10% payment hold-up by Port authorities, and their claim to recover the Rs. 3.65 Crores, which had supposedly beenspent for rectifying warranty defects for the other two cranes, were dismissed later - both by an Arbitration Tribunal and Hon'ble High Court - on the ground that the Port Authorities could not produce a single document in support of having spent such a sum.

Another reason why the Port Authorities lost out on their claim during arbitration was that they had never categorically "rejected" the cranes despite reporting technical defects several times to the vendor. Section 42 of the Sale of Goods Act states that ifabuyer does not categorically reject a consignment, within reasonable period,duly intimating the sellerthe reason for such rejection, his actioncan be deemed to be an "implied acceptance" of the suppliedmaterial. In the subject case though there were frequent and protracted exchange of correspondence between the Port Trust authorities and the Vendor about various types of technical deficiencies and spare parts and the said authorities had not issued commissioning certificate in respect of two cranes, none of

these correspondenceexpressed any desire by the Port to reject the cranes. The Learned High Court interpreted such conduct as an act of implied acceptance of cranes by the Port Authorities, and dismissed Port's claim.

B. SUGGESTED SYSTEM IMPROVEMENT:

1.0 Time is regarded as the essence of a contract. It has been noticed that many a time, extension of time to a contractor/supplier is granted by authorities in a liberal and routine manner. There is also a tendency not to apply the LD clause,by attributing the delay to Port because of lack of proper documentation and project monitoring, whereby the delay of the contractor / vendor can be unambiguously pinpointed. To prevent such scenario, it is desirable to maintain a"**Hindrance Register**" showing the trail of project execution and reason of delay. The site engineer should record the reason for delay,if any, in delivery/execution/testing/commissioning and get the same signed periodically by the Engineer of the Contract, or his nominated officer.

2.0 CVC, in a booklet titled "*Common Irregularities/Lapses Observed In Award And Execution Of Electrical, Mechanical And Other Allied Contracts And Guidelines For Improvement Thereof*" does advise maintaining a proper "Hindrance Register" with the following caution:

"Hindrance Registers, though are sometimes found as maintained at site but in most of the cases either entries are not made at all or bogus entries are made in collusion with the contractors. In quite a few cases rains during the monsoon were considered as hindrance and the benefit was given to the contractor.

3.0 Payment schedule, in case of high value procurement, especially having technical complexities, should be well calibrated / graded, and released in stage-wise tranches. The amount of payment released to a contractor/vendor should be in proportion to the overall progress as well as the importance of the stage of completion. In cases of procurement of heavy machinery, a good portion of payment should be held back till entire testing, installation and commissioning are completed properly to the satisfaction of the end-user. The amount of payment to be made to a vendor corresponding to a particular stage of the contract, will vary from case to case and type of project/procurement. But releasing overwhelming portion of payment without confirming total compliance to contracted terms and standards by the end-user, may create perverse incentive for the contractor to abandon the project without completing installation and commissioning. CVC instructions have repeatedly cited cases where the contractor got paid 90%/95% of the payment for the supply of equipment and then shirked the responsibility for erection and commissioning on one pretext or the other. The payment terms should be defined unequivocally and

should not be changed after award of the contract without compelling reason. An appropriate control on the flow of funds should be exercised while making payments.

4.0 Good Project Monitoring: The specific schedule of completion of various stages in a project should be stipulated in the contract document in an unambiguous manner. Completion of contract should imply overall completion of all events of the project. If the work is broken into small contracts, each and every contract should have its specific schedule of completion which, inter alia, should be within the overall completion schedule of the main contract. The contractors should be asked to submit the completion schedule of various activities in advance and progress should be monitored in accordance with such schedule.

5.0 Providing a defect-liability clause: It is good practice to incorporate a "defect-Liability-period-clause" in the bid documents and in the resultant contract. In the contracts involving installation/commissioning of equipment, the defect-liability period should be reckoned only from the date of successful installation/commissioning.

6.0 Specifying a proper RejectionClause:

6.1 As soon as goods/services have been delivered in terms of a contract any technical deviation noticed should be intimated to the contractor/supplier immediately. Preferably such intimation should be in writing, and if verbal, confirmed in writing, immediately afterwards. Where, as a part of the acceptance process, issue of specific "commissioning certificate" and /or "acceptance testing" for the procured item are envisaged, they should be completed within the agreed upon timescale as stipulated in the contract.

6.2 If any defect vis-à-vis the contracted specification is noticed after supply, the concerned authorities may decide to (a) get the vendor to rectify the same to full satisfaction of the consignee; (b) Reject the supply altogether and demand replacement. In case of (b), the vendor is to be clearly intimated the reasons for rejection without losing time. It should be kept in mind that using the item or not intimating the intention to reject can jeopardize the consignee's right to reject, since silence of the consignee can be deemed as "implied acceptance". In this connection, the following is worth noting :

"The Sale of Goods Act, 1930

42. Acceptance.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time,

he retains the goods without intimating to the seller that he has rejected them."

6.3 If upon intimation, the defect/deficiency itself is challenged by the vendor,immediately a joint inspection should be convened where the initial inspection authority, Port's nominated officer and Vendor's representative should be present. If required, the said joint inspection team may send random sample(s) for independent testing by a reputed third-party testing organization, with clear stipulation as to whether the result of such testing will or will not be binding on the parties to the contract.

N.B: *The above system improvement was issued when CVO (Kolkata Port Tryst) shouldered the additional charge of CVO (Chennai Port Trust). The lessons learnt are applicable and relevant to any port for avoidance of similar pitfalls.*

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Fighting corruption is not just good governance. It's self-defence. It's patriotism.

Joe Biden, former Vice President of the United States

The Talk Between Computers

[*Enhancing Data Transmission accuracy in Port Weighbridges by Preventing Electronics Vulnerabilities.*]

Case Study:

While examining the execution of a Contract pertaining to outsourcing of weigh bridge operations in one unit of KoPT, serious deficiency was noticed in the mechanism of data transfer between Weighbridge-attached computers and Port's own computer system (POMS). It was found that while the governing contract envisaged "networking" to be undertaken between weighbridge locations and Ports own computer system with the intended purpose of establishing a seamless real-time data transfer between the "data generation nodes" (at the Weighbridge end) and "data-destination nodes (at Port computer end), the same had not been done even after 3 years of project commissioning.

A real time data transfer was essential for such a project because the payment to be disbursed to the Service Provider was contingent upon the number of instances of weighment performed by each weighbridge (in some other Ports such payment could also be dependent upon the tonnage weighed). In other words the accuracy and authenticity of weighment data made available to Port Authorities by the said Service Provider was financially sensitive in nature.

Notwithstanding the above factors, the said weighbridge Service Provider was allowed to dispense with "Networking" and permitted to transfer Weighment data from Weighbridge-attached Computers to Port's System through a non-real time/batch processing mode with a definite time-lag of 10 minutes. No reason for deviating from the contractual provision could be found in the relevant file. In fact, a SOP (Standard Operating Procedure) meant for operation of weighbridge which was created at post-contract stage mentions the data communication as "real time data transfer with 10 minute time lag" – a contradiction in terms. As is generally known, a communication mechanism between two computer nodes cannot be called "real-time" if the same happens after a 10- minute time lag.

What is more, this permissible time-lag allowed between an instance of vehicle weighment and its eventual reporting by Service Provider, electronically, to Port's own Computer System was further enhanced, again for reasons not recorded anywhere. It was observed that the head of Traffic Department was unwilling to depend upon the authenticity of the electronically transmitted data (done after a time-delay) and wanted the Service Provider to furnish a written declaration guaranteeing that no Weighment had been missed out in their transferred data. In other words, the situation came to a stage where more reliance was placed on a written self-certification of the Service Provider instead of the electronic data-transfer mechanism envisaged in the contract. On spot check it was found that even this time-lag of 15 minutes is not being maintained by the Service provider.

Providing a time-lag between generation of data and its receipt at Port's own computer system creates a vulnerability that compromises the authenticity and accuracy of the reported data. To ensure the same it is necessary that such data transfer takes place simultaneously and instantaneously between the nodes attached to the Weighbridge and Port's own computer system or dedicated Node operated by Port Personnel right at the moment of vehicle weighment.

Suggested System Improvement:

1. If the Weighbridge-operation in a Port is outsourced to a Service Provider and periodic payment made to such Service Provider for operation of weighbridges is contingent upon the quantum of Vehicle weighment (by number or weight of vehicles passing through), then the electronic data-transmission between Weighbridge-attached Computer(s) and Port Server or any other dedicated node operated by port authority must be seamlessly done on a real time basis.
2. Transfer of in-situ data generated in the weighbridge computers can be achieved both through physical networking of Weighbridge locations to Port's own system or through some form of wireless communication. If after vehicle weighment, the weighment data is not broadcast simultaneously to the computer attached to the weighbridge and to Port's own Computer System and data transfer is allowed to be effected later with some "time-lag", then the authenticity and accuracy of the electronically transmitted weighment – data for the purpose of billing can be seriously compromised. This is so, since, it would be possible to alter/modify the data generated from the Weighbridge computers during the time-lag and send such altered data to Port's own system.
3. Efforts should be made to remove potential vulnerability in the existing data-communication mechanism between Weighbridge attached Computers and Port's own server/dedicated node.
4. The said aspect must also be clearly spelt out in the technical specification and terms of any future tender for contracting a Weighbridge Service Provider.

Impact of system improvements:

Ensuring accurate measurement of cargo in weighbridges within port area is essential to prevent overloading. The certificates of weighment from port-operated weighbridge have custom and insurance related implication. **The above system improvements have already been accepted by Kolkata Port Administration.**

Sustainability and way forward:

Since weighbridges are being operated practically by every port and since many ports have similar outsourced mode of weighbridge operation, the above system improvements suggested above have implication for other ports.

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The State of the Estate

[Study of and suggestions for enhancing Estate Management in KDS]

One of the important duties of Vigilance Department is to proactively study areas of organizational functioning that are vulnerable to abuse or leakage and suggest remedial measures to remove the same. In the context of Ports, discussions with CVC, Ministry & Port Officials have revealed one such area -"Management of Estate"- to be deserving particular attention, especially by those Ports who manage extensive areas of land.

Keeping the above in view when Vigilance department of KoPT first started studying this area in 2017, it was soon realized that the area was not only important from vigilance point of view but also from a management standpoints in case it could be a great source of revenue-regeneration for a cash-strapped port like KoPT. After all, the two Estate Divisions of KoPT (in KDS and HDC) having just 1% of Port's Manpower earned 13%of KoPT's total Operational Income in 2016-17 amounting to Rs 253.68 Crore. Another important feature of this stream of revenue is its lack of dependence on proportionate capital expenditure making it an ideal focus-segment for any one aiming to turn around KoPT's financial fortune. The fact that KoPT manages a total of nearly 11000 Acres of estate including huge tracts of land in prime localities of Kolkata and the Industrial Town of Haldia has other important cross-sectoral and socio-economic implications. The case studies narrated below aim to illustrate certain aspects of Estate Management in KDS which generated 23 % of KDS's total estate earning last year. Incidentally, this earning exceeded income earned from of all vessel related charges.

1st Case Study: In spite of obvious significance of estate functions, the first system study by Vigilance came across glaring vulnerabilities that have serious legal, administrative and financial implications for KoPT. For instance under a system of land allotment known as "monthly licensing" prevalent for decades many short-term licenses granted in prime localities of Kolkata had assumed the characteristics of an almost "perpetual contract". The reason was traced to an utter lack of site-monitoring and consequent non-enforcement of a peculiar clause within the agreement that puts such short-term licenses into an auto-extension mode enabling such licensees enjoy prime land for years together escaping the competitive bidding mechanism prescribed for getting a long-term lease.

Further it is noticed in several cases, short term monthly licenses (typically of 11 month duration) - both within and outside custom bonded area – are continued for years by a method of granting repeated extension and terming each extensions as a "fresh license". This practice is in contravention to both the letter and spirit of provision 10.1 & 11.1 of Land Policy Guideline 2014 issued by Ministry. An earlier query made by

Vigilance on the nature of such licensing-made 6 month ago (Vig/Sys.Impv/2016/517 dated 18.5.2017) still awaits reply from concerned Port authorities.

A recent Vigilance Investigation shows how, in many cases, even basic information about the license/lease and its holder may not be readily available on Estate records. In this case Estate Division was found to be religiously raising bill for years together (but not receiving any amount) against a short-term licensee who had expired years ago. Not only the licensee but even his son had expired. The relevant file, which first became untraceable but later retrieved by Estate Officials after persistent query from Vigilance, revealed that the land had been first allotted 53 Years ago! As the licensed plot was in a residential area of Kolkata Vigilance tried to find out how the same could have gone unnoticed for such a long time. On being queried, the concerned inspecting official explained that he was in charge of nearly 350 "plates/tenancies" spreading across huge area and did not have adequate time to even open files of many tenancies to see **whether there is even a valid license/lease agreement or not**. In several cases the original license / lease deed is not available and hence nothing is known about the terms of the lease. By his estimate, if he were to inspect a single location once in six months, it would take him years to just cover all plates under his jurisdiction and ascertain variation between the ground status and office records (if available). Discussion with other estate officials indicated absence of any proactive / system-driven approach to identify such cases.

What is even more peculiar is that while in the above case at least a bill was being sent every month in the name of a "dead man", there are many cases where not even a bill is being sent as nothing is known about the real occupant of the plot. This happens because no periodic inspection is conducted for years together after the lease/license got issued. As a result, possibility of many such licensees subletting their plots located in prime office /residential/industrial areas of Kolkata like Strand Road Posta, Chetla, Taratola to others illegally cannot be ruled out.

It is common knowledge that when a government authority licenses / leases any of its property, the most basic thing required is a detailed agreement with a set of governing terms and conditions. This is the first document that would be required in case of any dispute rights and obligation of each party. For instance, if a licensee is found by law enforcement agency to be storing prohibited material in a licensed site, KoPT would not be able to forsake their responsibility without producing a copy of the "Lease/License" Agreement where such storage might have been specifically prohibited. The legal ramification of a missing or non-existent agreement can be extremely dangerous for KoPT in a court of law and at times even to prove the ownership of the disputed land.

Such a situation did manifest itself recently when a huge fire broke out due to storage of inflammable material in an unmonitored plot very near to HQ office making media headlines.

2nd Case Study: Well before detection of a **"dead man being billed"** there was another case of illustrative value. In an office complex owned by KoPT situated a few hundred meters away from Estate Division and where Vigilance Department is located some companies had been allotted godown space through such short-term licenses years ago. Gradually they had encroached the entire thoroughfare around the complex and converted it to their own private storage yard stacking steel material worth crores of rupees without paying a single rupee as rent for the encroached space. The situation persisted for years without any change. When a search was made by Vigilance to ascertain the identity of these unauthorized encroachers, details were difficult to come by from estate division. One of the licensees who appeared to have permanently locked down ago was not even known to anyone in estate department as his file had gone missing. Available records indicated that these entities have been occupying these premises since decades even after ejectment notice had been served upon them. When the Port authorities tried to hold this licensee responsible for encroachment after the company took Kolkata Port to Court with the resulting legal dispute continuing till date. Thankfully, the company removed their inventory and abandoned the encroached space.

Conflict and Litigation Management of Estate Cases by KoPT:

Apart from the infirmities noticed in the contractual environment of leases and licenses and their worsening state due to lack of monitoring as evident from the above two case studies, there is a another area that evokes grave concern requiring immediate attention from apex management. **This is the quasi-judicial and judicial matrix in which hundreds of disputed cases currently operate**. A closer look at some of these disputes how easily the lease holders have been able to retain their occupancy many years beyond the expiry of their lease through a range of tactical legal maneuvers helped in no small measure by an inexplicable indifference on the part of KoPT to meet the challenge. **It appears as if all that a lease holder needs to do to enjoy a lease beyond expiry without commensurate payment is to kick start some dispute and create a quasi judicial / judicial statement**. No authentic data is readily available regarding how many cases are stuck up in litigations, at what stage and with what revenue implication.

One estimate made in 2017 by Dy. Chairman puts the number of **cases embroiled in such litigation at 1265 with a locked up rental-claim of around Rs. 632 crores**.

These are cases where presumably compensation bills are being raised against the litigant but without desired realization. Analysis of such cases indicates the following to be main causes behind the apparent legal impasse which invariably works in the favour of the non-paying litigant:

1. Failure in identification of breaches in lease/license and their resolution in right time and issuance of immediate ejectment notice in case conflict resolution fails
2. Lack of proper documentation on evidence collection on breach/violation by lessee.
3. Severe delay in filing a proper plaint before Estate Office for eviction under PP Act.
4. Protracted proceedings before PP Act Court without proper monitoring, in many cases running for decades without conclusion. Many cases get rejected by Estate officer several years after filing of plaint because of lack of basic evidence on breach caused by lackadaisical site inspection and improper determination of dues.
5. Absence of vigorous legal defense when PP Court Order in favour of KoPT gets subsequently challenged by litigant lessees in Court of law.
6. Missing lease agreement /papers weakening primary defense of KoPT in court.
7. **No effective step taken for eviction even when there are no restrictive orders from Courts as a result of which lessee neither vacates the premises nor pays any rent.**

In addition to cases under litigation, there are others where no bills are being sent or bills sent never realized. Latest data from "estate bill module" **puts the outstanding amount at a level of nearly 1100 crores - a sum as much as twice the entire non-estate revenue of KDS in 2016-17**. Even a fraction of this, if realized, can improve KDS's bottom-line significantly.

Understandably, the first step to solve a problem of such magnitude is to collect authentic and latest information on these leases, consolidate the same and thoroughly examine top 5 or 10 leases (in terms of locked-up revenue). Port Management was requested to provide such basic information in a proper format (enclosed) pertaining to each tenancy officer once for all for conducting further analysis.

PRESCRIBED TABULAR FORMAT FOR PROVIDING FOLLOWING INFORMATION (*TO BE GIVEN LOCATION & SECTION WISE WITH THE NAME OF THE CONCERNED OFFICER (CLASS – 1)*

SECTION, NAME & DESIGNATION OF OFFICER :				
LOCATION : {(For **Example** – **Say**, Strand Road (from…….to……) **OR Say**, Taratala Road (from….to….)}				
Serial Number	Plate Number with cc exact location & address of the Plate	Name & address of the Tenant (Lessee / Licensee)	Type of Tenancy (Lease or Licensee) with period & dates	Litigation Details: - 1. PP Act Case Date(s) of the following: (a) Ejectment Notice (b) Filing Plaint, (c) Eviction Order, (d) Appointing Authorised Officer (e) If pending, numbers of hearings held 2. If any Appeal against PP Act order filed, then dates & status of the said Court Case with specifying Stay Order, if any, with date of stay order & its present status 3. Any case is pending in Hon'ble High Court / & Hon'ble Supreme Court, its dates and status 4. Current Dues
1.	Plate No. XXXX			
2.	Plate No. YYYY			

That the above basic data, sought by Vigilance, could not be made available till date, i.e., even after lapse of more than 6 months, goes on to show how much revamping the existing estate management information system needs.

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Contracting Efficiency

[Improving Tendering Ecosystem of KoPT (Estimate Preparation)]

A. Concept Note

This study is the systemic analysis covering activities ranging from Estimate Preparation & Approval to Invitation of Tender in KoPT. The purpose of this study is to improve the overall tendering and contracting ecosystem of KoPT.

1.0 Analysis of current practice of Estimate preparation and approval:

For the purpose of studying the process flow of estimate preparation, the Civil Engineering Department of KDS was taken for analysis. In Civil Engineering, it is seen that the "estimate" is raised first by a Junior Engineer which gets checked by an Executive Engineer and subsequently recommended by a Superintending Engineer for "Technical Approval" of Chief Engineer. The Chief Engineer then sends this "estimate" file to another wing called "Contract Cell" which is a centralized wing to deal with the estimates received by Chief Engineer for "technical approval" from various sectionsof Civil Engineering department. The Contract Cells operates under the charge of Superintending Engineer (Contract). He, in turn sends, the estimate to the Executive Engineer assisting him, who again perused the estimate forwarded to him by Superintending Engineer (Contract). Finally, after checking, it is put up back to Superintending Engineer (Contract), who then forwards the same to Chief Engineer for grant of "Technical Approval":

Presently an estimated costraised by an engineering section ofCivil Engineering department undergoes two kinds of "approval" before an actual tender is floated on its basis – a "Technical Approval and then an "Administrative Approval". At present, all the estimate files which were generated by various section, irrespective of value, are being marked to the Head of the Department i.e., Chief Engineer. This leads to congestion of files at the desk of Chief Engineer and multiply 2/4 times movements between CE and the Contract Cell. At present there is no specific Delegation of Powers (DoP) applicable to "approval of estimates". As a matter of practice the powers which are with the 'execution of contract' as appearing under Section-34of DoP of 2015 are traditionally being followed.

While the above procedure is being followed by KDS Civil engineering Dept, the practice followed at HDC is quite different. In HDC, an officer of the level of Dy. HoD of the division/section [Senior Deputy Manager] grants "technical approval" for an estimate. After technical approval, all estimates pertaining to Civil, Mechanical and Electrical etc are routed through a single HoD, i.e., GM(Engg.) to Finance wing for obtaining "administrative approval". This is because, unlike KDS, one single HoD in HDC heads civil, electrical and mechanical departments. These processes indicate a lack of basic inconsistency in dealing with the estimate preparation/approval process.

2.0 The current procedure in framing Bid Document (Tender Booklet):

After technical and administrative approval of an estimate, an officer of the "Tender-Inviting-Department" (TID) prepares a document containing the terms and conditions which would be applicable to the proposed tender. The current practice is to constitute a "Tender Committee" for examining and vetting the bid document prepared by TID. The constitution of this committee depends upon the approved estimated value. This is also the same committee which functions as the "Tender Committee" (TC) that submits recommendation for award of contract / re-tender / negotiations to the appropriate "Tender Accepting Authority (TAA). The approval of tender booklet prepared by the TID consumes considerable time although in most cases the technical specification are simple and the terms are based upon GCC or identical work executed in past. A tender is invited only after this Tender Committee clears the Tender Booklet. In some case, Vigilance had found that the tender booklet goes all the way up to Board of Trustees for approval before invitation of tender even though the estimated value is not in the range of procurement power of BoT. Considering such inconsistency it may be prudent to avoid process repetition that contributes delay and avoidable diffusion of accountability.

3.0 Desirability of two-stage system for all tendering activities:

In most organizations, for "supply tenders", single stage tendering is the normal mode. In single-stage tendering, bidders are asked to quote the price for the tender item(s)/Work activities while confirm to terms and conditions contained in the bid document. In such a system, after tender-opening, all bids are opened and tested for their techno-commercial acceptability. Thereafter a contract is awarded to the "lowest evaluated" offer subject to reasonableness of rate. Only in case of purchase of complex plant and machinery, it is deemed appropriate to adapt two-stage biddingsystems.

In contrast to "supply tenders", two-stage-tendering (first opening the technical bids and evaluating them for techno-commercial conformance and then opening of price bidsof only those bidders who pass through first phase) are more frequently encountered in works/consultancy tenders. The two stage tender increases the tender-processing time for obvious reasons. For example, in two stage tendering system, all bids received in first stage have to be checked for their eligibility/credential. In a single-stage tendering system, the tender deciding authorities may concentrate onverification of credentials for only those bids which are in the zone of rate reasonableness. Thisis obviously advantageous from time point of view. At present KoPT follows two-stage-tendering is the mandatory system for all most all "Supply/Works/Consultancy" tenders. There was a time when KoPT used to follow single-stage system for all their supply-tenders. But at some point of time, it is believed that some Board Resolution made two-stage system mandatory.

At this juncture, it may be pertinent to consider what CVC has saidregarding the above matter in their circular No 01/02/11 dated 11/02/2011:

".. Procurement cases where technical specifications need to be iterated more than once, it would be prudent to invite expression of interest and proceed to finalize specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. In such cases, two-stage tendering process will be useful and be preferred.."

4.0 Making all documents as "essential document for bidding" and the phenomenon of shortfall documents:

During the last year analysis made by Vigilance shows that in many departments, documents which are not "essential" to decide the techno-commercial suitability of an offer are labeled as "essential" and listed under the "eligibility criteria" of the bid. It is found that some of these documents are actually not essential at the bidding stage and are relevant at subsequent stages like contract execution /bill passing. Listing of such documents under the eligibility criteria means that if a bidder fails to submit any of these numerous documents then his bid will fail to qualify the first stage.

While some departments take a strict view of this and reject such bids out-rightly, other departments allow a period of 15 days grace period after tender opening for such bidders to make good the shortfall in submission of such documents. Such differential practice may invite complaints from the bidders who may argue that the bidder who did not submit documents as per bid condition was ineligible and has been unjustly given an opportunity after bid opening. Interestingly, there appears to be a Board Resolution which actually allows such relaxation period for submission of shortfall documents. The corrective steps to solve this problem are outlined below which should be read along with an earlier system improvement issued in this regard vide Secretary/KoPT's administrative order no. Admn/Misc.689/V dated April 25, 2017.

B. System Improvement:

1. Deciding the Competent Authority for granting "Approval" for an Estimate:

At present there is no delegation of power specificallyfor "Approval" of Estimate whether such approval is technical or administrative in nature. As a result, there has beena practice to apply the same limits of financial power for estimate as that belonging to the power of Contract Acceptance, i.e., under Section-34 of DoP.

Since the delegation of Power does not envisage "tender acceptance power" to any authority below that of HoD, all estimate files, irrespective of their value up to Rs 1.0 Crore, are currently being marked to the desk of HoD for such technical approval. This is a majorbottleneck in the process chain and a significant contributor of delay in estimate preparation.

It is not known as to whether a Port Trust can formulate their own limits of power in areas not covered by DoP such as the aforesaid matter of "estimate approval" which is distinct from exercise of procurement power by a delegated authority. This may please be ascertained from Ministry.

2. Desirability of a Centralized Contract Cell in KDS or low value procurement:

The desirability of keeping a Contract Cell for centralized monitoring of estimate received from the divisions/sections which have already been scrutinized by three engineers (viz. Junior Engineer, Executive Engineer and Superintending Engineer), needs to be analyzed by KoPT management. The double checking of estimates which have already undergone multiple checking is certainly not in the system for low value work, for routine maintenance work involving repair, maintenance and standard construction. In this context, it is further pointed out that in HDC no such centralized contract cell is currently in operation to technically vet / verified the estimates raised by different engineers making a realistic issue.

3. Methodology for a Realistic Estimate:

While preparing an estimate it should be kept in mind that estimate is an inalienable part of the "procurement decision making chain" and hence comes under the relevant provisions of GFR and the recently adopted "Manual for Procurement of Goods 2017 by the Ministry. This is the all the more important since more often than not the "estimated value" of an item/work is taken as a benchmark for rate comparison/ appreciation in the subsequent tender committee stage.

It is therefore important to realize that the concerned authorities who are in charge of preparation of estimate areresponsible for making a realistic estimate for the item to be purchased or work to be done. In case of procurement of goods several methods have been elaborated in the "Manual for Procurement of Goods 2017, Para No.2.1.1 (iii) (e)"

As far as works tender are concerned, due diligence must be applied to take realistic rate for each constituent items of work in the tender schedule / BoQ. Generally, such rates are taken from CPWD / State PWD SoR (Schedule of Rate) which serves as a good indicator of market price provided such SoR are current. For Non-SoR items the current practice is to look for any LAR for same/similar item or conduct market survey. If LAR(s) for an item is to be taken as estimated rate care should be observed in ensuring that such LARs were not AHR (Abnormally High Rate) and ALR (Abnormally Low Rate) in the referenced past contract. There may be case where identical item of activities of work might have been executed in other ports. The collection of such data at the estimated stage is very helpful not only for preparation of realistic estimate but even for determining reasonableness of the rate at the subsequent tender committee stage. If a works tender is "supply-item-heavy" or "material intensive" in nature, then market

survey by way of collection of multiple budgetary quotations should be made. The above methods are only illustrative in nature and not exhaustive. There are myriad ways to ensure preparation of a realistic estimate for a work / item. The basic objective is to comply with the fundamental principle of procurement as enshrined at Para No.2.1.1 (iii) (e) of Procurement of Goods 2017.

4. Red flags to avoid during estimate preparation:

The possible pitfalls to avoid while preparation of estimate for Works/Supply Tenders is amply evident from the following extract taken from an analysis of tenders made by CVC :

4.1 In cases of Works Tender Estimate :

"**High-pitching of estimates :**It is imperative to mention, in the tender notice (called the NIT- i.e. Notice Inviting Tender) the estimated cost of the given work/project which is supposed to be arrived at by collecting all relevant information carefully and intelligently. Normally, this is the responsibility of the Convenor-Member (to be) of the TC. However, many a time, the estimates turn out to be high-pitched. In most of the cases, this is done deliberately (for obvious reasons) by :

a) Picking up "comparable works" selectively

b) by picking up, for comparison, incomparable works,

c) by willfully over-looking really comparable works – i.e. works awarded at competitive rates in the immediate past within or adjoining the particular area,

d) by'assuming' unreasonable rates towards labour cost, transportation, local taxes and such other variables – etc. In some cases, the high pitching of estimated cost could also be because of sheer apathy/callousness (i.e. not necessarily on a/c of motives) on the part of the official(s) entrusted with the job. At the same time, since such callousness and apathy eventually result in the award of the given work at unreasonably high rates, the concerned official(s) cannot be let off scot-free simply on the ground that there was no malafide behind his/their act of omission or commission. After all, when the act of omission/commission of a public servant, though bereft of malafides, cannot be condoned if it has resulted in monetary loss to the Organization.

4.2 Similar red flags in Supply Tender Estimates are :

(i) Generating artificial 'demand' for materials to justify purchases.

(ii) Splitting up of demands/quantities with a view to bringing each case under the financial powers of the purchase of a particular officer

(iii) Projecting artificial urgency to the purchase although no such urgency actually exists.

(iv) Obtaining "supporting quotations" from fictitious/non-existent entities where the quoted rates are invariably higher vis-à-vis the rates of the predetermined supplier.

(v) Effecting redundant purchases at exorbitant rates."

5.0 Dispensing with Tender Booklet Approval by Tender Committee and Adopting a deviation-based approach:

The existing procedure of vetting of tender booklet by a Tender Committee can be dispensed with the following checks and balances:

a) If the first "tender booklet" is based on the standard terms and conditions such as GCC (as in several routine works/items)then there may not be any need to get the same evaluated by a "Tender Committee" before bid-solicitation. The Tender Inviting Department can directly put up the tender-booklet to TAA (based on estimate value of equivalent procurement power of DoP) for approval.

b) If any deviation from GCC by way of Special Condition or otherwise is envisaged , then the TID should put up the list of such new conditions/ special conditions/deviations to TAA for approval after finance concurrence.

c) Definition of "similar work" used in the eligibility criteria for various types of routine "tendering activities" should be prepared in advance and approved by the respective HoDs in consultation with the Finance Department. This will reduce tender condition preparation time and impart a degree of comprehensive objectivity.

d) There are many areas where inconsistencies observed between the existing Civil Engineering Manual and GCC. Chairman is requested to constitute a team of senior officers of KDS &HDC with a definite time limit to streamline the same and get approval from BoT since these documents had been approved by BoT earlier.

6.0 Desirabilityof mandatory Two-stage-Tendering system followed in KoPT:

Organization like Railways which floats thousands of "supply" & "works" tenders every year, almost always the single-stage tendering mode is followed for supply-tenders. In case of work tenders floated by Railways, only those tenders whose estimated value is more than Rs. 10 crore is processed through two-stage-tendering system. In the context of port trust, Rs. 10 crore limit may be too high considering the fact that this is the procurement power currently delegated to the highest authority in a port i.e., of the Chairman.

However, taking a lesson from Railways tendering system, the desirability of fixing an appropriate financial threshold for "works tenders" below which only single-stage tendering is to be followed should be explored by the management. Similarly, a decision should be taken as to the desirability of adopting a two-stage-system for all supply tenders. This is an important area where the concerned port authority should discuss the issue and take an appropriate step with the approval of Chairman or Board of Trustees as needed.

7.0 Avoiding Shortfall document submission:

The first corrective action in this regard is to clearly mention in the bid document as to which document is "essential" and which document is "desirable" and at what stage.

The second is to enforce tender-discipline amongst prospective bidders at the very beginning itself. If any grace period is granted as matter of policy/routine then an automatic tendency would develop among bidders to be less careful in submitting all documents at one go in expectation of the grace period. In KoPT, in most large value tenders, pre-bid meetings are held which is a great opportunity to emphasize such tendering discipline. Allowing extra time for submission of shortfall documents would inevitably push back the tender processing chain by an equivalent period in addition to making such action prone to complain by rival bidders.

8.0 Creating Process Manual for each Department:

One of the important aspects emphasized by CVC is creation of a process manual by the respective departments of PSU / Autonomous Bodies. **In this connection, two years ago the then CVO had addressed a letter dated 23/11/2016 to all the Head of the Departments to undertake the manual creation activities (copy enclosed).** However, the mission remains largely unrealized and incomplete. The Chairman is urged to impress upon the respective departments about the importance and necessity of having the right kind of systems and procedure by codifying the same for their respective spheres of organizational activities in the form an approved manual.

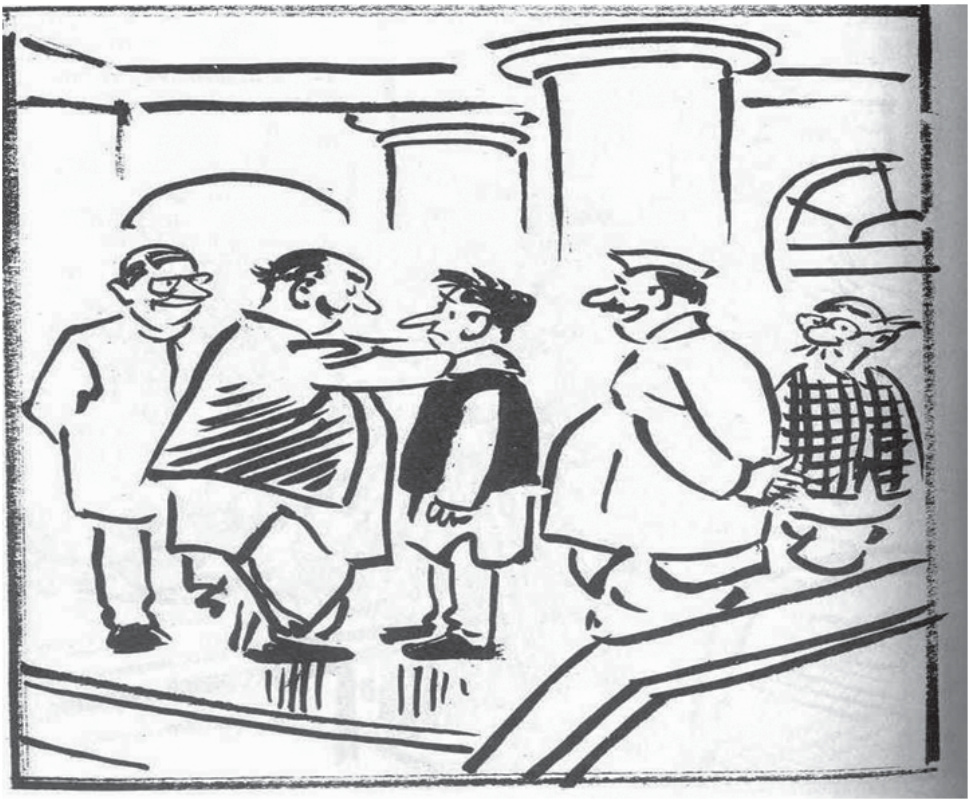
****

The Earth provides enough to satisfy every man's need but not for every man's greed.

Mahatma Gandhi

Transfer order! So soon - ? I told you not to be too efficient and honest !

Important CVC Circulars and Guidelines



You are new to politics and therefore worried about corruption charges, CBI probe, special court order and so on. Nothing will happen, I assure You

Telegraphic Address :
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E-Mail Address
cenvigil@nic.in

Website
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सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,
ब्लॉक–ए, आई.एन.ए., नई दिल्ली–110023
Satarkta Bhawan, G.P.O. Complex,
Block A, INA, New Delhi-110023

फा. / No. 005/CRD/19-886\21

दिनांक / Dated 11.07.2018

Circular No.06/07/18

Subject: **Transparency in Works/Purchases/Consultancy contracts awarded on nomination basis – reg.**

Reference: **(i) Commission's Circular No.15/5/06 dated 09.05.2006**
(ii) Commission's Office Order No.23/7/07 dated 05.07.2007
(iii) Commission's Office Order No.19/05/10 dated 19.05.2010

Reference is invited to Commission's Circulars cited above wherein the need for award of contracts in a transparent and open manner has been emphasized. The Commission is still receiving representations reporting instances of award of contracts and procurements in a non-transparent manner on nomination basis by several Departments/CPSUs.

2. The award of contracts/procurements/projects on nomination basis without adequate justification amounts to a restrictive practice eliminating competition, fairness and equity. The Commission would reiterate its earlier instructions, that award of contracts on nomination basis can be resorted to only in exceptional circumstances as laid down in Commission's Office Order No.23/7/07 dated 05.07.2007.

3. All Ministries/Departments/CPSUs are therefore advised to apprise the afore-mentioned guidelines to the concerned officers for strict compliance.

(J. Vinod Kumar)
Director

To

(i) The Secretaries of all Ministries/Departments of GoI.
(ii) All Chief Executives of CPSUs.
(iii) All CVOs of Ministries/Deptts/CPSUs.

No.005/CRD/19
Government of India
Central Vigilance Commission
*****

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 5th July 2007

Office Order No.23/7/07

Subject:- Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis.

Reference is invited to the Commission's circular No.15/5/06 (issued vide letter No.005/CRD/19 dated 9.5.2006), wherein the need for award of contracts in a transparent and open manner has been emphasized.

2. A perusal of the queries and references pertaining to this circular, received from various organizations, indicates that several of them believe that mere post-facto approval of the Board is sufficient to award a contracts on nomination basis rather than the **inevitability of the situation, as emphasized in the circular.**

3. It is needless to state that **tendering process or public auction** is a basic requirements for the award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties.

4. A relevant extract from the recent Supreme Court of India judgement in the case of Nagar Nigam, Meerut Vs A1 Faheem Meat Export Pvt. Ltd. [arising out of SLP(civil) No.10174 of 2006] is reproduced below to reinforce this point.

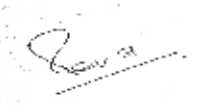
> "The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notifications of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance, during natural

calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through 'private negotiations'."

(Copy of the full judgement is available on the web-site of the Hon'ble Supreme Court of India, i.e., www.supremecourtofindia.nic.in)

5. The Commission advises all CVOs to formally apprise their respective Boards/managements of the above observations as well as the full judgement of the Hon'ble Supreme Court for necessary observance. A confirmation of the action taken in this regard may be reflected in the CVO's monthly report.

6. Further, all nomination/single tender contracts be posted on the web-site ex post-facto.



(Rajiv Verma)
Under Secretary

To

All Chief Vigilance Officers

No.005/CRD/19
Government of India
Central Vigilance Commission
*****

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 9th May 2006

CIRCULAR No.15/5/06

Subject:- Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis.

The Commission had, in it's OM No. 06-03-02-CTE-34 dated 20.10.2003 on back to back tie up by PSUs, desired that the practice of award of works to PSUs on nomination basis by Govt. of India/PSUs needed to be reviewed forthwith. It is observed that in a number of cases, Works/Purchase/Consultancy contracts are awarded on nomination basis. There is a need to bring greater transparency and accountability in award of such contracts. While open tendering is the most preferred mode of tendering, even in the case of limited tendering, the Commission has been insisting upon transparency in the preparation of panel.

2. In the circumstances, if sometimes award of contract on nomination basis by the PSUs become inevitable, the Commission strongly feels that the following points should be strictly observed.

(i) All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for scrutiny and vetting post facto.

(ii) The reports relating to such awards will be submitted to the Board every quarter.

(iii) The audit committee may be required to check at least 10% of such cases.

3. This may be noted for strict compliance.

(V. Kannan)
Director

All Chief Vigilance Officers

Copy to:

(i) All Secretaries of Govt. of India
(ii) All CEOs/Head of the organisation

No..OFF 1 CTE 1
Government of India
Central Vigilance Commission
(CTE's Organization)

Satkarkta Bhawan, Block A.
GPO Complex. INA
New Delhi-110023
Dt. the 25TH November 2002

OFFICE MEMORANDUM

Subject: Appointment of Consultants

While highlighting the common lapses/ irregularities observed in the Construction works undertaken by the PSUs/Banks, under the guidance of Consultants, the Commission had issued certain guidelines vide letter No. 3L PRC 1 dated 12.11.1982 [copy enclosed-Annexure-1] so as to avoid recurrence of such lapses. These were further emphasized vide letter No. 3L-IRC-1 dated 10.1.1983 [copy enclosed-Annexure-II], inter-alia, bringing out the guidelines circulated by the Bureau of Public Enterprises in their letter no. DPE/GL-025/78/Prodn./PCR/2/77/BPE/Prodn. dated 15.07.1978 and it was reiterated that the appointment of Consultants should be made in a transparent manner.

2. However, it has been observed during intensive examination of various works/contracts by the CTEO that these instructions are not being followed by a large number of organizations. The consultants are still appointed in an ad-hoc and arbitrary manner without inviting tenders and without collecting adequate data about their performance, capability and experience. In some cases, the consultants were appointed after holding direct discussions with only one firm without clearly indicating the job-content and consultation fee payable to them. Often the scope of work entrusted to the consultants is either not defined property or the consultants are given a free hand to handle the case due to which they experiment with impractical, fanciful and exotic ideas resulting in unwarranted costs. The organizations display an over-dependence on consultants and invariably abdicate their responsibility completely to the latter. The officials do not over see the working of the consultants resulting in the latter exploiting the circumstances and at times, in collusion with the contractors, give biased recommendations in favour of a particular firm. It has also been noticed that the consultants recommend acceptance of inferior items/equipments / payment for inadmissible items and also give

Contd.....

undue benefit to the contractors like non-recovery of penalties for the delayed completion. The position in respect of projects with multiple consultants is still worse as the self-interest of so many outside agencies takes precedence over the loyalty towards the organization. These agencies tend to collude or collide with each other, and both the situations are detrimental to the smooth implementation of the project.

3. Some of the common irregularities/lapses observed during the last four years or so in this regard are highlighted as under:-

i) One organization engaged architect from a very old panel. prepared about 15 years back.

ii) An organization invited and short-listed 5 consultants but awarded the contract to the highest bidder on the plea that the bidder had done a very good job in some other project with the organization. Extra amount of account of travel expenses, boarding and lodging was also sanctioned beyond contractual terms.

iii) A bank for construction of its Head Office in Mumbai, short-listed three firms after a thorough scrutiny of offers submitted by a large number of bidders. The price bids of these firms were opened , but in a surprising manner, the work of consultancy was awarded to an L-2 firm thus compromising all ethics of tendering.

iv) The payment terms to the contractors are often allowed quite liberally. In one case, the consultant's fee was paid on quarterly basis without linking the same with the progress of the project. Full payments had been authorized even before the completion of the project. In another work, the consultants were paid substantial amount at an early stage of the project though they had submitted only preliminary drawings. Subsequently, the consultants failed to complete the job and the department took no action against them. In yet another case, the consultant was allowed extra payment for additional documents that he had to generate due to re-tendering of the case. However, the reasons for re-tendering were found attributable to the consultants and instead of penalizing, they were rewarded with extra payment.

Contd.....

v) The consultants tend to increase the cost of the work for more fees as generally the fee of the consultants is fixed at a certain percentage of the final cost of project. In an office building work, tender was accepted for Rs.10.00 crores but during execution, specifications were changed and actual cost on completion was twice the tendered cost. Thus, the consultant was unduly benefited as there was no maximum limit fixed for the consultant's fee.

vi) In the consultancy agreement generally the nature of repetitive type of work is not defined. In one work, 4 similar blocks comprising of 100 hostel rooms each were constructed. The consultants were paid same standard fees for each block. Due to this, the organization suffered loss at the cost of the consultant.

vii) There is no check on consultant's planning, design and execution. In one work, pile foundation for a workshop building was designed with the capacity of the piles, capable of carrying twice the required load. In the same project, high capacity piles (450 mm dia, 20 m deep) were provided for a single-storeyed ordinary office building, which did not require pile foundation at all.

viii) In another case, the project was for a design and construction of a training institute on a big plot of land in a very posh and expensive area. The whole construction was two storyed with no scope for future expansion Ironically all other buildings in the vicinity are multi-storeyed highlighting the fact that space utilization here was very poor. Further, the walls in the reception area and on the outside of the auditorium were provided with acoustic insulation with no rationale. For air-conditioning of the library instead of providing a single AHU of suitable capacity with ducting , etc. 20 plus AHUs had been provided in the room. Such fanciful ideas along with poor planning and supervision resulted in the project suffering heavy cost and time overruns.

ix) In one of the works for a bank in Mumbai, the substation equipment has been installed in the basement area, jeopardizing the safety aspect, as Mumbai gets its fair share of heavy rains and the area is also in close proximity to the sea.

Contd....

x) In many cases, the consultants charge exorbitant traveling expenses. For a work in Punjab, Mumbai based Architects were appointed. The fee payable to them was Rs.6.00 lakhs, but the actual traveling expenses ultimately paid to them were to the tune of Rs.7.5 lakhs.

xi) Sometimes the consultants pass on their responsibility to the contractor . In one work, the consultant was supposed to give design ad drawing as per the consultancy agreement. While preparing the tender document for construction work, the responsibility for the preparation of drawings and structural design was entrusted with the construction contractor by adding a condition to that effect. The contractors loaded the quoted rates for the above work and the consultant was benefited at the cost of the organization.

xii) In case of road projects, it was observed that consultants under different categories like general consultants, planning & design consultants and construction management consultants were appointed for almost all the activities of the projects without competitive bidding. The work done by the consultants is not checked by the departmental engineers who feel their job is mainly to issue cheques to the consultants/contractors.

4. The above list is only illustrative and not exhaustive. The Commission would like to reiterate the instructions regarding appointment of consultants. The appointment of consultants should be absolutely need based and for specialized jobs only. The selection of consultants should be made in a transparent manner through competitive bidding. The scope of work and role of consultants should be clearly defined and the contract should incorporate clauses having adequate provisions for penalizing the consultants in case of defaults by them at any stage of the project including delays attributable to the consultants. As far as possible a Project Implementation Schedule indicating maximum permissible time for each activity should be prepared with a view to arrest time overruns of the projects. There should be no major deviation in the scope of work after the contract is awarded and the consultant should be penalized for poor planning and supervision if the deviations result in excessive cost overruns. Further, the consultant's fee should be pegged based on the original contract value. The role of the consultants should be advisory and recommendatory and final authority and responsibility should be with the departmental officers only.

Contd.....

It is suggested that these instructions may be circulated amongst the concerned officials of your organization for guidance in appointment/working of consultants in the engineering works/contracts. These instructions are also available on CVC's web site, http://cvc.nic.in

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

Encl: As above

To

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

GENERAL FINANCIAL RULES 2017

Rule 194 - Single Source Selection/Consultancy by nomination.

The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

(i) tasks that represent a natural continuation of previous work carried out by the firm;

(ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance; and

(iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.

(iv) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.

(v) It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

Rule 204 - Procurement of Non-consulting services by nomination.

Should it become necessary, in an exceptional situation to procure a non-consulting service from a specifically chosen contractor, the Competent Authority in the Ministry or Department may do so in consultation with the Financial Adviser. In such cases the detailed justification, the circumstances leading to such procurement by choice and the special interest or purpose it shall serve, shall form an integral part of the proposal.

MANUAL FOR PROCUREMENT OF GOODS 2017

4.6 Proprietary Article Certificate

4.6.1 In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists) against a PAC certificate (Annexure 6) signed by the appropriate authority. Once a PAC is signed at the designated level as per SoPP, the powers of procurement are the same as in normal conditions as per the delegation of powers. This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations. (Rule 166 of GFR 2017)

4.6.2 Terms and conditions

i) Users should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level as per DPFR/SoPP, for sourcing an item from OEM or PAC firms or their authorised agents;

ii) Proprietary items shall be purchased only from a nominated manufacturer or its authorised dealer as recorded in the PAC certificate;

iii) In certain unavoidable cases, the procuring authority may have no alternative but to waive payment of EMD/SD for procurement on a proprietary basis;

iv) To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other Government, public sector or private organisations;

v) In case of PAC/single tender procurements:

   a) Reports relating to such awards should be submitted to the Ministry every quarter;

   b) Internal audit may be required to check at least 10 (ten) per cent of such cases; and

   c) Details of such contracts should be published on the website of the Procuring Entity.

4.6.3 PAC - Risks and Mitigations

Risk	Mitigation
There is a risk that this mode may get used unjustifiably to restrict competition. Such risks get aggravated, in case of secrecy about such procedures as alternative vendor/contractors may not even come to know about such opportunities	The delegation of powers should be restricted for signing of PAC. Audit may take-up 10 (ten) per cent of cases of PAC procurements for review. Even in PAC procurements the NIT and the Award of Contract should be put on the website of CPPP and Procuring Entity.
Once approved, there is a risk of a nexus getting developed and the mode may continue to be used for many years, without fresh application of mind	No item should be procured on PAC basis for more than three years, after which a mandatory OTE mode may be used, to test the market
The bidder may charge a price higher than the market	The firm should be asked to accept a "fall clause" undertaking that, in case it supplies or quotes a lower rate to other Governments, public sector or private organisations, it would reimburse the excess. Negotiations may be called for to get prices reduced

4.7 Single Tender Enquiry (STE) without a PAC

4.7.1 A tender invitation to one firm only without a PAC certificate is called a single tender. This mode may be shortest but since it may provide lesser V⁴M as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only under following conditions:

i) In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.

ii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm. (Rule 166 of GFR 2017)

4.7.2 Terms and Conditions

i) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DFPR/SoPP, prior to single tendering. Unlike in PAC, powers of procurement of STE are more restricted; and

ii) Other terms and conditions of PAC procurement mentioned above would also apply in this case.

4.7.3 STE - Risks and Mitigations

Risk	Mitigation
Same but more heightened risks than PAC are present in this mode. Selection of a single vendor may be non-transparent and unjustified	Same mitigation strategies as in the case of PAC should apply. Procurements on a STE basis should be made from reputed firms after determining reasonableness of rates. Powers of procurement of STE should be severely restricted.

MANUAL FOR PROCUREMENT OF CONSULTANCY & OTHER SERVICES 2017

3.10 Direct Selection: Single Source Selection (SSS)

3.10.1 Under some special circumstances, it may become necessary to select a particular consultant/service provider where adequate justification is available for such single source selection in the context of the overall interest of Procuring Entity. In Finance Ministry's 'Manual of Policies and Procedure of Employment of Consultants', this is called 'Selection through Direct Negotiations', which is not the generally prevalent nomenclature. (Rule 194 of GFR 2017, also see para 6.9.3) The selection by SSS/nomination is permissible under exceptional circumstances such as:

i) tasks that represent a natural continuation of previous work carried out by the firm;

ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;

iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;

iv) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;

v) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single source selection.

Procuring Entity shall ensure fairness and equity and shall have a procedure in place to ensure that:

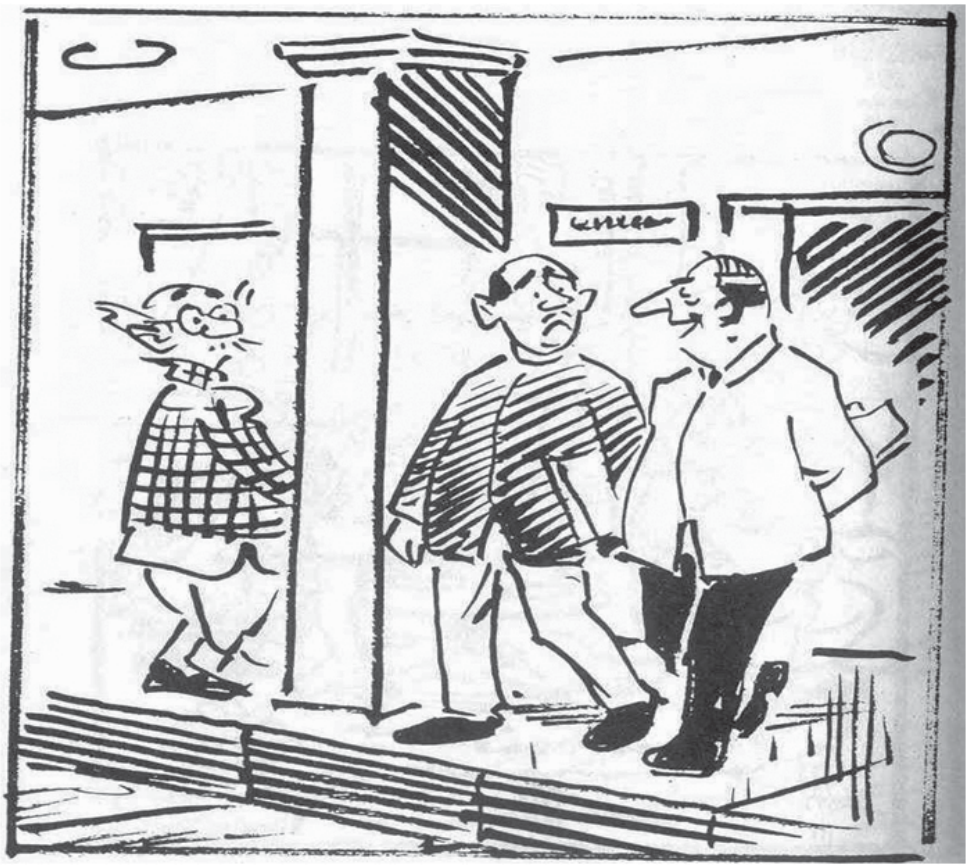
a) the prices are reasonable and consistent with market rates for tasks of a similar nature; and

b) the required consultancy services are not split into smaller sized procurement.

3.10.2 SSS – Risks and Mitigations

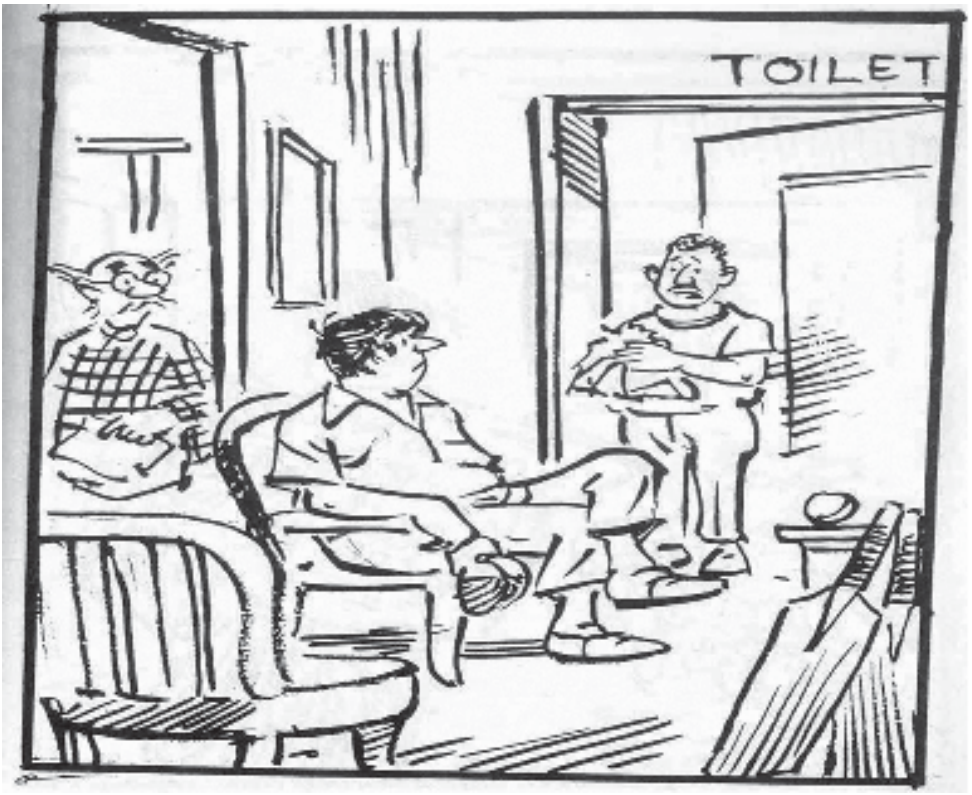
Risk	Mitigation
Inappropriate selection of SSS: There is a possibility that SSS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment. The assignment may be split into parcels to avoid competitive selection systems or to avoid obtaining higher level approvals for SSS.	Full justification for single source selection should be recorded in the file and approval of the competent authority (schedule of Procurement Powers – SoPP should severely restrict powers for SSS selection) obtained before resorting to such single-source selection. In direct selection, the Procuring Entity should ensure fairness and equity and the required consultancy/other services are not split into smaller sized procurement to avoid competitive processes.
Cost may be unreasonably high: The single consultant/service provider is likely to charge unreasonably high price.	Procuring Entity must have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature. If necessary negotiations may be held with the consultants/service providers to examine reasonableness of quoted price.

7.1.6 As per CVC guidelines, it's CFA's (Competent Financial Authority) responsibility to ensure that a statement of all selections by nominations, every month are to be reported to Secretary/Head of Ministry/Department.



Investigation proves that you are the only incorruptible officer. So they suspect something fishy about your conduct!

Politicians,businessmen,civil servants, cricketers etc., are all in here. We have to build more cells! Soon we will have what are called Cyber Criminals.



He is asking forty lakhs for not making public your offer of twenty lakhs for match fixing!

"Greed is a bottomless pit which exhausts the person in an endless effort to satisfy the need without ever reaching satisfaction"

...Erich Fromm


Save India
From Corruption

Vigilance Department
Kolkata Port Trust
6, Fairlie Warehouse Building (Ground floor)
Strand Road, Kolkata - 700 001