

Telegraphic Address :
"SATARKTA: New Delhi

E-Mail Address
cenvigil@nic.in

Website
www.cvc.nic.in

EPABX
24600200

फैक्स / Fax : 24651186



सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



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

सं./No. 011/VGL/063-334701

दिनांक / Dated 23rd January, 2017

Circular No. 01/01/17

Subject :- Systemic Improvement Guidelines - Engagement of Consultants - regarding.

Attention is invited to Commission's Circular No.08/06/11 dated 24th June, 2011 (**copy enclosed**) regarding selection and employment of consultants. The Commission, taking into account the practices and procedures, being followed by various organisations, would advise following measures while finalising the contracts for engaging consultants:

- (a) **Framework of Instructions of GOI / Guidelines of CVC / others** : Departments / Organisations (employer / client), engaging a consultant, should draw attention of the consultant to the relevant and extant instructions of Government of India, GFR issued by Ministry of Finance, guidelines of CVC and provisions of the Procurement Manual / relevant instructions of the respective organisation, as applicable to the subject matter of the advice / service to be rendered by the consultant and required to be complied with.
- (b) **Accountability of the employer / client and the consultant**: A consultant engaged by the employer has to have a certain degree of accountability, on its part, for any advice and / or for any service rendered to the employer, keeping in view norms of ethical business, professionalism and the fact that such advice / service is being rendered for a consideration, as per the terms of the contract. At the same time, the employer also has to have its share of accountability, for accepting the advice and services, provided by the consultant.

To ensure adequate accountability, suitable tender terms and conditions for apportioning accountability, between the employer and the consultant, need to be incorporated. Also, there should be suitable provisions to enforce such accountability, in case of improper discharge of contractual obligations / deviant conduct by / of any of the parties to the contract.

- (c) **Conflict of Interest:** The consultant shall avoid any conflict of interest while discharging contractual obligations and bring, before-hand, any possible instance of conflict of interest to the knowledge of the employer / client, while rendering any advice or service.

The consultant must act, at all times, in the interest of the employer / client and render any advice / service with professional integrity. A consultant is expected to undertake an assignment / project, only in areas of its expertise and where it has capability to deliver efficient and effective advice / services to the employer.

- (d) **Maximum Possible Use of In-house Expertise:** Before arriving at a decision to engage consultant and in matters of accepting advice / service rendered by the consultant, all organisations should, in the first instance, explore the possibility of using in-house expertise. Proof checking / peer review, in case of advice rendered by a consultant, especially in high value projects, may be advantageous.

2. Apart from above, following few measures may be considered for better and efficient execution of consultancy contracts:

- (a) Suitably incorporating Integrity Pact in the consultancy contracts.
- (b) An advisory to the consultant, in suitable format, to keep in view transparency, competitiveness, economy, efficiency and equal opportunity to all prospective tenderers / bidders, while rendering any advice / service to the employer / client, in regard with matters related to selection of technology and determination of design and specifications of the subject matter, bid eligibility criteria and bid evaluation criteria, mode of tendering, tender notification, etc.
- (c) Normally, pre-bid conference and timely addressing of objections / queries, in appropriate manner, from prospective tenderers / bidders should be in place.
- (d) Suitably incorporating a provision making the consultant to cooperate fully with any legitimately provided / constituted investigative body, conducting inquiry into processing or execution of the consultancy contract / any other matter related with discharge of contractual obligations by the consultant.

3. The Commission desires that the above guidelines be brought into the notice of all concerned.


(J. Vinod Kumar)
Director

To

- (i) The Secretaries of all Ministries / Departments of GOI
- (ii) All Chief Executives of CPSUs / Public Sector Banks / Public Sector Insurance Companies / Autonomous Bodies etc.
- (iii) All CVOs of Ministries / Departments of GOI / CPSUs / Public Sector Banks / Public Sector Insurance Companies / Autonomous Bodies etc.
- (iv) Website of CVC

Telegraphic Address :
"SATARKTA: New Delhi

E-Mail Address
cenvigil@nic.in

Website
www.cvc.nic.in

EPABX
24651001 - 07

फैक्स/Fax : 24616286



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

सं./No..... 011/VGL/063 -134657

दिनांक / Dated..... 24th June, 2011

Circular No. 08/06/11

Subject: Selection and employment of Consultants.

The issue of role and professional liability of consultants in government contracts has been under consideration in the Commission for quite some time. The Commission has decided that following guidelines, be kept in view while finalising the contracts for engaging consultants.

1. Conflict of Interest. The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting or other activities that conflict with the interest of the employer under the contract.

The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with following requirements:-

(a) The consultants shall provide professional, objective, and impartial advice and at all times hold the employer's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other employers, or that may place them in a position of being unable to carry out the assignment in the best interest of the employer. Without limitation on the generality of the foregoing, consultants shall not be hired under the circumstances set forth below:

(i) **Conflict between consulting activities and procurement of goods, works or non-consulting services (i.e., services other than consulting services covered by these Guidelines)** – A firm that has been engaged by the employer to provide goods, works, or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from subsequently providing goods, works, or services (other than consulting services covered by these Guidelines) resulting from or directly related to the consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and build contract.

(ii) **Conflict among consulting assignments** – Neither consultants (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of

the consultants. As an example, consultants assisting a employer in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

(iii) Relationship with Employer's staff – Consultants (including their experts and other personnel, and sub-consultants) that have a close business or family relationship with a professional staff of the Employer (or of the project implementing agency) who are directly or indirectly involved in any part of: (i) the preparation of the TOR for the assignment, (ii) the selection process for the contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Employer throughout the selection process and the execution of the contract.

(iv) A consultant shall submit only one proposal, either individually or as a joint venture partner in another proposal. If a consultant, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member, in more than one proposal when circumstances justify and if permitted by the RFP.

(b) Unfair Competitive Advantage - Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Employer shall make available to all the short listed consultants, together with the request for proposals, all information that would in that respect give a consultant a competitive advantage.

2. Professional Liability - The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the Employer will be governed by the applicable law, the contract need not deal with this matter. The client (purchaser) may, however, prescribe other liabilities depending on the requirement in each case without any restriction on the Consultant's liability as per the applicable law.

The Commission desires that the above guidelines be brought into the notice of all concerned.



(J Vinod Kumar)
Officer on Special Duty

To

1. All Chief Vigilance Officers of Ministries / Departments / PSUs / Banks / Insurance Companies / Autonomous Organizations / Societies / UTs.
2. All Secretaries to the Government of India.
3. All CEOs / Heads of Organizations of PSUs / Banks / Insurance Companies etc.