



KIOCL LIMITED
Vigilance Department



VIGILANCE NEWSLETTER

JULY 2023



Vigilance Newsletter

July 2023

Vigilance department wishes all the employees and their families a very Happy Independence Day, Vinayaka Chaturthi, Onam, Sri Krishna Janmashtami and Eid Milad in advance.

Continuing the efforts of Vigilance Department to help the Company and its employees to stay abreast of the changing methods of working and adapting to them while maintaining high level of integrity, this issue of Vigilance Newsletter brings the latest circulars and notifications issued by various Departments of Government of India having bearing on our working and vigilance.

This issue also has an article 'Conflict of Interest' and the practices followed in NMDC to reduce conflicts of interest which can be emulated by KIOCL.

I expect that this edition would enhance our understanding of relevant subjects and help in our working.

Chief Vigilance Officer

Circular/Notifications/Guidelines issued by Gol

1. Minimum Floor price for minimum wage based Manpower Outsourcing Service- 23/06/2023 [[view](#)]
2. Vivad se Vishwas I (VsV I) Relief for MSMEs- 18/07/2023 [[view](#)]
3. Proportionality in Performance Security for multiyear service contracts- 24/05/2023 [[view](#)].
4. Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017- 18/05/2023 [[view](#)].
5. Model Tender Document for Procurement of Consultancy Services – 18/05/2023 [[view](#)]
6. Amendment in General Financial Rules, 2017 Rule 171 (i) Performance Security- 03/04/2023 [[view](#)].
7. Relaxation for procurement of certain items through Global Tender Enquiry (GTE) – 03/04/2023 [[view](#)]

Circular/Notifications/Guidelines issued by CVC

1. Adoption and implementation of Integrity Pact-Revised Standard Operating Procedure - 16/06/2023 [[view](#)]

Vigilance Awareness

1. Article on Conflict of Interest.

CONFLICT OF INTEREST

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1. Introduction

Conflict of interest is a principle derived from the 'Principle of Natural Justice,' which states that "no one should be the judge in his or her own case" (Nemo iudex in causa sua). In contrast to the ethical and conduct guidelines, the term "conflict of interests" should be interpreted as "conflicts on prioritizing interests" by a public servant while performing duties. When the influence of secondary interest clouds an individual's impartial judgment or actions toward an official duty, this is referred to as a "conflict of interest."

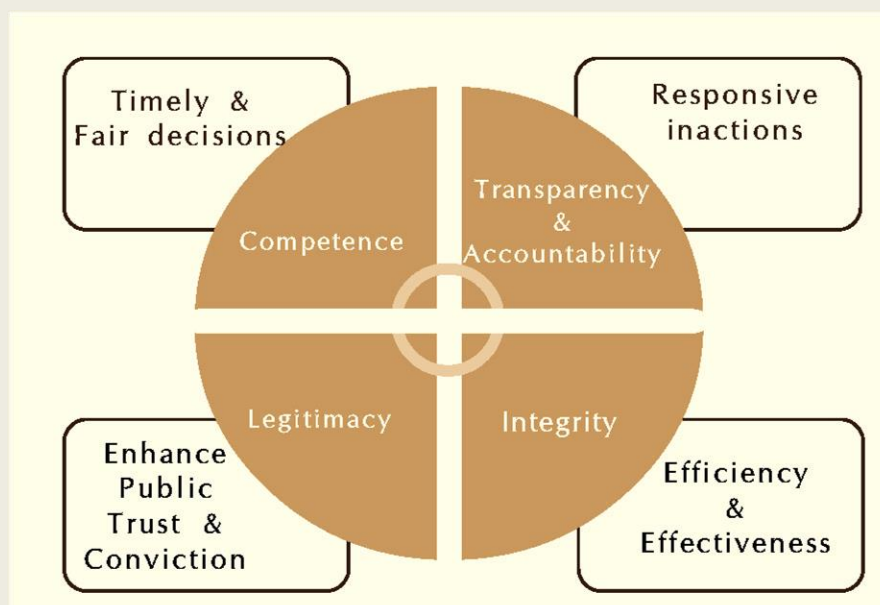
In order to function, PSUs do many things, like hiring employees and managers, forming and fulfilling contracts with other businesses, and so on. Conflicts of interest are inevitable here, and it would be naive to think otherwise. Recognizing and learning to cope with conflicts of interest as they emerge is important. The ability to recognize and resolve 'conflict of interest problems, incorporate governance and maintain public trust appears feasible; yet, it is challenging to achieve in practice. It has become extremely challenging for policymakers and public servants to deal with and design various methods for maintaining conviction among government functionaries and demonstrating their integrity since the emergence of the "Public Private Partnership" in providing services to citizens of the country. An individual's conflicts of interest can be divided into eight distinct classes.

- a) **Actual conflict of interest:** ...occurs when there is a direct conflict between a staff member's duties and responsibilities and their personal interests, which influence how those duties are carried out.
- b) **Potential conflict of interest:** ...refers to any action, decision or recommendation by a Board member that could result in a pecuniary profit or detriment to self, relatives, or a business with which the Board member or relatives are affiliated, unless otherwise provided by law.
- c) **Perceived conflict of interest:** ...include situations where it could be perceived, or appear to a reasonable person, that a staff member's personal interests could improperly or unduly influence the performance of their duties and responsibilities.
- d) **Conflict of duty:** ... exists if you have two or more roles that have competing priorities.

- e) **Direct interests:** ... an interest in an entity that is held directly, taking into consideration the potential dilution caused by the interests of others held in intermediary entities.
- f) **Indirect interests:** ... an indirect interest held through interests in one or more intermediary entities connected to the entity in question via a chain of ownership.
- g) **Financial interests:** ... monetary reward for a service rendered, monetary Gain for commercial dealings or ownership of shares with profit potential.
- h) **Non-financial interests:** ...interest of an individual (or his or her immediate family) in the design, conduct, or reporting of human subject research that is not financial in nature.

A 'conflict of interests' can be resolved by paying close attention to two factors: **first, the public servant who is authorized to make decisions**, and **second, the established procedures / systems used to make such decisions**. Certain regulations and directives, such as Section 44 of the Lokpal & Lokayukta Act, 2013, Rule 10 of the CCS (Pension) Rules, 1972, Rule 175 of the General Financial Rules, 2017, are already in place. These rules are meant to prevent the public servant from prioritizing his or her private interests over those of the public at large. **The most fundamental level of the code of ethics that applies to the subject of "Conflict of interest" for public employees** is illustrated by the diagram below:

Model Code of ethics for public servant & its effects



2. Practices followed in NMDC

- a. In order to reduce conflicts of interest, the following conditions / clauses are being included in the bidding documents:
- Bidders (including all the members of their consortium) who are associated for this Tender with Consultant or any of its associates that have been engaged by the employer to provide Consultancy Services for the preparation of design Specifications & other documents to be used for procurement of the Facilities to be purchased and installed under this Invitation are ineligible to bid for this tender.
 - Bidder (including all the members of their consortium) shall not directly or indirectly, take any service or assistance from the above referred Consultant for the above work, if he becomes a successful Bidder.
 - The Employer's Consultant (s) for the Facilities shall not be eligible to submit their bid.
 - Separate bid by a consortium member will not be accepted.
 - A party can be a member in only one consortium; bids submitted by such consortia, which include the same party as member and/or leader, will be rejected.
 - Bidders are not allowed to form new consortium (consortia) with other Bidders participating in the tender.
 - The composition or the constitution of the consortium, who have become eligible, may be permitted to alter (other than leader) only with the prior consent of the employer in writing.
 - For the purpose of formation of consortium, a member shall be an independent and single legal entity as per laws of India or as per laws in the country of such member and should have its own independent financial accounting system as per laws of India or as per laws in the country of such member.
 - Tenderer must declare whether the Proprietor or any Partner of the firm or Director of their Company as the case may be, has any relation with any employee working in NMDC.
 - **Qualification:** The determination will take into account the Bidder's financial, technical and production capabilities, in particular its Contract, works in hand, future commitments, current litigation, if any, and past performance. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder during EOI/ tender stage, **as well as such other information as the employer seems necessary and appropriate.**
 - Any effort by a Bidder to influence the employer in the employer's bid evaluation, bid comparison or Contract award decisions may result in rejection of the Bidder's bid.

- The employer reserves the right to accept or reject any First (Original) or Updated bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or **any obligation to inform the affected Bidder or Bidders of grounds for the employer's such action.**
- If at any point of time, it was found by the employer that the Bidder has furnished false information; the employer may reject the bid.
- **Undertaking:** We undertake that *I/we are not associated, nor has been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications and other documents for the subject tender.
- **Banning Ground:**
 - (i) The Agency employs an employee who was dismissed removed by NMDC for an offence involving corruption or abetment of such an offence.
 - (ii) The Agency restored to corrupt or fraudulent practices that may include misrepresentation of facts and/or fudging / forging / tampering of documents
- b. Key personnel designated by management regularly submit the declaration for share purchase as per SEBI guidelines.
- c. Policy of indicating gifts & other forms of benefits/gifts perceived by the officials incorporated in NMDC CDA rules. Also, Gifts are categorized as acceptable & unacceptable gifts from the persons having official dealings.
- **Undertaking:**

We hereby declare that we, M/s....., including any subcontractors or suppliers for any part of the Contract, do not have any conflict of interest which will call into question our participation in the procurement process and award of contract.
- The documents furnished by the Bidder for the above clauses are scrutinized thoroughly by tender committees. In addition to the above, further system, improvement is suggested that the tender committee members invariably provide a declaration inline with the CVC circular.
- **Integrity pact:**

In NMDC, for all the tenders above 1 crore, clauses pertaining to the submission of the Integrity pact by the bidders are incorporated. Moreover, list of IEMs along with the address is provided in the tender documents. In case of any complaints about the tenders, parties can reach out to the IEMs to resolve and address issues under the rules. Integrity Pact broadly consists of provisions for the following:

- Principal's assurance that they won't try to get an unfair advantage.
- Bidders' assurance that they will not provide the Principal's employee any benefits.
- Bidders are expected to keep all information confidential.
- No bidder may reach an understanding with any other bidder regarding prices or other terms of the bid.
- Bidders must be transparent about any fees they plan to pay to intermediaries.
- Any foreign bidders interested in bidding in India must reveal their India representative's name and contact information. Interested Indian parties must disclose any international partners they are working with.
- The pact would be in effect for a given contract from the time of bid invitation until contract completion.
- Any breach would lead to immediate termination of services and prohibition on business together in the future.

3. Suggestions

Although there is no single way to handle conflicts of interest, the following ideas are suggested.

- a) Availability of the policy and administrative procedure for approval of additional/ancillary work, appointment in the client's company after retirement, and identifying sensitive roles in the organization.

Redressal Mechanism, timely revision of CDA Rules, and manuals on works, services, and goods that comply with the guidelines set out by the Department of Expenditure.

- b) Policy and administrative procedures for ensuring that inside information, particularly confidential information obtained while performing official duties, is kept secure and not misused by staff.
- c) Contracts should have clauses that, for bid consultants from bidding, exclude officers from the ODI and officials on the agreed-upon list from the tendering process, implement integrity pacts, and forbid selective communication with parties.
- d) Periodic reviews of proven management actions/decisions such as policy formulation and purchases having vested interest; and withdrawal of such actions to minimize potential risks.

- e) To foresee, acknowledge, and prevent potential conflicts in evolving conflict situations, such as pre-employment applicant screening, associated public such as family, community, including religious or ethnic communities with public officials, affecting the interests of public servants, which should be expected.
- f) Making rules and regulations and periodically changing them to fit the environment. Additionally, disseminating corporate policies and practices as well as giving counsel to public officials

4. Conclusion

Organizations must effectively manage conflicts of interest; they cannot simply be wished away. **The first step along this path would be to make sure the Contract itself has enough clauses.** We must remember, however, that a **contract's clause is only as good as the parties' commitment to actually upholding it'**. Given this, the **organization must also keep a close watch on whether or not its associates and employees are upholding their contractual commitments and internal procedures.** Additionally, the **group must ensure that it has access to sufficient remedies in the event of any non-compliance.**
