



KIOCL LIMITED
Vigilance Department



VIGILANCE NEWSLETTER

JANUARY 2023



Vigilance Newsletter

January 2023

Vigilance department wishes all the employees and their families a very Happy & Prosperous New Year, Sankranti, Pongal and Ugadi 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 Central Vigilance Commission and various Departments of Government of India having bearing on our working.

2023 will be a historic Year for India. India will be leading the G20 having assumed the Presidency of G20 on 1st December 2022 and Presidency of Shanghai Cooperation Organisation (SCO) in November 2022. Many events are planned in the country which will showcase the vibrant and cultural heritage of India and its vast business potential. I hope it will also strengthen our resolve to incorporate a sense of ethics and integrity in our everyday life to take our Nation to greater heights and make a mark in the comity of Nations.

This issue also has case studies of system improvements and preventive vigilance initiatives implemented in other organisations which can be emulated by KIOCL for increasing efficiency and transparency.

I expect this edition would help in improving our working, to take forward and implement some of the ideas shared here.

1st January, 2023

Chief Vigilance Officer

Circular/Notifications/Guidelines issued by Gol

1. MoU Guidelines for the year 2022-23 and onwards dated 12-10-2022 issued by Department of Public Enterprises, Ministry of Finance [\[view\]](#)
2. Implementation of online system (SPARROW CPSE) for recording Annual Performance Appraisal Reports (APAR) for Board level Executives of CPSEs dated 28-10-2022 issued by Department of Public Enterprises, Ministry of Finance. [\[view\]](#)

Circular/Notifications/Guidelines issued by CVC

1. Adoption and implementation of Integrity Pact issued by CVC dated 21.11.2022.[\[view\]](#)
2. Amendments to Comprehensive Guidelines on Complaint Handling Mechanism reg. issued by CVC on 03.11.2022 [\[view\]](#)
3. Commissions Jurisdiction over Officers of Public Sector Insurance Companies and Public Sector Undertakings – clarification reg. Circular dated 01.12.2022 from CVC. [\[view\]](#)
4. Grant of Honorarium to Inquiry Officers/Presenting officers in departmental inquiries. Circular dated 05.12.2022 issued by CVC. [\[view\]](#)

Systemic Improvements and Preventive Vigilance initiatives

1. Handling of Raw Materials at Central Stores Department
2. Sensitive Post Rotation System
3. Optimization of Loadability of Different Types of Wagons for Carrying Coal and other Imported Materials to different Steel Plants

Vigilance Awareness

1. Legal Aspects of Public Procurement
2. Liabilities of Principal Employer

Preventive Vigilance Initiatives in Handling of Raw Materials at Central Stores Department

1. BRIEF DESCRIPTION OF THE MEASURE/INITIATIVE:

a) Central Stores Department (CSD) plays a vital role in improving the efficiency of Steel Plant by proper sample collection & testing, accepting quality materials, systematic storage as per specifications and timely issue of the same as per the requirement. During a surprise check, it was observed that the material which was under rejection category as per test report was accepted by the Inspecting Authority at Central Stores Department (CSD). Further, it was also observed that CSD and SMS/Operation jointly collected the samples of Quick Lime and the same were tested at Metallurgical Services Department (MSD) of Salem Steel Plant (SSP). The test reports were sent to the Inspecting Authority at CSD but the user department was unaware of the test report. There was no system to cross verify the test report by User Department which led to the acceptance of sub-standard material.

b) As a preventive measure, suitable changes were advised in the guidelines/procedures with regard to acceptance of materials at CSD to prevent such types of instances in future.

2. BACKGROUND:

a) SSP procures Quicklime as flux for the purpose of separation of impurities/slag and to have protection layer on the refractory bricks, in Steel Melting Shop (SMS). In one case, it was found that based on the Test report of MSD, the Inspecting Authority (IA) of the MM/ Central Stores Department prepares the Inspection report for acceptance/rejection of the materials. During Surprise check by Vigilance Department, it was observed that the material which was under rejection category as per test report of MSD was accepted with penalty by the Inspecting Authority and further it was found during investigation, 05 nos. of test report issued by the IA were non-conforming to the technical specifications mentioned in the Purchase Order, however the material were accepted by the IA.

b) During investigation, the IA prepared revised inspection notes against 4 out of total 5 consignments and sent the same to Finance department while no action was taken by the IA in the remaining 1(one) consignment which fell under rejection. Recovery was made from the supplier and system improvement of developing a system to feed the analysis report online at Testing Lab was suggested.

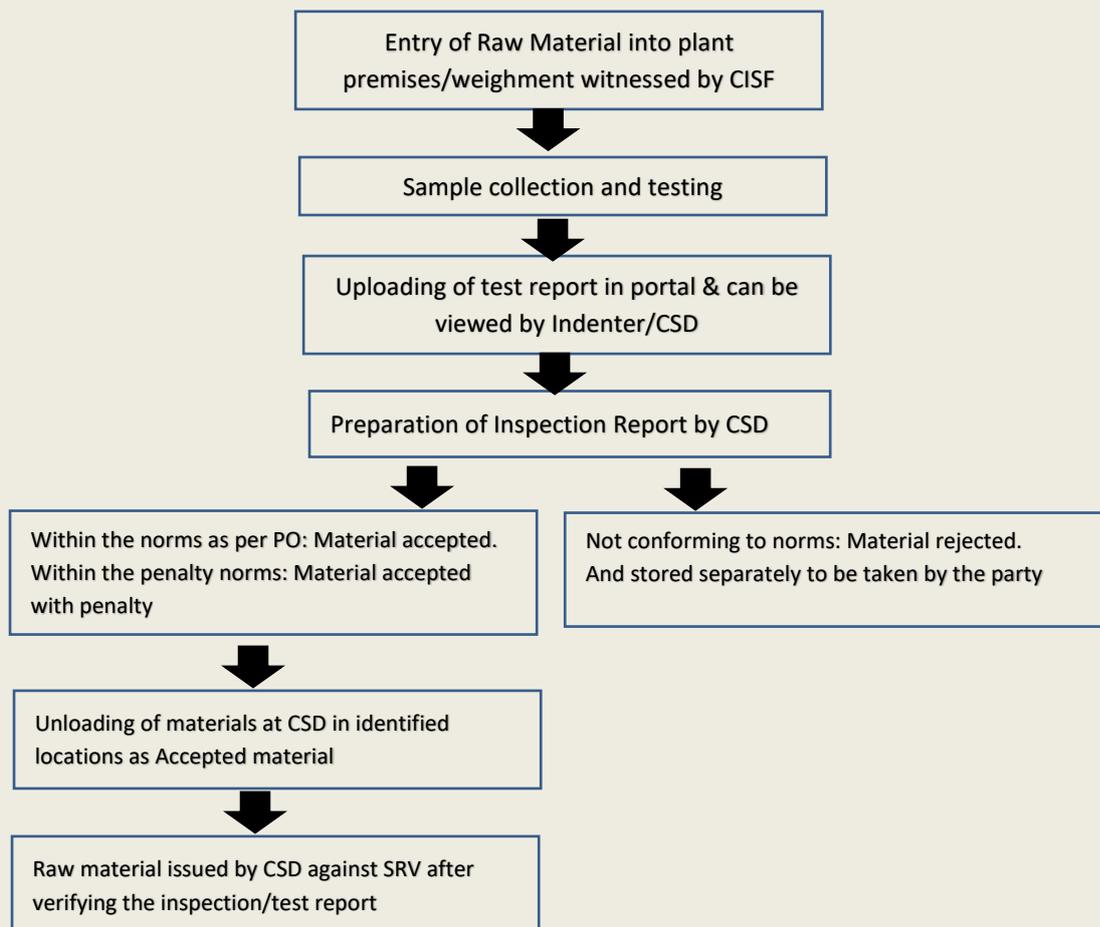
3. IMPLEMENTATION:

A system has been developed having features as enumerated below:

a) Indenter can view the test report for ensuring the receipt of the materials as per specification

b) Store Receipt Voucher (SRV) can be raised at Stores after getting clearance from both Inspection Wing of stores and Indenter after ensuring acceptance of materials

c) Central store is having one storage area/ Shed, where both Burnt Lime/Quick Lime and Burnt Dolomite is getting stored. In this storage area, for rejected lots, identification has been provided to avoid issue of rejected lots and to prevent mix-up of rejected materials d) The new material flow diagram is placed below



4. IMPACT AND BENEFITS:

- a) Ensures user receive materials as per the desired specifications
- b) Segregation of materials at different lots (Rejected/Accepted) to prevent mix-up
- c) Ensures transparency in Testing & acceptance of Raw Materials
- d) Ensures prevention of manipulation
- e) Real time availability of prevailing stock quantity of each and every item in Stores

5. POTENTIAL FOR REPLICABILITY:

The system can be replicated in other Plants/ units.

Case Study of Steel Authority of India Limited.

Source: Preventive Vigilance Initiatives 2022 issued by Central Vigilance Commission

Sensitive Post Rotation System (SPRS)

1. BRIEF DESCRIPTION OF THE MEASURE / INITIATIVE

Long tenure of employees on sensitive posts is not desirable from the point of view of probity and prevention of development of vested interest. CVC guidelines also prescribed PSUs to identify sensitive posts and limit tenure of officials against these posts. In line with CVC guidelines, Sensitive Post Rotation Policy has been revised in March, 2022 in BHEL and issued for compliance by all Units. The same has also been got configured in HR system. It has been rolled out to all the Units/ Regions/ Divisions within BHEL and covers all the executives numbering about 10000. The online system envisages to handle the complete workflow/ review process of rotation of officers working in sensitive posts.

2. BACKGROUND

The process of rotation for executives posted on sensitive posts was being handled offline through manual maintenance of records followed by placement decisions by Units, and subsequently by Corporate Office as required. Monthly Information Reports (MIR) were sought from Units. The tracking of officials who were holding sensitive posts was carried out manually on monthly basis in the form of compilation through miscellaneous MIRs and involved human intervention and chances of inadvertent as well as advertent error were present.

3. IMPLEMENTATION

The Online Sensitive Post Rotation System (SPRS) has been developed in-house on BHEL ERP–HR system. The online system has been developed in line with revised BHEL Sensitive Post Rotation Policy issued in March, 2022.

(i) Work Flow The system has been configured so as to facilitate the complete exercise through ESS. In module, info-type IT9035 is to be maintained for executives who are holding sensitive area(s). Start date of IT9035 will be the date of placement of the executive in the respective Sensitive Area, End date will be last date of placement in the respective Sensitive Area. Multiple records are to be updated if Employee holding more than one sensitive area.

Following areas are to be captured as Subtypes of the stated Sensitive Post Info-type (IT9035):

- 0001 Procurement of Goods & Services in all Areas/depts. (Purchase/Works Contacts/ Contracts/Sub Contract/ Outsourcing/Scrap Disposal/ Stores)
- 0002 Finance (Bill Passing, Third Party Payments)
- 0003 Transportation Contracts (CDC/Shipping/ Logistics)
- 0004 HR (Recruitment), Estate Matters
- 0005 Vendor Development/ Supplier Development Cell
- 0006 Estimation/ Pricing for Bid Submission
- 0007 Quality Inspection (Inspection at Vendor Works/ Incoming Material Inspection)
- 0008 Vigilance
- 0009 Identified by Unit (Nature of Work to be mandatorily maintained for this subtype only)

HR Departments have to ensure proper tagging of executives in the system, who are working in the designated Sensitive Post areas on real time basis so as to ensure timely review regarding their continuous posting in the sensitive area(s). Online reviews shall be triggered in the system based upon the continuous posting on the sensitive post by an employee.

(ii) Approver Review System Approver need to login his/her ESS account and follow the Path: ESS-> Approvals-> Sensitive Post Rotation System Approver will have option for "Recommendation for Continued Posting/ Recommendation for Change in Role/Work". Under "Recommendation for Continued Posting", Approver needs to provide input mandatorily "Continued Posted upto date" & "Reason". Further, Date of extension not allowed beyond 3 months after completion of 5 years. Based upon the reviews and data, a provision is being made to monitor the same through miscellaneous MIRs on timely basis.

(iii) Reports Three type of Reports can be generated through SPRS using T-code ZHR_SPRS_REPORT

- i) Status Report- To view Status of Review initiated
- ii) Detailed Report - To view Cases whose Review initiated/not initiated/ Addition/ Deletion/details in a period
- iii) MIR Report

4. IMPACT AND BENEFITS

The online system envisages to facilitate timely interventions for rotations thus ensuring compliance with the policy by the Units. The complete system has made the process online and transparent. The deployment of officials posted on sensitive posts can be tracked on real time basis. Further, reports can be generated at the click of a button rather than waiting for days to compile the data manually from all the Units within BHEL, to enable monitoring status of executives posted on sensitive posts.

In long run, the system shall enable timely rotation and succession planning of such officials who are holding sensitive posts. It will also reduce the possibility of collusion with outside stakeholders and also improve image of the Company among stakeholders.

5. POTENTIAL FOR REPLICABILITY

The process is same for all the officials posted in the sensitive post areas irrespective of their departments and work areas.

Case Study of Bharat Heavy Electricals Limited.

Source: Preventive Vigilance Initiatives 2022 issued by Central Vigilance Commission

Optimization of Loadability of Different Types of Wagons for Carrying Coal and other Imported Material to Different Steel Plants

1) BRIEF DESCRIPTION OF THE MEASURE / INITIATIVE:

a) Coal and limestone are essential inputs in steel making. Steel manufacturers are importing coal and limestone from different countries to meet its requirements. These imported materials are received at different ports and further transported to the various Plants through Railways. Load port indicates different Indian ports where imported cargo is discharged from vessels and further loaded into wagons for onward transportation to respective plants.

b) In the existing system, there were provisions in the contracts for different ports with respect to loadability of different types of wagons. However, Railways was providing different types of wagons for loading and the loading methodology was also varying from port to port. In order to optimize the loading tonnage at different ports, a fresh study on loadability was required, based on which the minimum loading capacity of different types of the wagons can be fixed.

c) Initiative was taken as a Systemic Improvement Project on Vigilance intervention, to study the pattern of loading in different types of wagons with reference to the permissible carrying capacity (PCC) at different ports in order to optimize the loadability of the wagons to save on freight. Based on the study, steps were taken to revise the loadability factor in the Port contracts at SAIL leading to financial benefit to organization.

2) BACKGROUND

a) The loadability tonnage per wagon was incorporated in different contracts based on a loadability study for coal wagons conducted in year 2015. As per the findings of the study, the clause on loading tonnage into wagons was modified for handling contracts of Imported Coking Coal as tabulated below:

Hard/Soft Coal	Minimum Load/Wagon
Standard BOX-N Wagons	58 MT
Higher capacity Wagons	61 MT
Other category Imported Coal	
Standard BOX-N Wagons	59 MT
Higher capacity Wagons	62 MT

b) Different types of wagons were provided by the Railway for loading and the loading methodology was varying from Port to Port. However, for optimization no fresh study was conducted to fix minimum loading capacity for different types of wagons. On Vigilance initiative system improvement was undertaken and a study was made on the existing process with respect to pattern of loading capacity in different types of wagons, the mechanization available at different ports, pattern of unloading etc. The data considered for the study was for duration 01.07.2019 to 30.06.2020 (mixed material rakes were excluded from the study)

c) It was found that: i) SAIL on an average load approx. 65 MT per wagon comprising of all methodology of loading. Limestone is less voluminous than coal and average loadability of limestone (which is being handled at all manual ports like Vizag, Paradip and Haldia-traditional

berths) is around 66 MT per wagon. ii) Basically, three types of loading mechanism is in practice and it is found that in traditional loading mechanism, average loadability is reduced by 2 MT as compared to mechanized loading. Both mechanized and rapid loading system has higher loading than traditional loading systems. d) Based on the study optimum loading pattern of different types of coal and other cargo in different types of wagons was arrived in order to minimize the idle freight being paid to the Railways. Loadability of wagons of coal (traditional and mechanical) and for limestone at various ports is tabulated below:

Type of Wagon/Material	BOXN & related category of wagons having PCC from 64-68 MT	BOXNHL & related category of wagons having PCC above 68 MT	BOST or BOBSN having PCC of 63 MT*
Coal (traditional)	61	63	58
Coal(Mechanical)	63	65	60
Limestone/ Dolomite/Gypsum	64	66	61

*Loadability in these special types of rakes will be governed by their PCC in the above ratio.

e) Based on the analysis of the data and observation/ findings, the redefined loadability was approved for implementation in loading contracts.

3) IMPLEMENTATION:

The redefined loadability has already been implemented in loading contracts at all Ports where SAIL is operating.

4) IMPACT AND BENEFITS:

The total freight for post-study period is compared with corresponding period of pre-study period for similar quantity to arrive at savings on account of loading factor. The total saving arrives by this methodology is Rs.16.35 Crore during Apr-Mar'2021. Other benefits include:

- a) Optimum loading pattern of different types of coal and other cargo including limestone.
- b) Minimization of idle freight payment – with huge sensitivity of increased loading to overall savings in idle freight. Average increase in loading by 1 MT will lead to reduction of yearly idle freight by Rs.20 Crores.
- c) better transparency and control

5) POTENTIAL FOR REPLICABILITY:

It is replicable in other organizations having imported materials at port and further transportation through Railways.

Case Study of Steel Authority of India Limited.

Source: Preventive Vigilance Initiatives 2022 issued by Central Vigilance Commission

Principal Employer Portal

1. BRIEF DESCRIPTION OF THE MEASURE/INITIATIVE

Employees' Provident Fund Organisation (EPFO) has developed an online facility (Principal Employer Portal 2.0) for principal employers to track PF compliance of the contractors engaged by them for carrying out work in or in connection with their establishment. The portal facilitates the principal employers to upload work orders/outsourced job contracts/contract workers related information such as Name and EPF code number of the contractor, Period of contract, Contract value, Number of contract workers and Universal Account Number (UAN) of the contract employees. The initiative aims to promote effective e-governance system in compliance set up and enhances coverage to extend provident fund benefits to all eligible employees. Principal employers who are already registered with EPFO can register on the portal using their EPF Code number whereas Govt. Departments and PSUs not having EPF code number viz. Railways, BSNL, PWDs, NHAI etc. which engage a large number of contract workers can register using their PAN/TAN at the link <https://unifiedportal-gemp.epfindia.gov.in/epfo/>.

2. BACKGROUND

As per the existing provisions, the contractors who are registered with EPFO would deduct the employees' share of EPF contribution while disbursing wages to the workers every month. The above employees' share is to be deposited along with matching contribution from the employer on or before 15th of the following month. All the above expenses relating to wages of contract workers are claimed by the contractor before the principal employer for reimbursement. While a large number of principal employers and contractors are covered under EPFO, a few instances have come to light where contractors have got their bills reimbursed whereas in reality, no or meagre amount of EPF contribution has been deposited. At times, it becomes extremely difficult to recover the amount from the contractors if the default is detected after the contract period. Further to boost generation and formalization of employment, Govt. of India has launched certain incentive schemes for employers viz. Pradhan Mantri Rozgar Protsahan Yojana (PMRPY) and Atmanirbhar Bharat Rozgar Yojana (ABRY) wherein depending on the total employment strength of the establishment and quantum of new employment generated, either 50% or total EPF cost of the new employees are borne by the Govt. of India. Contractors who avail such PMRPY or ABRY benefits should not get the same reimbursed from their principal employers. However, there have been instances where certain contractors have taken PMRPY/ ABRY benefit from Govt. of India and also claimed the same from their principal employer. To overcome these difficulties, a need was felt to develop an electronic facility for principal employers to enable them to monitor the EPF related compliance of their contractors as well as contract workers.

3. IMPLEMENTATION

The portal has been conceived, designed and developed by the in-house IT Team of EPFO utilizing the internal resources of the organization.

4. IMPACT AND BENEFITS

Now with the deployment of the Principal Employer Portal 2.0:

- 1) Principal Employers can view the amount of wages on which the EPF dues have been remitted by the contractor as compared to the actual wages and EPF employer's share paid to the contractor allowing him to detect any misappropriation at an early stage and take appropriate measures to safeguard its own interests as well as those of the contract workers
- 2) Principal employer can check if the contractor has availed any PMRPY/ABRY benefits from Govt. of India and accordingly settle his bills
- 3) The facility is helpful in identifying contractors who fail to deposit the statutory EPF dues of its employees correctly especially in situations where a single contractor supplies manpower to several employers as the collective data uploaded by the principal employers will not match with the data filed by the contractor in the form of Electronic Challan cum Returns (ECR) thereby enabling EPFO to secure compliance from such contractors
- 4) The facility has proved extremely helpful in improving compliance on the part of the contractors thereby reducing pressure on the human and physical resources of EPFO which can be utilized in other key areas

5. POTENTIAL FOR REPLICABILITY

The application can be utilized by other Govt. organizations and PSUs dealing with labour welfare measures viz. ESIC, Central Labour Commission, State Labour Departments etc. with minor modifications customized to meet the specific need of the department to detect misappropriation on the part of the contractors at an early stage and secure compliance of their respective provisions.

Case Study of EPFO.

Source: Preventive Vigilance Initiatives 2022 issued by Central Vigilance Commission

Legal Aspects of Public Procurement

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practise any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus, a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/ the Governor of State” is written to signify this fact. In a state government, the persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SOPs. Rule 224, Chapter 8: Contract Management of the GFR 2017 covers this aspect also.

1.3 Other Mercantile Laws

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage. Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act

2.1 Elementary Legal Practices

2.1.1 What is a Contract?

The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.1.2 Proposal or Offer:

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

2.1.3 Acceptance of the Proposal:

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

2.1.4 What agreements are contracts:

An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract unenforceable:

- i) Competency of the parties.
- ii) Freedom of consent of both parties.
- iii) Lawfulness of consideration.
- iv) Lawfulness of object.

2.2 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.2.1 Categories of persons and bodies who are parties to the contract may be broadly subdivided under the following heads: -

- i) Individuals;
- ii) Partnerships;
- iii) Limited Companies;
- iv) Corporations other than limited companies.

2.2.2 Contracts with Individuals:

Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

2.2.3 Contracts with Partnerships:

A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

2.2.4 Contracts with Limited Companies:

Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

2.2.5 Corporation other than Limited Companies:

Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.3 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement may occur in the following cases: -

- i) When the misunderstanding relates to the identity of the other party to the agreement.
- ii) When it relates to the nature or terms of the transactions.
- iii) When it related to the subject matter of the agreement.

2.4 Free consent of both Parties

2.4.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if there presentations made had been true.

2.4.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

2.4.3 Distinction has also to be drawn between a mistake off act and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.5 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and like wise an actor apromise which is illegalor impossible has no value.

2.6 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.7 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Procuring Entity is not bound to consider a tender, which is received beyond that time.

2.8 Communication of Acceptance

A date is invariably fixed in tender forms up to which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods. The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

2.9 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof. If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

2.10 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening of tender. No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the Procuring Entity to forfeit the earnest money.

2.11 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.12 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.13 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged:

i) By mutual agreement:

If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value;

ii) By breach:

In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived;

iii) By refusal of a party to perform:

On a promisor's refusal to perform the contract or repudiation there of even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages;

iv) In a contract where there are reciprocal promises:

If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.14 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for correlating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.) The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.15 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words “for and on behalf of the President of India” should therefore follow the designation appended below the signature of the officer authorized in this behalf. Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time. Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules. Note 3: The DGS&D officers are authorized by the President of India in exercise of the powers conferred by Clause (1) of Article 299 of the Constitution to make contracts for services, supply or work on behalf of the Central Government. DGS&D is also authorized to make similar contracts on behalf of the State Governments where so authorized by the State Governments, and on behalf of Government sponsored companies or corporations or local bodies where so authorized by such companies or corporations or local bodies.

2.16 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/ Departments are advised to set the effective date to be a date after the following:

- i) Date of signing of the contract;
- ii) Furnishing of performance bond in terms of performance security;
- iii) Receipt of Bank Guarantee for advance payment;
- iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer;
- v) Receipt of End User’s Certificate. The supplier shall provide the End User’s Certificate within 30 (thirty) days of the signing of the contract.

*Source: Manual for Procurement of Works 2019,
Ministry of Finance, Department of Expenditure*

Liabilities of Principal Employer Under the Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 (the “Act”) is one of the most significant labour legislations in India as the objective of the Act is to prevent exploitation of blue-collar workers and ensure facilitation of better work conditions for them. One of the significant stakeholders, under this legislation, are the ‘principal employers’, who may not always be completely aware of their specific obligations under the legislation. However, the role of principal employers is very important for better implementation of the Act. In view of this, an attempt is being made to provide a brief overview of how principal employers can be more compliant under the contract labour legislation and ensure effectiveness of the regime.

Who is a Principal Employer?

As per Section 2 (1) (g) of the Act, a principal employer would mean and include the head of any government or local authority; the ‘owner’ or ‘occupier’ or ‘manager’ of a factory (under the Factories Act, 1948); owner, agent or manager of a mine; or any person responsible for the supervision and control in an establishment. Establishment means any office or department of the Government or local authority or any place where industry, trade, business, manufacture, or occupation is being carried on[4].

To put it simply "Principal employer" covers any person responsible for the supervision and control of the establishment. In the case of a factory, such person would include the owner or occupier of the factory or a Manager under the Factories Act, 1948.

What is the difference between employer and principal employer?

In a factory, the owner or occupier or manager is considered a principal employer; but in an establishment or a company, the person who is in control and supervision of establishment or company will be the principal employer. Principal employer is the one who employs contract labour through a contractor.

Who is a Contractor?

As per Section 2 (1) (c) of the Act, a contractor would mean any person, who supplies contract labour for any work of an establishment and includes a sub-contractor. Every contractor to whom the Act applies has to take license under the Act.

Who is a Workman and what is Contract Labour?

The definition of ‘workman’ under the Act includes any person employed in or in connection with the work of any establishment to do any skilled, semiskilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but excludes certain categories. As per section 2 (1) (b) of the Act, “a workman shall be deemed to be employed as ‘contract labour’ in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer”.

Applicability of the Act

The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour and to every contractor, who employs or has employed 20 or more workmen on any day of preceding 12 months. This threshold for applicability, however, varies in certain states. For instance, in Maharashtra and Andhra Pradesh, the Act becomes applicable only if 50 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour. In West Bengal, on the other hand, the Act applies to every establishment employing 10 or more workmen. Also, the Act is not applicable to establishments in which work performed is only of an intermittent or casual nature.

The liabilities of a principal employer under the Contract Labour Act are examples of vicarious liability on owners of establishments. The Contract Labour Act provides respite and recourse to contract labour from non-payment of wages by allowing them access to the principal employer in the event of a default by the contractor.

The principal employer is required to ensure that a representative be present while the contractor is disbursing payment to the contract labour (Section 21(2)). The Act is silent on what is the role of such representative. Subsection 4 of Section 21 provides that in the event of a default on the part of the contractor to make payment of wages to the labour employed, the principal employer may need to step in and make good such payment or shortfall.

It therefore, becomes imperative that, the representative of the principal employer fully understand the nature of his duties and be authorized to take necessary steps in the event of a default. The representative should be trained in these aspects by the concerned department in the organization. Such steps could include issuing notice to the contractor and terminating the relationship, if required. Care should be taken while drafting the agreement with the contractor to ensure the same.

Obligations under the Act

The Contract Labour Act prescribes that the contractor shall provide certain amenities to the labour employed by it. The rules prescribe time periods within which such amenities may be provided. These facilities include canteen provisions, rest-rooms and first aid facilities. In the event that the contractor fails to provide the same, the obligation automatically falls upon the principal employer. The law also provides that it may be recoverable from the contractor. Under the Labour (Regulation and Abolition) Act, 1970 ("the Contract Labour Act") liability to pay gratuity is generally upon the principal employer.

While legal recourse to recover expenses incurred by the principal employer does offer some consolation, it would be prudent to establish and clearly define mutual rights, duties and obligations in the agreement executed with the contractor, within the confines of the law. Conditions may be imposed upon the contractor in the agreement to ensure compliance with the Contract Labour Act. Employers should provide for indemnity provisions that protect the principal employer in cases of default.

Monitoring & Supervision for Compliance

In case of large corporates employing a large number of persons under the Act (whether it be for housekeeping or security or for any other purpose), it would be prudent to obtain representations, in the nature of those provided below at the tender stage, from the contractor that in the past:

- the contractor has been in compliance with the relevant provisions of the Act;
- has a valid license / registration under the Act; and
- has not been in default of payment to labour provided by him to another principal employer.

A certain amount of due diligence may also be done to determine whether or not the contractor has been in default or in violation of the Contract Labour Act. Due diligence would be of significance where contractual safeguards may not offer adequate protection to principal employers. The law imposes very strict liabilities on the owners to ensure that the contract labour employed does not suffer in any manner. This needs to be kept in mind while drafting any agreement with a contractor for this purpose. Use of approved standard clauses in the tender and contract document would help in safeguarding the interest of the organisation.

While there are monetary liabilities on corporates, additional liabilities are imposed on Directors of companies. The penalty for non-compliance with provisions of the Contract Labour Act while employing contract labour is imprisonment for 3 months or fine or both. Though the quantum of fines imposed is not high, Directors, particularly, the independent and nominated Directors, would not want the dagger of criminal proceedings hanging over their heads. This alone should operate as sufficient thrust to ensure compliance with this Act.

Penal Provisions

Every principal employer to whom the Act becomes applicable has to take registration under the Act. In the event the principal employer does not obtain registration as required under the Act, he shall be punishable with imprisonment which may extend to 3 months or with fine which may extend to Rs. 1,000/- or with both and in case of continuing contravention, there will be an additional fine of Rs. 100/- for every day during which such contravention continues after conviction for the first such contravention. If the principal employer liable to be punished under the Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless any such person can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

It is important to note here that penalties are sometimes imposable on the principal employer, in case of non-compliance under certain other labour welfare legislations. For instance, non-payment of provident fund contribution, non-maintenance of provident fund records is punishable with respect to a principal employer by imprisonment for a term which may extend to 1 year, or with fine which may extend to Rs. 4,000/- or with both. Non-maintenance of ESI records by either contractor or principal employer is punishable with simple imprisonment up to 1 year or fine up to Rs. 4,000/- or with both.

Prohibition of Contract Labour in Core Activities

The Act prohibits use of contract labour in certain core activities of an establishment if the same has been specifically prohibited through a notification of the Central or State Government. Therefore, the principal employer and the contractor has to ensure that they are not employing contract labour in any of the core activities. For instance, the State of Andhra Pradesh has amended the Act to state that a core activity is one for which an establishment is set up and includes any activity which is essential or necessary to the core activity but activities related to canteen and catering services, sanitation works, loading and unloading operations, etc. does not come under the ambit of core activities unless these activities themselves are not the core activities of such establishment. However, the principal employer may engage contract labour to a core activity if such activity does not require full time workers or if there is a sudden increase in the volume of work in the core activity which needs to be completed in a specified time.

Absorption and Regularisation of Contract Labour

Absorption of contract labour and their status once the contract comes to an end has always been one of the most contentious issues with respect to contract labour. In the case of *Air India Statutory Corporations v United Labour Union*, a three-judge bench of the Hon'ble Supreme Court held that the contract workers had a right to be absorbed as permanent workers on abolition of contract labour. However, this decision was overruled by a five-judge bench of the Hon'ble Supreme Court in the case of *Steel Authority of India v National Union Water Front Workers and Others*, where it was held that contract labour does not have a right to get absorbed as regular employees since nothing in this regard has been mentioned explicitly in the Act. The apex court in the case of *Secretary, State of Karnataka v Uma Devi*, inter alia, held that contractual employees does not have a right to be absorbed.

Also, Courts have ordered for regularisation of contract labour, in cases where it has been found that the principal employers employed contract labour where the purpose seems to be to avoid providing benefits available to permanent workers, or if the ultimate control is with the principal employer for the work performed by the contract labour.

Engagement between Principal Employer and Contractor

A principal employer would typically have a contract for service with a contractor whereby the contractor will undertake to provide certain number of contract labour to the principal employer from time to time. Some of the important elements that needs to be considered as a part of these agreements, in view of the above are as follows:

- Scope of work for which contract labour is required (cannot be core activities or of perennial nature);
- Contractors' assurance of having complied and obligation to continue to be compliant with all responsibilities and obligations of a contractor under the Act and applicable state rules.
- Periodic reporting and submission of records and documentary evidences pertaining to contributions made, registers maintained, etc., by the contractor to the principal employer.
- Payment of service fee to contractor by principal employer;

- Enabling clause for deductions from service fee payable, in case any expense is incurred by a principal employer on behalf of a contractor.
- Zero control of principal employer over contract labour.

Separately, as good governance measures, the agreements between principal employers and contractors may also have provisions for conducting regular awareness programmes for making the contract labour aware of their rights and privileges under the Act. Also, independent committees may be set up which can be approached by contract labour in case of any grievance.

Indian labour laws require certain notices to be displayed on their notice boards in order to educate its employees as well as visitors to the establishment. These display requirements are mandated to be in English as well as the local language of the State in which the establishment is situated. Some States in India have their separate rules, while others follow the rules framed by the Central Government, regarding the display requirements. A Table indicating the name of the legislations mandating the display of notices along with a brief description of the contents of the notice to be displayed is given in Annexure.

The content of this article is intended to provide a general guidance on the subject matter. Specialist advice should be sought about specific circumstances.

The following should be mandatorily displayed in the premises of Principal Employer

Name of the Act/Rules	Section/ Rule No.	Form number, if any	Local Language in addition to English	Details of Information to be Displayed
Child And Adolescent Labour (Prohibition And Regulation) Act, 1986	S.12	NA	Yes	Notice containing an abstract of sections 3A and 14. While 3A prohibits employment of adolescents, Section 14 contains the penalty provision
Contract Labour (Regulation And Abolition) Central Rules, 1971	R.26(2)(ix)	NA	No	A copy of contractor's license shall be displayed prominently at the premises where contract work is carried on
	R.47	NA	No	The charges for foodstuffs, beverages and any other items serviced in the canteen shall be conspicuously displayed in the canteen
	R.53	NA	Yes	Notice in language understood by majority of workers to be displayed outside the latrine as "For Men only" or "For Women only", and shall also bear the figure of a man or a woman, as the case may be.
	R.71	NA	No	Notice showing wage period and the place/time of disbursement of wages
	R.79	NA	Yes	Every contractor shall display an abstract of the Act and Rules

	R.81	NA	Yes	Notices showing the rates of wages, hours of work, wage period, dates of payment of wages, names and addresses of the Inspectors having jurisdiction, and date of payment of unpaid wages, in conspicuous places
Industrial Employment (Standing Orders) Act, 1946	S.9	NA	Yes	The text of the standing orders as finally certified under this Act to be posted on special boards to be maintained for the purpose at or near the entrance and in all departments thereof where the workmen are employed
Maternity Benefit Act, 1961	S.19	Form-K	Yes	An abstract of the provisions of this Act and the rules made there under shall be exhibited in a conspicuous place in every part of the establishment in which women are employed
Minimum Wages (Central) Rules, 1950	R.22	Form-XI	Yes	1. Form-XI containing minimum rates of wages fixed together with 2. The abstracts of the Act 3. The abstracts of the rules made there under 4. Name & Address of the Inspector (These notices are to be displayed at all the offices) Additionally a notice of period of work including overtime is to be displayed in Madhya Pradesh.
Payment Of Gratuity (Central) Rules, 1972	R.4	NA	Yes	A Notice specifying name of officer with designation authorised by the employer to receive on his behalf notices under the Act or rules.
	R.20	Form U	Yes	Display an abstract of the Act and the rules made there under

Karnataka Payment Of Wages Rules,1963	R.7	Form VI	Yes	Notice specifying the rates of wages payable to different classes of workers to be displayed separately in the main entrance or each of the departments
	R.21 r/w S.25	Form V	Yes	The abstracts of the Act and of the rules
Rights Of Person with Disabilities Rules, 2017		R.8(2) r/w S.21	No	Display equal opportunity policy on either website or at conspicuous place in their premises
Sexual Harassment of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013	S.19	NA	No	1. Display penal consequences of Sexual Harassment 2. Order constituting the Internal Committee
Karnataka Shops and Commercial Establishments Acts, 1961	S.4(2)	NA	No	Registration certificate to be prominently displayed
	S.12(1) r/w R.24(4)	Form P	No	Notice of Weekly Holiday
	R.24(5)	NA	Yes	The abstracts of the Act and of the rules
	24-A	NA	Yes	The name Board in Kannada version shall be written more predominantly by providing more space than for other languages
Karnataka Tax on Professions, Trades,	R.8	NA	No	Display conspicuously at his places of work the certificate of

Calling And Employments Rules, 1976				registration or the certificate of enrolment or a copy thereof
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Disclaimer: The Rule name mentioned in the above table is for the State of Karnataka and the respective State Rules will be applicable for establishments in States other than Karnataka.
