



KIOCL LIMITED
Vigilance Department



VIGILANCE NEWSLETTER

OCTOBER 2022



Vigilance Newsletter

October 2022

At the outset Vigilance department wishes all the employees and their families a very Happy Vijaya Dashami/Dasara, Eid-e-Milad, Deepavali, Kannada Rajyotsava, Gurupurab and Merry Christmas, 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.

We will be observing the Vigilance Awareness Week this year starting from 31st October 2022, the 147th birth Anniversary of Sardar Vallabhbhai Patel, till 6th November 2022. The theme for this year is “**Corruption Free India for a Developed Nation.**” Many events are planned during this week in which I request your wholehearted participation. I hope it will strengthen our resolve to incorporate a sense of ethics and integrity in our everyday life.

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.

I expect this edition would help in improving our working and to identify some areas for effecting improvements in future.

1st October, 2022

Chief Vigilance Officer

Circular/Notifications/Guidelines issued by GoI

1. Manual for Procurement of Goods 01-07-2022 issued by Department of Expenditure, Ministry of Finance [\[view\]](#)
2. Manual for Procurement of Consultancy & Other Services dated 01-07-2022 issued by Department of Expenditure, Ministry of Finance [\[view\]](#)
3. Manual for Procurement of Works dated 01-07-2022 issued by Department of Expenditure, Ministry of Finance [\[view\]](#)
4. Corrigendum - Updated Manual for Procurement of Works dated 04-08-2022 issued by Department of Expenditure, Ministry of Finance [\[view\]](#)
5. Amendment in General Financial Rules 2017 - Acceptance of electronic Bank Guarantee dated 05-08-2022 issued by Department of Expenditure, Ministry of Finance [\[view\]](#)
6. Push Button Procurement dated 06-09-2022 issued by Department of Expenditure, Ministry of Finance [\[view\]](#)
7. Reservation in promotion to Persons with Benchmark Disabilities (PwBDs) dated 04-07-2022 issued by Department of Public Enterprises, Ministry of Finance [\[view\]](#)

Systemic Improvements and Preventive Vigilance initiatives

1. E-Measurement Book implemented in CPWD
2. Online Tender Finalisation system implemented by Indian Railways
3. Case study of Fraud committed in Vendor Registration

Vigilance Awareness: Whistle Blowers Protection Act, 2011

Preventive Vigilance

E-Measurement Book implemented in CPWD

1.0 Brief Introduction

On the recommendations of the Vigilance Unit to further digitize the work-related field records and payment-related business processes, e-Measurement Book system has been introduced in the organization.

1.1 Background

One area that is highly sensitive and susceptible to all kinds of manipulations and a major source of corruption is the process of recording measurements by field officers of work done by the contractor in civil projects, the quantity of the materials received in procurement contracts. This important process is made further critical as the measurements were mostly handled by junior officials at the rank of JE and the situation is further aggravated as these Measurement Books are kept in the custody of JE. In all construction and maintenance works, the measurement of construction work done by the contractor is recorded in a physical book called the Measurement Book (MB). In the present system, the physical measurement of quantities is taken manually and then the measurements are recorded manually in a physical paper book. It provides a vast scope for making all types of manipulations which are normally possible in case of physical records.

The major deficiencies and lacunae that have given rise to many complaints and vigilance cases are as given below:

- There is immense scope for data manipulation by over writing or by cutting and striking of the earlier recorded data or by inserting spurious additional data wherever space is available. Sometimes intentionally blank places are left in the MB so that fictitious data can be inserted at a later date to suit nefarious objectives.
- Inordinate delay in taking measurements and then backdating while entering the measurements in the MB. The field officers delay recording measurements at site to harass the contractors and then to camouflage the delay, they resort to back dating while entering data in the MB. This wrong dating technique is also resorted to manipulate records in the form of recording arrival of huge quantities of material at site so that huge advance payments can be released to the contractor even when the materials actually did not arrive at the site. Here measurements are recorded in advance to extend financial benefit to the contractor.

Preventive Vigilance Initiatives and Outreach Activities

- The physical record system provides immense scope for Junior level officers to allow huge variations in the schedule of quantities in the form of deviations, extra items and substitute items and that too without approval from Competent authorities.
- In the physical record system making measurements and recording in MB is very opaque. Neither the contractor nor the senior officers can view and monitor the measurements recorded in the MB. In this system, the MB remains in the sole custody of JE. The MB is

returned back to concerned JE once a bill is paid to the contractor. Any fraud or scam committed by the junior level field officers in the MB is very difficult to detect.

- Mobilization advance for materials and security deposits are to be mentioned in the MB and deduction are to be made in the running bills but often deductions are not made in time because of manipulations in the MB subsequently.
- Monitoring deduction of taxes and other statutory deductions is very difficult.
- Old record of MB's occupies lot of storage space and is also very easy to tamper with anytime during storage/custody with the JE.
- Missing MBs or torn pages in MBs are a very common phenomenon as observed in many vigilance cases.
- Immense scope for making over-measurements in order to extend financial benefit to the contractor or for making short-measurements to harass the contractor.
- Physical MB provides a great scope for giving rise to serious disputes between the department and the contractors leading to unnecessary arbitration cases and Court cases
- Wrong payment of escalation is very difficult to detect in the present system.
- There is scope for inclusion and measurements of additional works without the approval of Competent Authority.
- No monitoring is possible by the senior officers regarding work progress, specifications, quantities executed etc. vis-a-vis the estimated quantities in the tender agreement.
- Physical system of MB often results in delays in the processing of bills and payments to the contractors.

1.2 Implementation

Initially an experimental module of e-MB was developed by a team of officers from various wings and made functional on the Public Finance Management System (PFMS) portal. This module is web-based and designed to capture the abstract of MB according to the rates and quantities mentioned in the contract/agreement against each item of work/supply. After successful testing of this module e-MB system was successfully launched on 13th April, 2018 and this e-MB system has been made mandatory for all divisions of CPWD across the country. Presently this e-MB procedure is being used for all works and packages above Rs. 15 lakhs. This web-based system enables CPWD to monitor the financial progress or utilization of funds along with the physical progress of projects. It also enhances transparency and helps in effective implementation of the project schedule or to even expedite the progress. This e-MB system was implemented in 2 phases which can be broadly classified as macro phase or Phase- I and micro phase or Phase-II. In the first phase macro e-MB has been implemented by synchronizing it with PFMS system. This system is open to further modifications to include various details like zero rates, percentage rate, part rates, agreement schedule, data entry directly through Excel files, rebates etc. All payments against the work done and material/equipment purchased are maintained in the system. e-MB module captures the following details:

- Abstract details of measurement allowed and to be paid;
- Abstract details of Cost allowed and to be paid for;
- Running bills, first bill to final bill and supplementary bills including all deductions and recoveries;
- Advance/ Mobilization payment details;
- Provision for extra items and deviation items.

The second phase of the e-MB system called as Micro e-MB was implemented along with ERP implementation in CPWD. This part consists of capturing actual measurements at site on an electronic platform which is transmitted to the web-based e-MB system automatically through internet. This process is connected with GPS and also records the actual location of the person making the electronic measurement of the work done at site.

1.3 Impact and Benefits

- The use of e-MB has tremendously enhanced the transparency in recording measurements at work site and is a very effective tool to curb corruption in the system.
- This system greatly reduces disputes between the department and contractors.
- Monitoring by higher officials is possible and any fraud, if committed by any person, can be detected at an early stage.
- Introduction of e-MB system greatly reduces the time period taken earlier from the stage of making measurements at site to the stage of making final payment to the contractor
- The contractors and the suppliers can now easily track their bills and can also find out where their bills are held up.
- Effective monitoring of tax deductions
- This system will immediately raise red flags/alarms if there are any excessive deviations allowed by the field staff without the approval of Competent Authority.
- With the introduction of e-MB system, it is ensured that no escalation is paid for the period for which extension of time was not granted by the Competent Authority.

Systemic Improvement

Online Tender Finalisation system implemented by Indian Railways

1.0 Brief Introduction

Adoption of the online tender finalization through Indian Railways Electronic Procurement System (IREPS)

1.1 Background

Indian Railways had adopted Online Tender System called IREPS (Indian Railways Electronic Procurement System) developed by Centre for Railway Information Systems (CRIS), an in-house institution of Indian Railways, few years back covering all processes from NIT to Tabulation/ Comparative Statements. There after downloading these offers and Comparative Statements etc. and further tender finalization was done manually by the Tender Committee.

On Vigilance Initiative, tender finalization up to final stage of issuance of LOA was started online in April 2019. IR is using IREPS to finalize tenders using its newly developed features by enabling the decision-making process online. This has been implemented on all Zonal Railways permitting exception only with the approval of Competent Authority under special conditions. Presently almost 100% of total tenders have been covered including Procurement of Goods & Services, AMC, all type of works tenders including single packet /two packet etc. covering bidding units above/ below/At par/ single rate/schedule of rates etc.

1.2 Implementation

Tender finalization through IREPS application software incorporates following:

- a) Online Technical Evaluation of Offers
- b) Assisted Creation of Draft Tender Committee Minutes
- c) Sharing & Digital Signing of minutes by Tender Committee members
- d) Adding of comments/suggestions by Tender Committee members
- e) Versioning, Cloning, Modifications of Tender Committee minutes by Convener
- f) Submission of Tender Committee recommendations to Accepting Authority
- g) Acceptance of Tender Committee Recommendations by Approving Authority with or without modification instructions, Rejection of Recommendations, Return for Clarifications
- h) Submission of revised Tender Committee recommendations
- i) Automatic generation of letters for Negotiations, Counter Offer, TC Meeting, Letter of Acceptance.

1.3 Impact and Benefits

The following benefits have been derived:

a) Transparency

- Real-time online access to system generated Comparative Charts
- Reason for Rejection of Technical Bids informed to the bidders for two packet tenders
- No Need to Visit Railway Offices for Paying Tender Document Cost and Getting Tender Documents etc.
- Online receipt of Digitally Signed Letter of Acceptance, Counter Offer & Negotiation
- Submit Counter Offer reply and Negotiation Bids online

b) Efficiency

- Digitized Item Directories, Cloning of Tenders, Auto inclusion of Conditions/ Documents, Auto Generation of LOAs, Counter Offer and Negotiation Letters, TC Meeting Letters, TC Minutes, Tender Opening Process
- Reduction in Contracting Time Cycle
- Generation of Automatic Comparative Statements, Briefing notes, online real-time delivery of files and letters and effective monitoring tools

c) Monitoring

- System Generated MIS reports for effective monitoring of progress and exceptions
- Tender Decision Interface – Overview of all decisions/ actions for the tender
- Stage wise monitoring of process flow with reference to time
- SMS & E-Mail Alerts for TC Meetings, TC Minutes forwarding etc
- Online Statistical Reports have been made available to all stake holders which has resulted in faster tender decision and elimination of delays.

d) Accountability

- System keeps track of all file movements.
- All forwarding remarks are stored permanently.

Preventive Vigilance

Case study of Fraud committed in Vendor Registration

1.0 Background

1.1 This is a case study from BEML where a fraud was committed by a Contractor to get its firm included in Approved Contractor List (ACL) on the basis of forged documents in order to win a sub-contracting tender for Maintenance and Repair Contract worth Rs.360 lakhs per annum (approx.) with a total duration of contract for 2 years and a provision for further extension of 1 year. The Vendor submitted forged/fabricated/fake documents right from Vendor registration process till submission of tender documents to meet eligibility criteria as specified in the tender.

2.0 Vendor Registration in BEML

2.1 Registration of vendors in BEML is done by a process through Vendor Assessment Committee (VAC). In this case the VAC carried out the vendor assessment and recommended the Vendor for Approved Contractor List Registration. VAC recorded the following in their report:

- i) Visited the Firm and verified the documents with originals and found satisfactory.
- ii) PAN Card of the Firm is registered in the name of the Proprietor as the Firm is a Proprietorship Company.
- iii) Financial figures of the Year 2015-16 are approximate and un-audited.
- iv) The Contractor is handling logistics/labour contract at Ore handling plant of a reputed PSU. The Firm has welding machines, drilling machines, metal cutting & grinding machines etc. The Contractor has work force of 40 (approx.) with 17 persons being skilled persons. Details provided by the contractor are verified and certified.
- v) The Firm is recommended for registration under Category -A (For all type of works – i.e., Rehab, filed repair, contract manpower provider) since the Contractor is “A” Class Contractor and registered with M/s.”*” Company.

2.2 Based on the VAC’s recommendation and duly filled format for inclusion into Approved Contractor List (ACL). Corporate Quality Unit of BEML registered the Firm under Category “A” with the approval of competent authority and allotted the Vendor Code and communicated the same to all concerned.

3.0 Outcome of Vigilance investigation

- As per Section-11, under Chapter-II of the Indian Contracts Act, 1872, read in line with Section-3 of the Indian Majority Act, 1875, persons who have attained/completed age of majority i.e., 18 years, are only competent/eligible for entering into contracts. Where as in this case on verification of documents, it was noticed that the said proprietor had not attained the age of 18, hence not competent/eligible for entering into contracts.

- Supporting documents provided as a proof for having infrastructure, machines etc., were fake and false. False statements were submitted primarily to get the eligibility for vendor registration.
- False and fabricated previous work orders submitted to get technical qualification.
- Firm's unaudited balance sheet for the previous years were submitted (signed by the proprietor only) & Income Tax Returns were not submitted.
- False and fabricated previous manpower supply work order submitted to get technical qualification.
- Vendor did not have any technical expertise/qualification/experience etc., to take up technical jobs.
- The VAT Registration Certificate was issued for the Trading activity in 'Others' Category, i.e., Hardware items, sanitary fitting, hand pump parts, electrical goods and civil contract works.
- The contact number provided against "contact person" in the Vendor Registration Application and in the letter head of experience certificate/work order/contract to the firm are same.
- Firm was not paying minimum wages to the temporary workers deployed by them.
- Further, District Manager has sent the clarification to Service HQ of BEML against the clarification sought by them with reference to the turnover of the vendor for the particular year, which was false.
- Specific approval has not been taken from competent authority for the constitution of the assessment committee. Copy of the note sheet was not available in the vendor registration file.
- Committee has overlooked this vital criterion and has considered & wilfully accepted the Un-audited Balance sheet for Vendor Registration process and recommended the Firm's Registration at BEML, without applying their mind.
- Also, the VAC made recommendations to consider registration of the firm as "Approved Contractor List for Category 'A', i.e., for all types of work (Rehab, field repair, contract manpower provider) up to Rs.300 lakh.
- The firm produced the experience documents which cover only civil works and labour supply, whereas the firm was registered under Approved Contractor List for AMC, MARC job which is purely a technical maintenance job.

4.0 Findings of the Vigilance Investigation

The detailed investigation revealed weak internal controls, non-compliance to Company policy and procedures and also gross negligence on the part of concerned officers of VAC. Failure to check, verify and identify fake/forged documents produced by the Firm for vendor registration.

5.0 Recommendations

- a) Vendor Assessment should be carried out by a committee constituted of Members who are not directly involved in Procurement & handling tenders for the Company.

b) Insisting on submission of Audited Balance sheets, IT Returns of immediate previous 3 years as a documentary proof towards annual turnover and verification of the same before accepting it for vendor registration.

c) Set up a robust mechanism to cross check, verify the veracity and genuineness of documents and a duly constituted Team of Officers to conduct random checks to exercise supervision on the working of the VAC.

Learning for KIOCL

Further to the above an SOP for the list of checks to be done mandatorily by the VAC approved by the competent authority should be available which should include keeping photographic/videographic record in the File of visit of the Committee to the premises of the Vendor and checking original documents (of the copy submitted by the Vendor). The visit of the VAC to the premises of the Vendor and further recording can be done from site through a hand-held terminal (HHT) which records the coordinates of the premises, date and time of inspection along with capturing pictures of original documents being inspected by the Members of the VAC and Officials representing the Vendor during the inspection along with the facility being inspected.

Vigilance Awareness

Whistle Blowers Protection Act

1.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

i) The Act seeks to protect whistle blowers, i.e., persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

ii) Any public servant or any other person including a non-governmental organization may make such a disclosure to the designated agencies i.e., Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.

iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.

iv) Similarly, the Amendment Act, 2015, the Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:

a) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence;

b) Records of deliberations of the Council of Ministers;

c) That which is forbidden to be published by a court or if it may result in contempt of court;

d) A breach of privilege of legislatures;

e) Commercial confidence, trade secrets, intellectual property (if it harms a third party);

f) That relayed in a fiduciary capacity;

g) That received from a foreign government;

h) That which could endanger a person's safety etc.;

i) That which would impede an investigation etc.;

j) Personal matters or invasion of privacy.

v) However, if information related to (b), (e), (f), and (j) is available under the Right to Information Act, 2005, then it can be disclosed under the Act;

vi) Any public interest disclosure received by a Competent Authority will be referred to a government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding;

vii) The Identity of the Complainant must be included in the Complaint or the Disclosure. However, the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency

can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry;

viii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency;

ix) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees;

x) Similarly, any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees;

xi) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement;

xii) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code;

xiii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency;

xiv) But no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before;

xv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act;

xvi) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant;

xvii) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect;

xviii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect;

xix) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect;
