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No. IWAI/Vig./19/2019

To

1. The Member (Finance)
2. The Member (Technical)
3. The Member (Traffic)
4. Secretary & Project Director (FVP), IWAI, Noida
5. The Chief Engineer (Technical), IWAI, Noida
6. The Chief Engineer (Traffic), IWAI, Noida
7. The Hydrographic Chief, IWAI, Noida.
8. The Chief Engineer (JMVVP), IWAI, Noida.
9. The Chief Engineer, IWAI, Patna.
10. The Director, IWAI, Kolkata/ Kochi/Guwahati/Vijayawada.
11. The Director (F&A), IWAI, Noida.
12. Officer-in-charge, IWAI, Bhubaneswar/ Varanasi/ Sahebganj/ Farakka

Subject: Hiring of Tax Consultants on Nomination/ Competitive basis/ Finalization of contracts on nomination basis.

Sir,

I am directed to enclose a copy each of the Office Order No. 23/7/07 dated 05.07.2007, Circular No. 18/12/12 dated 11.12.2012 and Circular No. 06/07/18 dated 11.07.2018 issued by the Central Vigilance Commission for information and compliance, unless and otherwise merited. I am further directed to say that Instructions of CVC regarding Hiring of Tax Consultants on Nomination/ Competitive basis/ Finalization of contracts on nomination basis need to be followed and contracts on nomination basis for all Consultancy works including hiring of Tax Consultants and other contracts must be avoided.

3. This issues with the approval of the Vice-Chairperson, IWAI.

Encl: as stated

Yours faithfully,

(Razi Jawaid)
Assistant Secretary (Vig/R&T)
Subject: Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis.

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

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

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

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

"The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notifications of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance, during natural
calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through 'private negotiations'.

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

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

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

(Rajiv Verma)
Under Secretary

To

All Chief Vigilance Officers
Circular No. 18/12/12

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

The Commission has been emphasising on the need for observing integrity transparency, fairness and equity in all aspects of decision making including in tendering and award of contracts. However, the Commission is still receiving complaints regarding adoption of non-transparent methods in tendering and award of contracts. A number of such complaints pertain to award on nomination (single source procurement) basis instead of following a process of open competitive bidding. The Commission in their earlier office order No. 23/7/07 dated 05.07.2007 (copy enclosed) had laid down the exceptional circumstances where 'single source procurement' can be resorted to. These guidelines were consequent to the Supreme Court's judgement in case of Nagar Nigam, Meerut v/s A1 Faheem Meat Export Pvt. Ltd.,[S.I.P (Civil) No. 1074 or 2006].

2. In view of the complaints being received regarding award of contracts on nomination basis without adequate justification, the Commission has decided to reiterate their earlier instructions for strict implementation. The Commission has also observed that there have been instances where government organisations/PSUs obtain contract from other government organisations/PSUs and further award the same to private entities on 'back to back tie up' basis without competitive tendering mechanism and without any significant value addition by the procuring government organisation/PSU. This practice subverts the Commission's emphasis on integrity, transparency, fairness and equity in decision making. It is therefore, necessary to curb this practice. Further, the Commission directs that details of all tenders awarded on nomination basis shall be posted on website in public domain as per Commission's office order of 5th July 2007 along with brief reasons for doing so.

3. Kindly acknowledge the receipt and circulate to all concerned in your organization.

(J. Vinod Kumar)
Officer on Special Duty

To,
(i) The CMDs of all CPSUs/Public Sector Banks/Insurance Companies/Fls.
Circular No.06/07/18

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

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

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

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

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

(J. Vinod Kumar)
Director

To

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