CIRCULAR


A copy of communication contained in CVO, IWAI lr. no. JNP/VIG/IWAI/2019 dated 11/06/2019 (Copy enclosed) on the captioned subject along with copy of CVC Circular No. 01/01/17 dated 23/01/2017 and Circular No. 08/06/11 dated 24/06/2011 is herewith forwarded for information and compliance by all concerned.

Encl: As stated

(Razi Jawaid)
Assistant Secretary (Vigilance)

To,

i) Hydrographic Chief, IWAI.

ii) Chief Engineer (Technical) / Chief Engineer – Project Manager (JMVP) / Chief Engineer (Traffic) / Chief Engineer (Patna).

iii) Director (F&A) / Director (IT) / Director (NWs) / Director (Mech.) / Director (NER) Director (Traffic) / Director (Tech.) / Director (Hy.) / Dy. Secretary, IWAI, Noida.

iv) Director, IWAI, Kolkata / Kochi / Guwahati / Vijayawada.

v) Officer-in-charge, Varanasi / Allahabad/ Sahibganj / Bhubaneswar.

vi) Hindi Cell – for Hindi translation.

Copy for information to:

1) PPS/ PS/ Sr.PA/PA to Chairman/Vice- Chairman/ Member (Finance)/Member (Technical)/Member (Traffic).

2) P.A to Secretary.
No JNP/VIG/IWAI/2019/

11th June, 2019

Sub: Engagement of Consultants: Latest Guidelines from CVC

1.0 In many organisations, the single most systemic inadequacy noted in Public Sector type of setting is with regards to Consultancy Contracts and Nomination Contracts. It is thus necessary to take some measures to improve the existing practices and procedures.

2.0 With regards to Consultancy Contract certain guidelines that has been issued by CVC recently are attached herewith and some of the salient points which appears very important are elaborated below:

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<tr>
<td>1</td>
<td>CVC has stated the fact that the organization which engages the Consultant (Employer) has a definite share of accountability in accepting the advice/service rendered by a consultant.</td>
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<td>(Para (b) of CVC’s Circular No. 01/01/2017 dated 23/01/2017 mentions that suitable terms and conditions need to be incorporated to ensure (1) and (2) above)</td>
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<td>2</td>
<td>The Consultant is also responsible and accountable for the services rendered /advice given by him/her since such advice/service is the result of contractual relations between the consultant and the employer.</td>
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<td>Para (d) of CVC’s Circular No. 01/01/2017 dated 23/01/2017</td>
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<td>3</td>
<td>CVC has advised that all organizations should explore the possibility of using in-house expertise before arriving at a decision to engage consultant and accepting the advice/service rendered by such consultant.</td>
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<td>Para (a) of CVC’s Circular No. 01/01/2017 dated 23/01/2017</td>
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<td>4</td>
<td>CVC had advised that while engaging a Consultant their attention should be attracted to the need for their advice to be complaint with provisions of GFR, CVC Guidelines and Instruction of GoI etc. as applicable to the subject matter.</td>
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<td>Para (a) of CVC’s Circular No. 01/01/2017 dated 23/01/2017</td>
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<td>5</td>
<td>CVC has advised to ensure that a consultant must avoid any conflict of interest while discharging contractual obligation and bring, beforehand, any possible instance of conflict of interest to the knowledge of the employer. Further a consultant is expected to undertake an assignment/project only in areas of its expertise and where it has capability to deliver efficient and effective advice/service.</td>
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<td>Para (1) of CVC’s Circular No 08/06/11 dated 24.06.2011</td>
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CVC directs that an **advisory should be issued to the Consultant to keep in view transparency, competitiveness, economy, efficiency and equal opportunity** to all prospective bidders while rendering any advice to the employer in regard to selection of technology, determination of design and specification of the subject matter, with bid eligibility criteria, bid evaluation criteria, more of tendering, tender notification etc.

CVC’s advice is aimed at ensuring the co-operation of consultant, **through special provision**, with any legitimately provided /constituted investigative body in the event of an **enquiry related to execution of the consultancy contract.**

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3.0 The consultancy contracts are more prone to potential irregularity/abuse than the normal contracting processes since these contracts (consultancy contracts) are intangible in nature. The GFR, which guides the procurement process of PSU and autonomous Bodies, devotes a number of provisions on this topic. Manual for procurement of Consultancy and Other Services issued by Ministry of Finance, Department of Expenditure, which is based on GFR, gives various guidelines on the subject matter. These instructions on Consultancy Contract also find place in the Delegation of Power issued by Ministry of Shipping in 2015.

4.0 CVC guidelines need to be adhered to by any authority engaging in consultancy tenders/contracts. If not already taken care of, then a Comprehensive Administrative Order regarding manner of implementation of the various advices/instructions contained in these CVC Circulars is necessary for the benefit of all authorities engaged in consultancy tenders/contracts. Such an exercise will involve addition of new clauses /conditionality in the bid document/Agreement pertaining to procurement of consultancy services.

5.0 Suitable directives may kindly be issued in this regards.

Yours faithfully,

[Signature]

Chief Vigilance Officer
JNPT & IWAI

Enclosures: As above.
Circular No. 01/01/17

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

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

(a) **Framework of Instructions of GOI / Guidelines of CVC / others**: Departments / Organisations (employer / client), engaging a consultant, should draw attention of the consultant to the relevant and extant instructions of Government of India. GFR issued by Ministry of Finance, guidelines of CVC and provisions of the Procurement Manual / relevant instructions of the respective organisation, as applicable to the subject matter of the advice / service to be rendered by the consultant and required to be complied with.

(b) **Accountability of the employer / client and the consultant**: A consultant engaged by the employer has to have a certain degree of accountability, on its part, for any advice and / or for any service rendered to the employer, keeping in view norms of ethical business, professionalism and the fact that such advice / service is being rendered for a consideration, as per the terms of the contract. At the same time, the employer also has to have its share of accountability, for accepting the advice and services, provided by the consultant.

To ensure adequate accountability, suitable tender terms and conditions for apportioning accountability, between the employer and the consultant, need to be incorporated. Also, there should be suitable provisions to enforce such accountability, in case of improper discharge of contractual obligations / deviant conduct by / of any of the parties to the contract.
(c) **Conflict of Interest:** The consultant shall avoid any conflict of interest while discharging contractual obligations and bring, before-hand, any possible instance of conflict of interest to the knowledge of the employer / client, while rendering any advice or service.

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

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

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

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

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

(J. Vinod Kumar)

Director

To

(i) The Secretaries of all Ministries / Departments of GOI
(ii) All Chief Executives of CPSUs / Public Sector Banks / Public Sector Insurance Companies / Autonomous Bodies etc.
(iii) All CVCs of Ministries / Departments of Govt / CPSUs / Public Sector Banks / Public Sector Insurance Companies / Autonomous Bodies etc.
(iv) Website of CVC
Circular No. 08/06/11

Subject: Selection and employment of Consultants.

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

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

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

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

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

(ii) Conflict among consulting assignments – Neither consultants (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of
the consultants. As an example, consultants assisting a employer in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

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

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

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

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

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

(J Vinod Kumar)
Officer on Special Duty

To

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